

#H-855

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Pre-Print RECOMMENDATION

Statutory Clarification and Simplification of CID Law

Note: This is a pre-print report. The Law Revision Commission has approved the substance of this report, but minor editorial changes may be made prior to final publication.

December 2007

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF RECOMMENDATION

The Law Revision Commission recommends that the existing Davis-Stirling Common Interest Development Act be repealed and replaced with a new statute that continues the substance of existing law in a more user-friendly form.

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

- (1) Related provisions would be grouped together in a logical order. This would make relevant law easier to find and use. It would also provide a logical organization for any future changes in the law.
- (2) Where there is significant overlap between the Corporations Code and the Davis-Stirling Act, the substance of the Corporations Code would be added to the Davis-Stirling Act and the Corporations Code provision would be made expressly inapplicable. This would consolidate relevant law in one location and minimize inconsistencies between the two sources of law.
- (3) Sections that are excessively long or complex would be restated in simpler and shorter sections.
- (4) Consistent terminology would be used throughout.
- (5) Some governance procedures would be standardized so as to simplify routine matters.
- (6) Various minor substantive improvements would be made.

This recommendation was prepared pursuant to Resolution Chapter 100 of the Statutes of 2007.

STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

CONTENTS OF RECOMMENDATION

SUMMARY OF RECOMMENDATION	2
STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW	1
CONTENTS OF RECOMMENDATION	1
BACKGROUND	2
OVERVIEW OF PROPOSED LAW	3
GENERAL PROVISIONS	4
Application of Davis-Stirling Act and Corporations Code	5
Nonresidential CIDs	5
Corporations Code	5
Notice Procedures	5
Method of Delivery	5
Proof of Notice and Delivery Failure	6
Date of Delivery	6
Terminology	7
Parenthetical Reference	7
“Common Interest Development” Defined	7
CID Types	8
“Member” v. “Owner”	8
ASSOCIATION GOVERNANCE	8
Board Meetings	8
Committees	9
Adjournment to Another Time and Place	9
Meeting Location	9
Teleconference	10
Executive Session	10
Board Action by Written Assent	11
Member Meeting	11
Meeting Location	12
Teleconference	12
Member Elections	13
Sealed Ballot Voting Procedure	13
Election Inspector	13
Teleconference	14
Campaign Activity	14
Voting Rights	14
Action by Written Consent	14
County Model	15
Judicial Enforcement	15
Inspection of Records	15
Existing Law	15
Preemption of Corporations Code	16
Scope of Inspection Right	17
Redaction	17

Judicial Enforcement.....	18
Record Keeping	19
Duty to Maintain	19
Record Retention Period	19
Annual Reports	20
Notice of Availability.....	21
Member Handbook	21
Conflicts of Interest	21
Due Process Hearing	22
Responsibility for Violation of the Governing Documents	22
Government Assistance	22
DISPUTE RESOLUTION	23
Internal Dispute Resolution.....	23
Civil Action to Enforce Statutory CID Law.....	23
RESERVE FUNDS.....	24
Background	24
Reserve Study	24
Reserve Funding Plan	25
ASSESSMENTS	25
Assessment Increase	25
Assessment Collection	26
Application Dates.....	26
GOVERNING DOCUMENTS.....	26
Hierarchy of Document Authority	26
Restrictive Covenants	27
APPLICATION OF PROPOSED LAW TO STOCK COOPERATIVE	27
CONSTRUCTION DEFECT LITIGATION	27
DEFERRED OPERATION	27
FURTHER STUDY	28
CONTENTS OF PROPOSED LEGISLATION	29
PROPOSED LEGISLATION.....	35
CONFORMING REVISIONS	153
DISPOSITION OF FORMER LAW	257

BACKGROUND

A common interest development (“CID”) is a housing¹ development characterized by (1) separate ownership of dwelling space (or a right of exclusive occupancy) coupled with an interest in common property,² (2) covenants, conditions, and restrictions that limit use of both the common area and separate ownership interests, and (3) management of common property and enforcement of

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

2. The interest in the common property may either be an undivided ownership interest, or membership in an entity that owns the common property.

restrictions by a community association. CIDs include condominiums, community apartment projects, housing cooperatives, and planned developments.³

There are over 41,000 CIDs in California, ranging in size from three to 27,000 units each.⁴ These developments comprise over four million total housing units.⁵ Most CIDs are relatively small, with over half consisting of 25 or fewer separate interests.⁶

Homeowner associations are run by volunteer directors who may have little or no prior experience in managing real property, governing a nonprofit association or corporation, complying with the laws regulating CIDs, and interpreting and enforcing the restrictions and rules imposed by the governing documents.⁷

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

- *The Corporations Code*. If an association is incorporated, it is typically governed by the Nonprofit Mutual Benefit Corporation Law.⁸ An unincorporated homeowner association is subject to both the general law on unincorporated associations,⁹ and specific provisions of the Nonprofit Mutual Benefit Corporation Law.¹⁰
- *The Davis-Stirling Common Interest Development Act* (hereafter the “Davis-Stirling Act”).¹¹ That act provides a body of law specific to CIDs.

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

OVERVIEW OF PROPOSED LAW

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

3. See Civ. Code § 1351.

4. Levy & Co., 2005 California Community Association Statistics 1 (2005).

5. *Id.*

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

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

8. Corp. Code § 7110 *et seq.*

9. Corp. Code § 18000 *et seq.*

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

11. Civ. Code §§ 1350-1378.

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

- (1) Related provisions would be grouped together in a logical order. This would make relevant law easier to find and use. It would also provide a logical organization for any future changes in the law.¹²
- (2) Where there is significant overlap between the Corporations Code and the Davis-Stirling Act, the substance of the Corporations Code would be added to the Davis-Stirling Act and the Corporations Code provision would be made expressly inapplicable. This would consolidate relevant law in one location and minimize inconsistencies between the two sources of law.
- (3) Sections that are excessively long or complex would be restated in simpler and shorter sections.
- (4) Consistent terminology would be used throughout.
- (5) Some governance procedures would be standardized so as to simplify routine matters.
- (6) Various minor substantive improvements would be made.

For the most part, the proposed law would be a nonsubstantive cleanup of existing law. However, there are a number of instances where minor substantive improvements are proposed. Those changes are discussed more fully below.

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

GENERAL PROVISIONS

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

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

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

APPLICATION OF DAVIS-STIRLING ACT AND CORPORATIONS CODE

Nonresidential CIDs

Under existing law, an entirely nonresidential CID is exempt from specified requirements of the Davis-Stirling Act, on the grounds that those requirements “may not be necessary to protect purchasers in commercial or industrial developments” and could simply add unnecessary costs and burdens.¹⁴

The proposed law would continue those exemptions. In addition, a nonresidential CID would be exempt from the member election provisions of the Davis-Stirling Act.¹⁵ Such an association would instead be governed by the Corporations Code member election procedures.¹⁶

Corporations Code

Proposed Civil Code Section 4025 would define the relationship between the Corporations Code and the Davis-Stirling Act, in two ways:

- (1) It would make clear that where there is an inconsistency between the two sources of law, the Davis-Stirling Act prevails.
- (2) It would list specific provisions of the Corporations Code that are entirely superseded by the Davis-Stirling Act. Those provisions reflect subjects where the substance of applicable Corporations Code provisions would be imported into the Davis-Stirling Act. Readers would no longer need to consult the Corporations Code on those matters.

NOTICE PROCEDURES

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

Method of Delivery

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

- (1) “Individual notice” would be delivered individually to a specific named person.¹⁷ Individual notice is appropriate where a member’s individual property interests would be affected.
- (2) “General notice” would be provided to all members and could be provided by various forms of general publication.¹⁸ General notice would be less costly than individual notice. It would be appropriate for matters of more

14. Civ. Code § 1373.

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

16. See Corp. Code § 7510 *et seq.*

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

18. See proposed Civ. Code § 4045.

general interest, such as the time, place, and agenda for a pending board meeting. A member who wants to be assured of receipt of a general notice could request delivery of a general notice by one of the methods authorized for delivery of an individual notice.¹⁹

- (3) A notice that is to be “delivered to the board” would be delivered in the manner specified.²⁰ This would give greater certainty as to how to communicate with the board regarding official matters.

These provisions would regularize notice delivery procedures and provide for cost savings.

Proof of Notice and Delivery Failure

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

The proposed law would generalize the substance of those provisions, with one significant change.²²

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

That rule makes sense in a typical nonprofit corporation, where a member could live anywhere. If the member moves without giving a forwarding address, the corporation has no way, short of conducting an investigation at its own expense, of determining where to send notice to that member.

A CID is different. Each member necessarily owns a unit in the CID. That provides a straightforward alternative. When a mailed notice is returned as undeliverable, future notices should be delivered to the separate interest owned by the member.²³

Date of Delivery

Under existing law, some time periods are measured from the date of delivery of a notice, while others are measured from the date of receipt. The proposed law would provide a uniform rule. All time periods would be measured from the date on which a notice is sent.²⁴ Where that could result in a response deadline of 10 days or fewer, the proposed law would add five days to the specified period.

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

20. See proposed Civ. Code § 4035.

21. Corp. Code § 7511(b).

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

23. See proposed Civ. Code § 4055.

24. See *id.*

TERMINOLOGY

Parenthetical Reference

The Corporations Code defines certain common procedural requirements and then invokes those requirements by use of a parenthetical reference. For example, Corporations Code Section 7150(b) provides in part: “Bylaws may be adopted, amended, or repealed by approval of the members (Section 5034)...”²⁵ That approach simplifies drafting and facilitates the use of standardized rules for common procedures.

The proposed law takes a similar approach with regard to the rules on voting thresholds,²⁶ forms of notice delivery,²⁷ and the content of the member handbook.²⁸

“Common Interest Development” Defined

The Davis-Stirling Act defines the term “common interest development” by reference to the four specific types of CID:²⁹

“Common interest development” means any of the following:

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

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

The proposed law would include a definition of “common interest development” that states all of the substantive elements that define the term.³¹

25. Corporations Code Section 5034 specifies the number of affirmative votes required in order for an action to be “approved by the members.”

26. See proposed Civ. Code §§ 4060 (approved by board), 4065 (approved by majority of all members), 4070 (approved by majority of quorum of members).

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

28. See proposed Civ. Code § 4810.

29. Civ. Code § 1351(c).

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

31. See proposed Civ. Code § 4100.

CID Types

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

The proposed law restates the definitions of the different types of CIDs to emphasize the essential differences.³²

“Member” v. “Owner”

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

In the interest of consistency, the proposed law would use the term “member” exclusively. It defines that term so as to preserve the ownership aspect of membership.³³

In addition, the definition of “member” would expressly recognize that a non-owner may be granted some membership rights under an association's governing documents.³⁴ Such an arrangement may arise when a development has an affiliated relationship with another entity.

ASSOCIATION GOVERNANCE

The proposed law would include a chapter on the governance of an association by its board and members.³⁵ It would include provisions relating to board meetings, member meetings, member elections, record inspection, record keeping, annual reports, director conflicts of interest, managing agents, and government assistance. For the most part, those provisions would continue existing law. Any significant changes to existing law are discussed below.

BOARD MEETINGS

The Davis-Stirling Act includes a provision entitled the “Common Interest Development Open Meeting Act.”³⁶ Though much simpler than the state and local government open meeting laws,³⁷ it borrows some language from those laws and has a similar thrust.

The CID Open Meeting Act has the following effect:

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

33. See proposed Civ. Code § 4160.

34. See proposed Civ. Code § 4160(b).

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

36. Civ. Code § 1363.05.

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

- (1) Require advance notice of a meeting of the association's board.
- (2) Guarantee a member's right to appear and speak at a meeting of the board.
- (3) Define which matters may be considered by the board in closed executive session.
- (4) Require the preparation and availability of board meeting minutes.

Those rules are continued in the proposed law³⁸ with a number of minor improvements, which are discussed below.

Committees

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

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

Adjournment to Another Time and Place

The Corporations Code provides for adjournment of a board meeting to another time and place.⁴¹ That provision would be continued in the proposed law.⁴²

If the meeting is adjourned for more than 24 hours, then notice of the time and place at which the meeting will resume must be given to a director who was not present at the time of adjournment.⁴³

The proposed law would also require that notice be given to members.⁴⁴

Meeting Location

Existing statutory law is silent on where a CID board meeting may be held. The Department of Real Estate's regulations include a requirement that a board meeting be held within the development, unless the available meeting space is too small, in which case the meeting must be held as close to the development as is practicable.⁴⁵

38. See proposed Article 2 (commencing with Section 4500) of Part 5 of Division 4 of the Civil Code.

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

40. See proposed Civ. Code § 4560(a).

41. Corp. Code § 7211(a)(4).

42. See proposed Civ. Code § 4505(b).

43. Corp. Code § 7211(a)(4).

44. See proposed Civ. Code § 4520(d).

45. 10 Cal. Code Regs. § 2792.20(b).

The proposed law would codify that rule.⁴⁶

Teleconference

The Corporations Code specifically authorizes the use of teleconferencing in a nonprofit mutual benefit corporation board meeting.⁴⁷ Government open meeting laws also provide for teleconferencing.⁴⁸

The Davis-Stirling Act does not specifically address teleconferencing at a board meeting. The existing definition of a meeting as “any congregation of a majority of the members of the board *at the same time and place*”⁴⁹ could preclude a teleconference in some cases.

The proposed law authorizes the use of teleconferencing in board meetings.⁵⁰ It expressly provides that a director who participates in a meeting by teleconference is deemed to be “present,” thus avoiding any conflict with the definitional requirement that a majority of members be present in the same location. The proposed law would also state basic procedural requirements that are drawn from the teleconference provisions of the Corporations Code and the government open meeting laws.

Executive Session

Although board meetings are generally open to the members of an association, there are circumstances in which the board may meet privately, in closed “executive session.”⁵¹ Matters that may be considered in executive session are litigation, the formation of contracts with third parties, member discipline, and an assessment dispute.⁵² If a member who is the subject of a disciplinary hearing requests that the hearing be conducted in executive session, that matter must be heard in executive session.⁵³ Executive session is also mandatory for a board decision on a payment plan request⁵⁴ and a decision to foreclose on a lien.⁵⁵

The proposed law would instead provide that a member who is the subject of an assessment dispute, payment plan request, foreclosure decision, or disciplinary hearing could choose whether the matter would be considered in executive

46. See proposed Civ. Code § 4530.

47. Corp. Code § 7211(a)(6).

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

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

50. See proposed Civ. Code § 4535.

51. Civ. Code § 1363.05(b).

52. *Id.*

53. *Id.*

54. Civ. Code § 1367.1(c)(3).

55. Civ. Code § 1367.4(c)(2).

session.⁵⁶ That would allow a member to decide whether privacy or transparent decision making is more important in a particular instance.

Existing law guarantees that a member may attend an executive session held to consider whether to discipline the member.⁵⁷ The proposed law would generalize that rule, allowing a member to attend any executive session held to consider a matter that directly affects the member's individual interests.⁵⁸

Those changes would promote transparency in association decision making and should help to dispel concerns that can arise when sensitive decisions are made behind closed doors.

The proposed law would also eliminate an ambiguity involving inconsistent terminology. Existing law speaks of "meeting" in executive session and "adjourning to" executive session interchangeably. The proposed law would use the phrase "meeting in executive session" exclusively to eliminate any implication that a board that meets to conduct only executive session business must first meet in open session and then adjourn to a closed session.⁵⁹ A board would still be required to give advance notice of a meeting, even if the meeting involves only executive session business.⁶⁰

Board Action by Written Assent

The Corporations Code allows the board to act without holding a meeting, if all members of the board assent to the action in writing.⁶¹

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

The proposed law would generalize the Corporations Code procedure so that it applies to any homeowner association, whether incorporated or unincorporated.⁶²

MEMBER MEETING

Existing law includes a number of provisions that regulate the conduct of a meeting of the membership. Some are in the Davis-Stirling Act;⁶³ others are in the Corporations Code.⁶⁴

56. See proposed Civ. Code § 4540(c).

57. Civ. Code § 1363.05(b).

58. See proposed Civ. Code § 4540(d).

59. See proposed Civ. Code § 4540.

60. See proposed Civ. Code § 4090 ("board meeting" defined).

61. Corp. Code § 7211(b).

62. See proposed Civ. Code § 4545.

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

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

That is the approach taken in the proposed law.⁶⁵ Specific issues relating to the proposed member meeting provisions are discussed below.

Meeting Location

The Corporations Code allows a member meeting to be held anywhere, provided that the location is designated in the bylaws.⁶⁶ If no location is designated, the meeting is to be held at the “principal executive office” of the corporation.

The proposed law would instead require that a member meeting be held in the development, if space allows. If there is no suitable meeting space, then the meeting is to be held as near to the development as is practicable.⁶⁷ That would parallel the rule proposed for board meetings.⁶⁸

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

Note too that a CID with a scattered member population could use a mailed ballot in lieu of a meeting⁶⁹ or could use teleconferencing to provide satellite locations for participation in the meeting.⁷⁰

Teleconference

The Corporations Code authorizes the use of teleconferencing in conducting a member meeting.⁷¹ The proposed law continues that policy,⁷² but it does so with language that is drawn from the proposed board meeting teleconferencing

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

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

66. Corp. Code § 7510(a).

67. See proposed Civ. Code § 4575(c).

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

69. See proposed Civ. Code § 4640.

70. See proposed Civ. Code § 4590.

71. Corp. Code § 7510(f).

72. See proposed Civ. Code § 4590.

provision.⁷³ Use of the same standards for both types of meetings should simplify compliance with the law.

MEMBER ELECTIONS

Sealed Ballot Voting Procedure

Existing law provides a detailed mandatory procedure for the use of sealed ballots in certain types of elections.⁷⁴ The proposed law would continue that procedure.⁷⁵ Under the proposed law, an association could, by rule, apply the sealed ballot procedure to any member election.⁷⁶

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

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

Vote counting is to be conducted at a properly noticed board or member meeting, which must be open to the public. Any member has the right to observe the process of ballot counting.⁷⁷ This guarantee of transparency is in tension with the secrecy of the balloting process, and it is not entirely clear how the two goals are reconciled in practice.

The proposed law adds a minor clarification on that point:

Any member may observe the counting of ballots, but shall not be permitted to observe any information that would reveal the identity of a member casting a ballot.⁷⁸

Election Inspector

Existing law requires the use of a neutral election inspector to collect and count ballots.⁷⁹ The proposed law would make minor clarifying changes to the rules for selection of an election inspector.⁸⁰

73. See proposed Civ. Code § 4535.

74. Civ. Code § 1363.03(b).

75. See proposed Civ. Code § 4640.

76. See proposed Civ. Code § 4640(a)(5).

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

78. See proposed Civ. Code § 4650(c).

79. Civ. Code § 1363.03(c).

80. See proposed Civ. Code § 4635.

Teleconference

The proposed law would permit the use of teleconferencing at a member meeting.⁸¹ As a practical necessity, a member who participates in a meeting by teleconference would be required to vote orally. That special rule would supersede the general sealed ballot procedure.⁸² The use of teleconferencing would be optional, at the discretion of the association.

Campaign Activity

Both the Davis-Stirling Act and the Corporations Code include provisions that govern the use of association resources in campaign activity. The general principle is that an association resource may not be used for campaign advocacy unless equal access to the resource is provided to all advocates or candidates.⁸³

The proposed law continues those rules, with minor improvements to clarity and consistency.⁸⁴

A provision drawn from the Corporations Code is included in the proposed law, to make clear that an association is not liable for the publication of information that the association is required to publish pursuant to the equal access rules.⁸⁵

Voting Rights

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

The proposed law includes default rules on those issues,⁸⁶ which are drawn from the Corporations Code⁸⁷ and Department of Real Estate regulations.⁸⁸

Action by Written Consent

Under the Corporations Code, any action that requires the approval of the members may be approved by the unanimous written consent of the members.⁸⁹ This provides a useful alternative where a proposal is entirely uncontroversial. The proposed law would include the same rule.⁹⁰

81. See proposed Civ. Code § 4590.

82. *Id.*

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

84. See proposed Civ. Code § 4670.

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

86. See proposed Civ. Code § 4675.

87. Corp. Code §§ 7312(d), 7611(a).

88. 10 Cal. Code Regs. § 2792.18.

89. Corp. Code § 7516.

90. See proposed Civ. Code § 4680.

County Model

Existing law provides that an association “shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots....”⁹¹

That requirement is problematic. There appears to be no single statewide standard that can serve as a model. Instead, the election official in each county seems to be charged with developing local procedures to preserve the confidentiality of absentee ballots.⁹² The proposed law does not continue the “county model” requirement.

Judicial Enforcement

The Corporations Code⁹³ and the Davis-Stirling Act⁹⁴ provide different and inconsistent rules for judicial enforcement of the member election laws.

The proposed law would continue the Davis-Stirling Act provision,⁹⁵ with the addition of some beneficial language from the Corporations Code,⁹⁶ and would state expressly that the Corporations Code provision is inapplicable.⁹⁷ That will help to avoid uncertainty as to which law controls.

INSPECTION OF RECORDS

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

Existing Law

Until recently, record inspection rights were addressed exclusively by the Corporations Code.⁹⁸ It provides for member access to the membership list and “accounting books and records” of the association, as well as minutes of meetings. The right to inspect the membership list is limited to a noncommercial use of the

91. Civ. Code § 1363.03(e).

92. See Elec. Code § 3017(b).

93. Corp. Code § 7616.

94. Civ. Code § 1363.09.

95. See proposed Civ. Code § 4685.

96. Proposed Civil Code Section 4685(b) would adopt the expedited hearing and notice provisions of Corporations Code Section 7616(c). The second sentence of proposed Civil Code Section 4685(d) would borrow language presuming the validity of an election that is not challenged in the time provided for a challenge.

97. See proposed Civ. Code § 4025(b)(3).

98. See Corp. Code §§ 8330-8338.

list that is reasonably related to the member's interest as a member.⁹⁹ Inspection may be limited in order to protect members' privacy rights.¹⁰⁰ The inspection right can be enforced in the superior court.¹⁰¹ Costs and expenses, including reasonable attorney's fees, may be awarded to the member if the association acted unlawfully in denying inspection.¹⁰²

The Davis-Stirling Act expressly incorporates those provisions.¹⁰³ As a result, they apply to any association, even one that is unincorporated.

In 2003, the Legislature added Civil Code Section 1365.2 to further elaborate on record inspection rights.¹⁰⁴ That section was repealed and replaced with another section of the same number in 2005.¹⁰⁵ The new section added additional record inspection rules.

The proposed law continues existing law on member record inspection rights, except as discussed below.¹⁰⁶

Preemption of Corporations Code

The Corporations Code provisions on record inspection are expressly applicable to a CID.¹⁰⁷ However, the main Davis-Stirling Act provision on record inspection states that it supersedes two of those Corporations Code provisions, to the extent of any inconsistency with those sections.¹⁰⁸

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

The proposed law would completely preempt the Corporations Code provisions on record inspection.¹⁰⁹ This would provide a single clear source of law on the topic. It should not result in significant substantive change in the law, as most of the substance of the Corporations Code provisions is also addressed by the Davis-Stirling Act.

99. Corp. Code § 8338.

100. Corp. Code § 8332.

101. Corp. Code § 8336.

102. Corp. Code § 8337.

103. See Civ. Code § 1363(f).

104. 2003 Cal. Stat. ch. 375.

105. 2005 Cal. Stat. ch. 458.

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

107. Civ. Code § 1363(f).

108. Civ. Code § 1365.2(m).

109. See proposed Civ. Code § 4025(b)(4).

Scope of Inspection Right

The proposed law would broaden the scope of the member record inspection right to include the governing documents of the association.¹¹⁰

Redaction

The Davis-Stirling Act provides some protection against identity theft, fraud, and invasion of privacy by listing certain types of information that an association may redact before allowing inspection of a record.¹¹¹

Under existing law, redaction of personal information is optional. That is problematic, because a failure to redact personal information can result in liability for the person who provides access to the unredacted record.¹¹² The proposed law would make redaction mandatory.¹¹³

Existing law requires an association to withhold records that are privileged as a matter of law.¹¹⁴ The proposed law would continue that rule.¹¹⁵ Existing law also provides that a contract for maintenance, management, or legal services is not privileged.¹¹⁶ The proposed law would continue that limit on evidentiary privileges, but only with respect to a member's right to inspect association records. Any evidentiary privilege that is otherwise applicable to such contracts would continue to apply with respect to third parties.¹¹⁷

Under existing law, an association is entitled to be reimbursed for a specified amount of costs incurred as a result of redacting records that are classified as "enhanced association records." The proposed law would generalize that requirement so that an association would be reimbursed for any required redaction, regardless of the record being redacted.¹¹⁸

With that change, the special classification of some records as "enhanced" would be eliminated. That change would have no substantive effect, except with respect to the reimbursement rule discussed above. However, the change would eliminate an existing ambiguity about the application of other record provisions that, by their terms, apply to "association records" but do not expressly apply to "enhanced association records."¹¹⁹

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

111. Civ. Code § 1365.2.

112. Civ. Code § 1365.2(d)(3); proposed Civ. Code § 4745.

113. See proposed Civ. Code § 4710.

114. Civ. Code § 1365.2(d)(1)(C).

115. See proposed Civ. Code § 4700(b)(2).

116. Civ. Code § 1365.2(d)(1)(E)(iv).

117. See proposed Civ. Code § 4700(b)(2) ("*For the purposes of this section, a contract to provide maintenance, management, or legal services to an association is not privileged.*") (emphasis added).

118. See proposed Civ. Code § 4720.

119. See, e.g., Civ. Code § 1365.2(b)(2), (c)(1)-(3), (d)(1), (e)(1)-(2), (f), (i), (j).

Judicial Enforcement

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

- Proposed Civil Code Section 4725 states substantive limitations on the use of association records and authorizes the association to deny a request when it reasonably believes that the records will be misused or that disclosure would violate a member's constitutional rights.
- Proposed Civil Code Section 4730 provides a procedure for denial of a record inspection request. It requires a formal notice of denial, which includes an offer to use the association's internal dispute resolution process. If the member objects to the denial decision, the association must either comply with the request or commence a proceeding to set aside the request. If the member does not object in the time provided, then the request expires and the association need do nothing further.
- Proposed Civil Code Section 4735 authorizes a member to bring an action in the superior court to enforce a record inspection request. The action would turn on a small number of fairly straightforward factual questions: is the requested record subject to inspection, did the requesting member follow procedures, is an action pending to set the request aside, or was the request in fact set aside by the court? The action may be filed in the small claims division. The court may impose a civil penalty of up to \$500 against an association that withholds records unreasonably.

If the court finds that the requested disclosure would violate member constitutional rights or that there is a reasonable likelihood that disclosure would result in misuse of the records, the court may modify or set aside the request. The court may toll any association deadline, postpone an association meeting, or order any other relief that may be appropriate under the circumstances. The court may award costs and expenses against either party, under specified conditions.

- Proposed Civil Code Section 4740 provides for an action to enjoin the improper use of records and award damages for harms that result from misuse. An association that prevails under the section would be awarded costs and expenses.

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

RECORD KEEPING

Duty to Maintain

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

Under the proposed law,¹²² the list of records that must be maintained would be expanded to include all of the types of records that are subject to member inspection and other types of business records that should be maintained by any well-run nonprofit organization.

In developing the proposed record retention requirements, the Commission looked to common practice within the nonprofit sector. There is a wide range of advice available on the topic, including some that is specific to homeowner associations.¹²³ The proposed law is generally consistent with that body of advice.

Record Retention Period

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

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

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

- (1) Association records shall be made available for the current fiscal year and for each of the previous two fiscal years.
- (2) Minutes of member and board meetings shall be permanently made available. If a committee has decision making authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently made available.¹²⁴

An association director who reads that provision might assume that it states the only applicable requirement for retention of the specified records. That would be a mistake. Some of the listed documents are subject to specific retention requirements that exceed three years.¹²⁵ In addition, documents that could be relevant in future litigation should be maintained for at least as long as the applicable statute of limitations.¹²⁶ As a practical matter, the governing documents

121. Corp. Code § 8320.

122. Civ. Code §4775.

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

124. Civ. Code § 1365.2(i).

125. See, e.g., 22 Cal. Code Regs. § 1085-2 (employment records maintained for four years).

126. See, e.g., Code Civ. Proc. §§ 318 (five year period for action relating to title to real property), 337(1) (four year period for action on written contract), 337.1 (four year period for action on patent construction defect), 337.15 (ten year period for action on latent construction defect), 338(a) (three year period for action on liability created by statute), 338(b) (three year period for trespass or injury to real property),

and records relating to their amendment should be kept permanently, as they are fundamental to the governance of the association and the rights of members.

The proposed law would provide clear record retention rules. It identifies certain types of records that must be retained permanently.¹²⁷ Most other records that an association is required to maintain would be retained for at least four years.¹²⁸ That should satisfy retention requirements imposed by other law, most of which require that a document be preserved for three to four years.

ANNUAL REPORTS

Existing law requires that an association distribute three different annual reports to its membership:

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

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

338(d) (three year period for action for fraud or mistake), 338(g) (three year period for slander of title), 343 (four year period for actions not otherwise provided for), 359 (three year period for action against director or member of corporation for penalty, forfeiture, or liability created by law).

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

128. See proposed Civ. Code § 4780(a). There is a special rule for retention of ballots cast in a member election. See proposed Civ. Code § 4780(c).

129. Civ. Code § 1365(a).

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

131. Corp. Code §§ 8321-8322

132. Civ. Code § 1365(b).

133. Civ. Code § 1365.3.

Notice of Availability

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

Similarly, the Corporations Code provides for distribution of notice of the availability of a nonprofit mutual benefit corporation's annual report, rather than the report itself.¹³⁵ Again, instructions are to be provided on how to obtain a complete copy of the report at no cost.

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

Member Handbook

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

CONFLICTS OF INTEREST

The proposed law would continue a provision that incorporates Corporations Code Section 310, governing contracts in which a director has a financial interest.¹³⁸

In addition, the proposed law would add a new set of rules requiring recusal of a director in the most common situations in which the director would have a personal interest in a board decision.¹³⁹ The proposed law would make clear that

134. Civ. Code § 1365(c).

135. Corp. Code § 8321.

136. See proposed Civ. Code § 4820.

137. See proposed Civ. Code § 4810.

138. See proposed Civ. Code § 4855(a).

139. See proposed Civ. Code § 4855(b).

the recusal rules are not intended to be exclusive. Other provisions of law or the governing documents may also govern director conflicts of interest.¹⁴⁰

DUE PROCESS HEARING

Existing law requires that a member have notice and an opportunity to be heard by the board before the board disciplines the member for a violation of the governing documents.¹⁴¹

The proposed law would make minor improvements to the hearing requirements and would generalize the requirement so that a hearing is also required before the board assesses a charge against a member for having caused damage to association property.¹⁴²

RESPONSIBILITY FOR VIOLATION OF THE GOVERNING DOCUMENTS

Existing law provides that a member is responsible for a violation of the governing documents by the member's guest or invitee.¹⁴³ The proposed law would restate that rule to make clear that a member is also responsible for a tenant or a resident of the member's unit (such as a family member who is not a member of the association).¹⁴⁴

GOVERNMENT ASSISTANCE

The proposed law would continue two sections that relate to government involvement in the governance of CIDs, without substantive change.¹⁴⁵

In addition, the proposed law would add a new provision, authorizing the Attorney General to act on certain complaints regarding CID governance.¹⁴⁶ That provision would be consistent with the spirit of existing law, as discussed below.

The Corporations Code currently authorizes the Attorney General to act on a complaint that a nonprofit mutual benefit corporation is not complying with the Corporations Code provisions governing member meetings, voting, and record inspection.¹⁴⁷

140. See proposed Civ. Code § 4855(c).

141. Civ. Code § 1363(h).

142. See proposed Civ. Code § 5005.

143. Civ. Code § 1363(g).

144. See proposed Civ. Code § 5015.

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

146. See proposed Civ. Code § 4955.

147. Corp. Code § 8216.

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

The proposed law would restore that authority to its original dimension, by adding a provision that expressly authorizes the Attorney General to act on complaints regarding a violation of the Davis-Stirling Act provisions on member meetings, voting, and record inspection.¹⁴⁸ As under existing law, the Attorney General's authority would be largely discretionary.

DISPUTE RESOLUTION

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

Internal Dispute Resolution

Existing law requires that an association provide an internal dispute resolution procedure for use by a homeowner who has a dispute with the association.¹⁴⁹ The point of the internal dispute resolution process is to make sure that a homeowner has an opportunity to meet with a representative of the board and explain his or her side of a dispute, in the hopes that the problem can be resolved by mutual agreement.

The provision requiring a due process hearing before a member is disciplined or assessed for damage to the common area would serve the same purpose, by providing an opportunity to be heard by the board.¹⁵⁰

In order to avoid procedural redundancy, the proposed law would make clear that a matter resolved through a due process hearing could not be revisited under the internal dispute resolution procedure.¹⁵¹

Civil Action to Enforce Statutory CID Law

There are a number of existing provisions that provide for a civil action to enforce a specific provision of the Davis-Stirling Act.¹⁵²

Those provisions cover much, but not all of CID statutory law. That incomplete coverage may create an implication that judicial enforcement is unavailable except

148. See proposed Civ. Code § 4955.

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

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

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

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

where it is specifically authorized. For example, the Davis-Stirling Act provides that an association is responsible for maintenance of the common area,¹⁵³ but there is no specific provision authorizing a civil action to enforce that obligation. It is therefore not clear whether such an action may be brought.

The Commission sees no policy reason to authorize judicial enforcement of the specific provisions listed above, while denying judicial enforcement of other important provisions of the Davis-Stirling Act (e.g., an owner's right of access to a separate interest, rulemaking procedure, architectural review procedure). The proposed law would generally authorize a civil action to enforce any provision of the Davis-Stirling Act.¹⁵⁴

RESERVE FUNDS

Background

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

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

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

Underfunding of reserves appears to be common. One survey of 687 associations found an average funding rate of 54%. That is, the surveyed associations only had 54% of the funds in reserve that would be needed for future repair and replacement costs.¹⁵⁵

Reserve Study

Existing law does not require that an association fully fund its reserves. Instead, the law requires study and disclosure. An association must prepare an annual reserve study, which identifies its future repair responsibilities and compares the

153. Civ. Code § 1364(a).

154. See proposed Civ. Code § 5130.

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

cost of those repairs to the amount set aside in the reserve fund. This serves two important purposes:

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

The current rules on reserve funding are spread across multiple provisions.¹⁵⁶ It is difficult to read those sections together and get a clear picture of what is required.

The proposed law would restate the substance of the existing requirements in a significantly simplified form.¹⁵⁷

Reserve Funding Plan

An association must also adopt a "reserve funding plan." The plan would "include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve...."¹⁵⁸

The proposed law would restate the substance of the existing requirements in a significantly simplified form.¹⁵⁹

ASSESSMENTS

An association is required to impose assessments sufficient to perform its obligations. However, an assessment may not exceed the amount required to accomplish the purpose for which it is assessed.¹⁶⁰

Assessment Increase

Under existing law, an association may increase its assessments by any amount that is required to meet its obligations, even if the governing documents purport to limit assessment increases.¹⁶¹ However, an increase above a certain amount must be approved by the members.¹⁶² The provision establishing those rules is poorly phrased, but legislative history makes its meaning clear.¹⁶³

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

157. See proposed Civ. Code § 5555.

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

159. See proposed Civ. Code § 5560.

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

161. Civ. Code § 1366(b).

162. *Id.*

163. See Senate Housing and Urban Affairs Committee Analysis of AB 279 (July 1, 1987) (on file with Commission); Letter from Senate Housing and Urban Affairs Committee to Senator Leroy F. Greene

The proposed law restates those rules to improve their clarity, without changing their substance.¹⁶⁴

Assessment Collection

Assessment collection is governed by several complex and partially overlapping sections.¹⁶⁵

The proposed law regroups the material by subject matter, and presents it as a series of relatively short sections that roughly track the order of the procedural steps involved in collecting an overdue assessment.¹⁶⁶

Application Dates

The existing assessment collection provisions have differing application dates:

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

The proposed law would significantly simplify those application rules.¹⁶⁷

GOVERNING DOCUMENTS

Hierarchy of Document Authority

The proposed law establishes a formal hierarchy of authority between the different types of governing documents.¹⁶⁸ The articles would be bound by the declaration. The bylaws would be bound by both the articles and the declaration. An operating rule would be subordinate to all of the other document types. The express statement of those rules should help to avoid any uncertainty about the relationship between different types of documents.

(August 20, 1987) (on file with Commission). See also C. Sproul and K. Rosenberry, *Advising California Common Interest Communities* § 5.4, at 283-84 (Cal. Cont. Ed. Bar 2006).

164. See proposed Civ. Code § 5580.

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

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

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

168. See proposed Civ. Code § 6005.

Restrictive Covenants

Existing law requires that illegal discriminatory covenants be expunged from the governing documents, and provides an expedited procedure for doing so.¹⁶⁹ That section would be restated in the proposed law, with a new requirement that an amended declaration be recorded and that amended articles of incorporation be filed with the Secretary of State.¹⁷⁰ Those new requirements are consistent with the general practice for amending those types of documents.¹⁷¹

The proposed law would also make clear that the expungement requirement applies to any illegal discriminatory restriction in an association's governing documents, regardless of form.

APPLICATION OF PROPOSED LAW TO STOCK COOPERATIVE

Existing law requires that a declaration be recorded in order for a common interest development to be created. Notwithstanding that requirement, the Commission has learned that many stock cooperatives are created without a recorded declaration. The information and restrictions that would ordinarily be expressed in a declaration are instead expressed in articles of incorporation, bylaws, regulations, or lease terms. In order to avoid any implication that a stock cooperative is not governed by the proposed law, the proposed law provides expressly that it applies to a stock cooperative that does not have a recorded declaration.¹⁷² The Commission intends to examine further issues on the application of common interest development law to a stock cooperative as a separate study.

CONSTRUCTION DEFECT LITIGATION

Existing law includes fairly lengthy provisions setting out procedural prerequisites to an association filing a construction defect lawsuit against a developer or builder.¹⁷³ The proposed law would leave those provisions unchanged to the maximum extent possible. The section numbers would change and cross-references would be updated, but no other changes would be made.¹⁷⁴

DEFERRED OPERATION

The proposed law would have a one-year deferred operative date. That would give practitioners time to adjust to the new organization of the law. It would also

169. Civ. Code § 1352.5.

170. See proposed Civ. Code § 6150.

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

172. See proposed Section 6000(b).

173. Civ. Code §§ 1375-1375.1.

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

provide an opportunity for a follow-up bill to coordinate the proposed law with any changes to the law that are made in the same year that the proposed law is enacted.

FURTHER STUDY

In the course of developing the proposed law, the Commission received a number of suggestions for substantive changes to existing law. Most were too substantive for inclusion in a reform of this type. However, the Commission noted all of the suggestions and will study them on an ongoing basis.

CONTENTS OF PROPOSED LEGISLATION

PROPOSED LEGISLATION.....	35
Civ. Code §§ 4000-6215 (added). Common Interest Developments	35
PART 5. COMMON INTEREST DEVELOPMENTS	35
CHAPTER 1. PRELIMINARY PROVISIONS	35
Article 1. General Provisions	35
§ 4000. Short title	35
§ 4005. Effect of headings	35
§ 4010. Continuation of prior law	35
§ 4015. Application of part	36
§ 4020. Nonresidential development	37
§ 4025. Application of Corporations Code	37
§ 4030. Construction of zoning ordinance	38
§ 4035. “Delivered to the board”	38
§ 4040. “Individual notice”	38
§ 4045. “General notice”	39
§ 4050. Time and proof of delivery	39
§ 4055. Delivery failure	39
§ 4060. Approved by board	40
§ 4065. Approved by majority of all members	40
§ 4070. Approved by majority of quorum of members	40
Article 2. Definitions	41
§ 4075. Application of definitions	41
§ 4080. “Association”	41
§ 4085. “Board”	41
§ 4090. “Board meeting”	41
§ 4095. “Common area”	41
§ 4100. “Common interest development”	42
§ 4105. “Community apartment project”	42
§ 4110. “Community service organization”	42
§ 4115. “Condominium”	43
§ 4120. “Condominium plan”	43
§ 4125. “Condominium project”	43
§ 4130. “Declarant”	43
§ 4135. “Declaration”	44
§ 4140. “Director”	44
§ 4145. “Exclusive use common area”	44
§ 4150. “Governing documents”	44
§ 4155. “Managing agent”	45
§ 4160. “Member”	45
§ 4163. “Member election”	45
§ 4165. “Operating rule”	45
§ 4170. “Person”	46
§ 4175. “Planned development”	46
§ 4180. “Rule change”	46
§ 4185. “Separate interest”	46
§ 4190. “Stock cooperative”	47
CHAPTER 2. MEMBER BILL OF RIGHTS [RESERVED]	47
CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE.....	47
Article 1. Association Existence and Powers	47
§ 4400. Association	47
§ 4405. Association powers	47

§ 4410. Standing	48
§ 4415. Comparative fault	48
§ 4420. No limitation of rights.....	49
Article 2. Board Meeting	49
§ 4500. Short title	49
§ 4505. Convening or adjourning meeting.....	49
§ 4510. Quorum	49
§ 4515. Board action.....	50
§ 4520. Notice of board meeting	50
§ 4525. Board meeting open	51
§ 4528. Limitation on meeting content	51
§ 4530. Board meeting location	52
§ 4535. Teleconference.....	53
§ 4540. Executive session.....	53
§ 4545. Action without meeting	54
§ 4550. Minutes	54
§ 4555. Civil action to enforce article.....	55
§ 4560. Application of article	55
Article 3. Member Meeting.....	55
§ 4575. General rules for conduct of meeting.....	55
§ 4580. Quorum	56
§ 4585. Member action	56
§ 4590. Teleconference.....	56
§ 4595. Notice of regular meeting	57
§ 4600. Special meeting of members	57
§ 4605. Meeting adjournment	58
§ 4610. Waiver of requirements.....	59
§ 4615. Court-ordered meeting	59
§ 4620. Court-ordered modification of meeting requirements.....	60
Article 4. Member Election.....	61
§ 4625. Application of article	61
§ 4630. Election provisions in governing documents	61
§ 4635. Selection of election inspector	61
§ 4640. Secret ballots.....	62
§ 4650. Counting ballots	64
§ 4655. Ballot custody and inspection	64
§ 4660. Proxies	65
§ 4665. Nomination of candidate for board	65
§ 4670. Campaign-related information	66
§ 4675. Voting rights	66
§ 4680. Action by unanimous written consent.....	67
§ 4685. Judicial enforcement	67
Article 5. Inspection of Records	68
§ 4700. Scope of inspection right	68
§ 4705. Inspection procedure	70
§ 4710. Redaction	71
§ 4715. Optional removal from membership list	71
§ 4720. Fees	71
§ 4725. Permissible purpose	72
§ 4730. Denial of request	72
§ 4735. Action to enforce	73
§ 4740. Action to enjoin improper use of records.....	74
§ 4745. Liability.....	74
§ 4750. Application of article	74
Article 6. Record Keeping	75
§ 4775. Duty to maintain records.....	75

§ 4780. Record retention periods	76
§ 4785. Director inspection	77
Article 7. Annual Reports	77
§ 4800. Annual budget report	77
§ 4805. Annual financial statement	78
§ 4810. Member handbook	78
§ 4815. Community service organization report	79
§ 4820. Notice of availability	80
§ 4825. Financial statement	80
§ 4830. Judicial enforcement	80
Article 8. Conflict of Interest	80
§ 4855. Interested director	80
Article 9. Managing Agent	81
§ 4900. Prospective managing agent disclosure	81
§ 4905. Trust fund account	82
Article 10. Government Assistance	83
§ 4950. Director training course	83
§ 4955. Attorney general	83
§ 4960. State registry	84
CHAPTER 4. DISPUTE RESOLUTION AND ENFORCEMENT	85
Article 1. Disciplinary Action	85
§ 5000. Authority to impose disciplinary fine	85
§ 5005. Due process hearing	85
§ 5015. Responsibility for guest, invitee, or tenant	86
§ 5020. Removing vehicle from common interest development	86
Article 2. Internal Dispute Resolution	86
§ 5050. Application of article	86
§ 5055. Fair, reasonable, and expeditious dispute resolution procedure required	87
§ 5060. Minimum requirements of association procedure	87
§ 5065. Default meet and confer procedure	88
§ 5070. Notice in member handbook	89
Article 3. Alternative Dispute Resolution Prerequisite to Civil Action	89
§ 5075. Definitions	89
§ 5080. ADR prerequisite to enforcement action	89
§ 5085. Request for resolution	90
§ 5090. ADR process	90
§ 5095. Tolling of statute of limitations	90
§ 5100. Certification of efforts to resolve dispute	91
§ 5105. Stay of litigation for dispute resolution	91
§ 5110. Attorney's fees	91
§ 5115. Notice in member handbook	91
Article 4. Civil Actions	92
§ 5125. Enforcement of governing documents	92
§ 5130. Enforcement of this part	92
CHAPTER 5. FINANCES	92
Article 1. Accounting	92
§ 5500. Accounting	92
Article 2. Use of Reserve Funds	93
§ 5510. Use of reserve funds	93
§ 5515. Temporary transfer of reserve funds	93
§ 5520. Use of reserve funds for litigation	94
Article 3. Reserve Funding	94
§ 5550. Inspection of major components	94
§ 5555. Reserve funding study	94
§ 5560. Reserve funding plan	99
Article 4. Assessments	100

§ 5575. Levy of assessment	100
§ 5580. Assessment increase	100
§ 5585. Exemption from execution.....	101
Article 5. Payment and Collection of Assessment	101
§ 5600. Payment	101
§ 5605. Delinquency	102
§ 5610. Assignment or pledge	102
§ 5615. Pre-lien notice	103
§ 5620. Payment plan	103
§ 5625. Pre-lien meeting	104
§ 5630. Lien creation and priority.....	104
§ 5635. Lien release	105
§ 5640. Lien for damage or fine.....	106
§ 5645. Collection generally	106
§ 5650. Prohibition on foreclosure for small amount	107
§ 5655. Foreclosure	107
§ 5660. Right of redemption after trustee sale	108
§ 5665. Recorded association information.....	109
§ 5670. Statement of collection procedure.....	109
§ 5675. Application of article	111
Article 6. Insurance and Liability	111
§ 5680. Limitation of director and officer liability	111
§ 5685. Limitation of member liability	112
§ 5690. Notice of change in coverage.....	113
CHAPTER 6. PROPERTY MAINTENANCE AND USE.....	113
Article 1. Maintenance	113
§ 5700. Maintenance responsibility generally	113
§ 5705. Temporary removal of occupant to perform treatment of wood-destroying pests	114
§ 5710. Exclusive use communication wiring	114
Article 2. Limitation of Association Authority to Regulate Property Use	115
§ 5725. Application of article	115
§ 5730. Display of flag or other noncommercial display	115
§ 5735. Pets.....	116
§ 5740. Roofing materials.....	116
§ 5745. Television antenna or satellite dish	117
§ 5750. Marketing restriction.....	118
§ 5755. Low water-using plants	118
§ 5760. Improvements to separate interest.....	118
Article 3. Architectural Review	119
§ 5775. Architectural review and decisionmaking.....	119
CHAPTER 7. PROPERTY OWNERSHIP AND TRANSFER	120
Article 1. Ownership Rights and Interests	120
§ 5800. Ownership of common area	120
§ 5805. Appurtenant rights and easements	120
§ 5810. Access to separate interest property	121
Article 2. Transfer Disclosure	121
§ 5825. Disclosure to prospective purchaser	121
§ 5830. Information to be provided by association.....	122
§ 5835. Related requirements	123
§ 5840. Enforcement of article	123
§ 5845. Validity of title unaffected	123
Article 3. Transfer Fee	123
§ 5875. Transfer fee	123
§ 5880. Exemption from transfer fee limitations	123
Article 4. Restrictions on Transfers	124
§ 5900. Grant of exclusive use.....	124

§ 5905. Partition of condominium project	125
§ 5910. Lien for work performed in condominium project.....	126
Article 5. Transfer of Separate Interest	126
§ 5925. Community apartment project	126
§ 5930. Condominium project	126
§ 5935. Planned development	127
§ 5940. Stock cooperative.....	127
§ 5945. Transfer of exclusive use common area.....	127
§ 5950. Severability of interests.....	127
CHAPTER 8. GOVERNING DOCUMENTS	128
Article 1. General Provisions	128
§ 6000. Creation of common interest development	128
§ 6005. Document authority	128
Article 2. Declaration.....	129
§ 6025. Content of declaration.....	129
§ 6030. Disclosure of airport in vicinity	129
§ 6035. Disclosure of BCDC jurisdiction	130
§ 6040. Amendment authorized	130
§ 6045. Approval of amendment	131
§ 6050. Approval of amendment to delete obsolete construction or marketing provision.....	131
§ 6055. Effective date of amendment	132
Article 3. Articles of Incorporation	132
§ 6060. Content of articles	132
Article 4. Condominium Plan	133
§ 6075. Content of condominium plan	133
§ 6080. Amendment of condominium plan	134
Article 5. Operating Rules	134
§ 6100. Requirements for validity and enforceability.....	134
§ 6110. Application of rulemaking procedures.....	134
§ 6115. Approval of rule change by board.....	135
§ 6120. Reversal of rule change by members	135
§ 6125. Applicability of article to changes commenced before and after January 1, 2004.....	136
Article 6. Unlawful Restrictions	137
§ 6150. Discriminatory restriction	137
Article 7. Construction of Documents	137
§ 6175. Liberal construction of instruments	137
§ 6180. Boundaries of units	138
CHAPTER 9. CONSTRUCTION DEFECT LITIGATION	138
§ 6200. Actions for damages	138
§ 6205. Action following pre-filing dispute resolution.....	147
§ 6210. Notice of resolution	150
§ 6215. Notice of civil action.....	151
Uncodified (added). Operative date	151
CONFORMING REVISIONS	153
DISPOSITION OF FORMER LAW	257

PROPOSED LEGISLATION

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

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

PART 5. COMMON INTEREST DEVELOPMENTS

CHAPTER 1. PRELIMINARY PROVISIONS

Article 1. General Provisions

§ 4000. Short title

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

Comment. Section 4000 continues former Section 1350 without change.

§ 4005. Effect of headings

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

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

§ 4010. Continuation of prior law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 4015. Application of part

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

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

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

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

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

§ 4020. Nonresidential development

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

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

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

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

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

§ 4025. Application of Corporations Code

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

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

- (1) Sections 5211 and 7211.
- (2) Chapter 5 (commencing with Section 5510) of Part 2 of, and Chapter 5 (commencing with Section 7510) of Part 3 of, Division 2.
- (3) Sections 5610, 5611, 5612, 5615, 5617, 7610, 7611, 7612, 7614, and 7616.
- (4) Chapter 13 (commencing with Section 6310) of Part 2 of, and Chapter 13 (commencing with Section 8310) of Part 3 of, Division 2.

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

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

Comment. Section 4025 is new.

Subdivision (b) lists provisions of the Nonprofit Public Benefit Corporation Law and the Nonprofit Mutual Benefit Corporation Law that are entirely superseded by the provisions of this part.

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

See also Section 4080 (“association”).

§ 4030. Construction of zoning ordinance

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

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

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

§ 4035. “Delivered to the board”

4035. If a provision of this part requires that a document be “delivered to the board” the document shall be delivered by one of the following methods:

(a) By first-class mail, postage prepaid, to the person designated in the member handbook (Section 4810) to receive documents on behalf of the association. If no person has been designated to receive documents, the document shall be delivered to the president or secretary of the association.

(b) By personal delivery to a director at a meeting of the board.

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

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

§ 4040. “Individual notice”

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

(1) Personal delivery.

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

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

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

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

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

Comment. Section 4040 is new.

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

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

§ 4045. “General notice”

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

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

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

(3) Posting in a location that is accessible to all members, including on an Internet website, if the location has been designated in the member handbook (Section 4810) for the posting of general notices by the association.

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

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

(b) Notwithstanding subdivision (a), if a member requests that general notice to the member be delivered as an individual notice, a general notice to the member shall be delivered as an individual notice (Section 4040). The option provided in this subdivision shall be described in the member handbook (Section 4810).

Comment. Section 4045 restates part of former Section 1350.7 without substantive change.

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

§ 4050. Time and proof of delivery

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

(b) If a document is delivered by mail, delivery is complete at the time of deposit into the mail.

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

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

Comment. Subdivision (b) of Section 4050 continues part of former Section 1350.7(b)(2) without substantive change.

Subdivision (c) continues part of former Section 1350.7(b)(3) without substantive change.

Subdivision (d) is comparable to part of Corporations Code Section 7511(b).

See also Sections 4080 (“association”), 4155 (“managing agent”).

§ 4055. Delivery failure

4055. (a) If a notice to a member is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the

notice to the member at the given address, the association shall deliver that notice and any future notices to that member to the address of a separate interest owned by the member.

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

Comment. Section 4055 is new.

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

§ 4060. Approved by board

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

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

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

§ 4065. Approved by majority of all members

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

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

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

§ 4070. Approved by majority of quorum of members

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

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

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

Article 2. Definitions

§ 4075. Application of definitions

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

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

§ 4080. “Association”

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

Comment. Section 4080 continues former Section 1351(a) without substantive change. See also Sections 4100 (“common interest development”), 4500 (existence of association).

§ 4085. “Board”

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

Comment. Section 4085 is new. It is added for drafting convenience. See also Sections 4080 (“association”), 4140 (“director”).

§ 4090. “Board meeting”

4090. “Board meeting” means a congregation of directors constituting a quorum at the same time and place to hear, discuss, or deliberate upon any business scheduled to be heard by the board.

Comment. Section 4090 restates part of the substance of former Section 1363.05(j) without substantive change, with two exceptions: (1) The number of directors required to establish a meeting has been changed from a majority to a number constituting a quorum. This reflects the fact that a board may have a quorum that is different from a simple majority. See Section 4510. (2) The exception for matters considered in executive session is not continued.

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

See also Section 4085 (“board”).

§ 4095. “Common area”

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

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

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

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

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

§ 4100. “Common interest development”

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

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

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

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

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

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

See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment project”), 4125 (“condominium project”), 4175 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”), 6000 (creation of common interest development).

§ 4105. “Community apartment project”

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

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

§ 4110. “Community service organization”

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

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

Comment. Section 4110 continues former Section 1368(c)(3) without substantive change. See also Sections 4095 (“common area”), 4100 (“common interest development”).

§ 4115. “Condominium”

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

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

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

§ 4120. “Condominium plan”

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

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

§ 4125. “Condominium project”

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

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

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

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

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

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

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

§ 4130. “Declarant”

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

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

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

§ 4135. “Declaration”

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

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

§ 4140. “Director”

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

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

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

§ 4145. “Exclusive use common area”

4145. (a) “Exclusive use common area” means a part of the common area designated by the declaration or pursuant to Section 5900, to be used exclusively by one or more, but fewer than all, of the members. The right of exclusive use is appurtenant to the separate interests of those members.

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

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

Comment. Section 4145 restates former Section 1351(i) without substantive change, except that the reference in subdivision (c) to “telephone wiring” is generalized to accommodate non-telephonic communication technology and nonmetallic media (e.g., fiber optic).

See also Sections 4095 (“common area”), 4135 (“declaration”), 4160 (“member”), 4185 (“separate interest”), 5710 (maintenance of communication wiring).

§ 4150. “Governing documents”

4150. “Governing documents” means the declaration, bylaws, articles of incorporation or association, operating rules, and any other documents that govern the operation of the common interest development or association.

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

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

§ 4155. “Managing agent”

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

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

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

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

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

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

§ 4160. “Member”

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

(a) An owner of a separate interest in a common interest development.

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

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

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

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

§ 4163. “Member election”

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

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

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

§ 4165. “Operating rule”

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

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

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

§ 4170. “Person”

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

Comment. Section 4170 is new. It is added for drafting convenience.
See also Section 4080 (“association”).

§ 4175. “Planned development”

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

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

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

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

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

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

§ 4180. “Rule change”

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

Comment. Section 4180 generalizes former Section 1357.100(b).
See also Sections 4085 (“board”), 4165 (“operating rule”).

§ 4185. “Separate interest”

4185. (a) In a community apartment project, “separate interest” means the exclusive right to occupy an apartment.

(b) In a condominium project, “separate interest” means a separately owned unit.

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

(d) In a stock cooperative, “separate interest” means the exclusive right to occupy a portion of the real property.

(e) Unless the declaration or a condominium plan otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior

surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common area.

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

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

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

§ 4190. “Stock cooperative”

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

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

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

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

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

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

CHAPTER 2. MEMBER BILL OF RIGHTS [RESERVED]

CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE

Article 1. Association Existence and Powers

§ 4400. Association

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

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

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

§ 4405. Association powers

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

(1) The powers granted in this part.

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

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

Comment. Section 4405 restates former Section 1363(c) without substantive change. See also Sections 4080 (“association”), 4150 (“governing documents”).

§ 4410. Standing

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

(a) Enforcement of the governing documents.

(b) Damage to the common area.

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

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

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

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

§ 4415. Comparative fault

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

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

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

(d) In an action involving damages described in subdivision (b), (c), or (d) of Section 4410, the defendant or cross-defendant may allege and prove the comparative fault of the association or its managing agents as a setoff to the

liability of the defendant or cross-defendant even if the association is not a party to the litigation or is no longer a party whether by reason of settlement, dismissal, or otherwise.

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

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

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

See also Sections 4080 ("association"), 4155 ("managing agent"), 4160 ("member"), 4170 ("person").

§ 4420. No limitation of rights

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

Comment. Section 4420 generalizes the substance of Corporations Code Section 8313.

See also Sections 4150 ("governing documents"), 4160 ("member").

Article 2. Board Meeting

§ 4500. Short title

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

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

§ 4505. Convening or adjourning meeting

4505. (a) Unless the governing documents provide otherwise, a board meeting may be called by the board chair, the president, the vice president, the secretary, or any two directors.

(b) Unless the governing documents provide otherwise, a majority of the directors present at a meeting, whether or not a quorum is present, may adjourn the meeting to another time and place.

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

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

See also Sections 4085 ("board"), 4090 ("board meeting"), 4140 ("director").

§ 4510. Quorum

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

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

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

§ 4515. Board action

4515. (a) Except as otherwise provided by law, an action approved by a majority of directors present at a meeting at which a quorum is present is the action of the board. The governing documents may specify a higher percentage for approval of a board action, but may not specify a lower percentage.

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

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

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

§ 4520. Notice of board meeting

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

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

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

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

(e) Unless the governing documents provide otherwise, notice of a meeting need not be given to a director who does any of the following:

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

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

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

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

(1) The time for delivery of notice of a meeting has been extended from four to 10 days.

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

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

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

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

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

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

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

§ 4525. Board meeting open

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

(b) The board may set a reasonable time limit for member testimony at a board meeting.

Comment. Section 4525 continues part of former Section 1363.05(b) & (h), without substantive change, except that the establishment of a time limit on member testimony is now optional. The part of former Section 1363.05(b) that described the basis for meeting in executive session is continued in Section 4540(a)-(b).

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

§ 4528. Limitation on meeting content

4528. (a) Except as otherwise provided in this section, the board may not discuss or take action on any item at a meeting unless the item was placed on the agenda included in the notice provided pursuant to Section 4520.

(b) This section does not preclude any of the following from being raised at a meeting, even if the matter is not on the agenda:

(1) A statement or question of a resident of the development other than a director.

(2) A brief response to statements made or questions posed by a resident other than a director.

(3) A request for clarification.

(4) A brief announcement.

(5) A brief report on a director’s own activities.

(c) A board or director, acting in compliance with any rules or procedures provided in the governing documents, may take any of the following actions at a meeting, even if the action was not on the agenda:

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

(2) Request a managing agent, other agent, or staff to report back to the board at a subsequent meeting concerning any matter.

(3) Direct a managing agent, other agent, or staff to place a matter of business on a future agenda.

(4) Direct a managing agent, other agent, or staff to perform administrative tasks that are necessary to carry out this section.

(d) The board may take action on an item of business that is not on the agenda if the board openly identifies the item to the members present at the meeting and one or more of the following conditions is satisfied:

(1) A majority of the directors present at the meeting determines that an emergency situation exists. For the purposes of this paragraph, an emergency situation exists if there are circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action by the board, and that, of necessity, make it impracticable to provide notice.

(2) The board determines that there is a need to take immediate action and that the need for action came to the attention of the board after notice of the meeting was delivered. This determination may only be made by the affirmative vote of two-thirds of the directors present at the meeting, or, if less than two-thirds of the directors are present at the meeting, by a unanimous vote of all directors present at the meeting.

(3) The item appeared on the agenda of a prior board meeting, was taken up at that meeting, and was continued for action at a later meeting. An item cannot be continued under this paragraph to a meeting that takes place more than 30 days after the meeting at which the item was originally considered.

Comment. Section 4528 restates former Section 1363.05(i) without substantive change.

§ 4530. Board meeting location

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

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

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

§ 4535. Teleconference

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

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

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

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

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

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

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

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

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

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

§ 4540. Executive session

4540. (a) The board may meet in executive session to consider litigation, matters relating to the formation of contracts with third parties, or personnel matters.

(b) Except as provided in subdivision (c), the board may consider all of the following matters in executive session:

(1) An assessment dispute.

(2) A request for a payment plan.

(3) A decision to foreclose on a lien.

(4) A hearing pursuant to Section 5005.

(c) A member who is the subject of a matter described in subdivision (b) may submit a written request to the board (Section 4035) that the matter be considered in an open meeting or in executive session. The board shall comply with the member’s request.

(d) Notwithstanding Section 4525, if the board meets in executive session, a member who is the subject of the matter under consideration may attend and speak during consideration of the matter.

Comment. Subdivision (a) of Section 4540 continues part of former Section 1363.05(b) without substantive change. See also Section 4525(a) (executive session closed).

Subdivision (b) continues board discretion to consider certain matters in executive session. See former Section 1363.05(b). It supersedes former law mandating that certain matters be considered in executive session. See former Sections 1367.1(c)(3), 1367.4(c)(2).

Subdivision (c) is new. It gives a member the choice of whether a matter directly involving that member will be considered in an open meeting or executive session.

Subdivision (d) generalizes part of the substance of former Section 1363.05(b) that allowed a subject of disciplinary action to attend an executive session at which the disciplinary action is considered. The right of a member to attend an executive session under subdivision (c) is limited to the matter of which the member is the subject.

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

§ 4545. Action without meeting

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

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

Comment. Section 4545 generalizes Corporations Code Section 7211(b).

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

§ 4550. Minutes

4550. (a) Board meeting minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, shall be available to members within 30 days of a board meeting.

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

(c) A member may request a copy of meeting minutes under Article 5 (commencing with Section 4700). Notwithstanding Section 4705, a request for a copy of meeting minutes is not required to include a statement of the purpose for the request.

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

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

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

Subdivision (c) restates the substance of the second sentence of former Section 1363.05(d). The second sentence of subdivision (c) makes express what is implicit in former Section 1363.05(d), that a member has an absolute right to inspect minutes and is not required to state a permissible purpose in order to obtain a copy.

Subdivision (d) restates former Section 1363.05(e) without substantive change.

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

§ 4555. Civil action to enforce article

4555. (a) A member may bring a civil action for declaratory or equitable relief for a violation of this article by the member's association, including injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues.

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

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

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

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

§ 4560. Application of article

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

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

Comment. Subdivision (a) of Section 4560 is drawn from Corporations Code Section 7211(c). Subdivision (b) continues part of former Section 1363(i) without substantive change.

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

Article 3. Member Meeting

§ 4575. General rules for conduct of meeting

4575. (a) An association shall hold a regular member meeting to transact business that requires action by the members, with the frequency stated in the governing documents.

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

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

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

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

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

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

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

§ 4580. Quorum

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

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

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

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

§ 4585. Member action

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

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

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

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

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

§ 4590. Teleconference

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

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

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

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

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

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

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

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

See also Section 4160 (“member”).

§ 4595. Notice of regular meeting

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

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

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

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

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

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

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

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

§ 4600. Special meeting of members

4600. (a) The following persons may call a special meeting of the members at any time, for any lawful purpose, by adoption of a board resolution or by delivery

of a written request to the board (Section 4035) that states the business to be transacted at the special meeting:

- (1) The board.
- (2) The president of the association or chair of the board.
- (3) Any person authorized to do so by the governing documents.
- (4) Members representing five percent or more of the voting power of the association.

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

- (1) The date and time of the special meeting, which shall be between 35 to 90 days after the special meeting is called.
- (2) The location of the special meeting.
- (3) If arrangements are made for participation in the meeting by teleconference, instructions on how to participate by teleconference.
- (4) The general nature of the business to be transacted at the special meeting. No other business may be transacted at the special meeting.

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

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

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

§ 4605. Meeting adjournment

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

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

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

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

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

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

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

§ 4610. Waiver of requirements

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

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

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

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

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

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

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

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

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

§ 4615. Court-ordered meeting

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

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

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

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

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

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

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

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

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

§ 4620. Court-ordered modification of meeting requirements

4620. (a) A director, officer, or member may petition the superior court for an order modifying any requirement of this part or the governing documents that governs the conduct of a member meeting or a written ballot. On filing the petition, the court shall set the matter for hearing. The petitioner shall provide general notice of the hearing, including a copy of the petition.

(b) If the court determines that it would be impractical or unduly difficult for the association to conduct a member meeting or otherwise obtain the consent of the members, the court may order that a member meeting or written ballot be held and may, to the extent it is fair and equitable to do so, modify or dispense with any provision of this part or of the governing documents that relates to the conduct of a member meeting or written ballot, including any quorum requirement or provision requiring a specified number or percentage of votes for member approval of a matter.

(c) An order issued pursuant to this section shall provide for a method of notice that is reasonably designed to give actual notice to all parties who are entitled to notice of the member meeting or written ballot. Compliance with the method of notice ordered by the court need not result in actual notice to all persons who are entitled to notice.

(d) To the extent practical, an order issued pursuant to this section shall limit the subject matter presented for member approval to the following matters:

(1) An amendment of the governing documents that would or might enable the association to manage its affairs without further resort to this section.

(2) Dissolution, merger, sale of assets, or reorganization of the association.

(3) A reasonable amendment of the declaration, if more than 50 percent of the voting power is required to amend the declaration.

(e) In a proceeding under this section, the court may determine who is a member or director of the association.

(f) Member approval of a matter that is obtained in compliance with the requirements of an order issued under this section is valid and shall have the same force and effect as a member approval that complies with all of the requirements of this part and the governing documents.

Comment. Section 4620 is comparable to Corporations Code Section 7515.

Subdivision (b) authorizes court modification of meeting requirements if it is impractical or unduly difficult to obtain the consent of the members. This section cannot be used to modify a

provision of the governing documents or a contract that expressly requires the consent of a non-member in order to make a decision.

Subdivision (d)(3) continues the general substance of former Section 1356.

See also Sections 4080 (“association”), 4135 (“declaration”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”), 4170 (“person”).

Article 4. Member Election

§ 4625. Application of article

4625. This article governs a member election. This article does not govern a vote of directors or other appointed or elected officials.

Comment. Section 4625 restates former Section 1363.03(m).

Former Section 1363.03(l) is redundant and is not continued. See Section 4080 (“association” defined).

Former Section 1363.03(n) is redundant and is not continued. See Section 4025(d) (application of Corporations Code).

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

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

§ 4630. Election provisions in governing documents

4630. The association shall adopt operating rules to address all of the following matters:

- (a) Any rule required to implement this article.
- (b) Any qualification to serve in an elected position.
- (c) The loss and restoration of a member’s voting privilege.
- (d) The calculation of voting power.
- (e) If the governing documents permit the use of proxies, procedures for the use of proxies.
- (f) The selection of an election inspector.

Comment. Section 4630 restates part of former Section 1363.03(a)(3)-(5) without substantive change. The provision of former Section 1363.03(a)(3) that relates to procedures for nomination of candidates is continued in Section 4665.

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

§ 4635. Selection of election inspector

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

(b) An election inspector shall be an independent third party, including, but not limited to a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. Except as provided in subdivision (c), a member of the association may serve as election inspector.

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

- (1) A director.
- (2) A candidate for the office that is the subject of the election.

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

(4) The parent, grandparent, child, grandchild, brother, sister, spouse, domestic partner, uncle, aunt, niece, nephew, or first cousin, whether by blood, marriage, domestic partnership, or adoption, of any person who is disqualified under paragraphs (1) to (3), inclusive.

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

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

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

(3) Receive ballots.

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

(5) Count and tabulate all votes.

(6) Determine when the polls open and close.

(7) Determine the results of the election.

(8) Perform any other task that may be required to conduct the election with fairness to all members.

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

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

Comment. Subdivision (a) of Section 4635 restates former Section 1363.03(c)(1).

Subdivisions (b)-(c) restate former Section 1363.03(c)(2). The limitation on the selection of an employee or contractor to serve as an election inspector has no effect on the ability of an association to contract with and compensate a person who serves as election inspector. Subdivision (c)(4) generalizes and clarifies the rule disqualifying a person who is "related" to a disqualified person.

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

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

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

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

§ 4640. Secret ballots

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

(1) Assessment approval.

(2) Director election or removal.

(3) Amendment of the governing documents.

(4) The grant of exclusive use of common area.

(5) Any other matter that is expressly identified in the operating rules as being governed by this section.

(b) The association shall deliver the following voting materials to every member who is entitled to vote, by first-class mail or personal delivery, at least 30 days prior to the deadline for voting:

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

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

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

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

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

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

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

(3) Seal and sign the outside envelope.

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

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

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

(f) A member election that is not governed by this section may be conducted as provided in Section 7513 of the Corporations Code.

Comment. Subdivision (a) of Section 4640 generalizes part of former Section 1363.03(b) without substantive change. Subdivision (a)(5) is new. It authorizes the use of the procedure provided in this section for any election designated in the association's operating rules as governed by this section. This is optional.

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

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

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

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

The first sentence of subdivision (e) restates former Section 1363.03(k). The second sentence restates part of former Section 1363.03(b). See also Corp. Code § 7513(b).

Subdivision (f) makes clear that Corporations Code Section 7513 applies to an election that is not governed by this section, notwithstanding Section 4025.

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

§ 4650. Counting ballots

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

(b) Prior to opening and counting a ballot, the election inspector shall verify the information and signature on the outside envelope and shall verify the eligibility to vote, voting power, and voting class of the member who cast the ballot. A decision by the election inspector to accept or reject a ballot is governed by Section 7517 of the Corporations Code.

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

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

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

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

§ 4655. Ballot custody and inspection

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

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

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

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

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

Comment. Section 4655 restates former Section 1363.03(h)-(i). Subdivision (d) generalizes the requirements of the last sentence of former Section 1363.03(h).

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

§ 4660. Proxies

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

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

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

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

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

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

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

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

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

Comment. Subdivisions (a)-(h) of Section 4660 restate former Section 1363.03(d).

Subdivision (i) is drawn from Corporations Code section 7613(g).

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

§ 4665. Nomination of candidate for board

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

(b) The governing documents shall permit self-nomination.

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

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

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

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

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

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

Subdivisions (e)-(f) are drawn from Corporations Code Section 7522(d).
See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”).

§ 4670. Campaign-related information

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

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

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

(d) For the purposes of this section, “campaign-related information” means information that is reasonably related to a pending election, including, but not limited to the following information:

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

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

(3) Information that includes the photograph or name of a candidate within 30 days before ballots may be cast in an election.

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

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

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

See also Sections 4080 (“association”), 4095 (“common area”), 4163 (“member election”).

§ 4675. Voting rights

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

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

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

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

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

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

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

§ 4680. Action by unanimous written consent

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

Comment. Section 4680 is drawn from Corporations Code Section 7516. See also Section 4160 (“member”).

§ 4685. Judicial enforcement

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

(b) Upon the filing of the complaint, and before any further proceedings are had, the court shall enter an order fixing a date for the hearing, which shall be within five days unless good cause is shown for a later date. The court shall require that the plaintiff serve notice of the date of the hearing and a copy of the complaint on the association and on any person, other than the plaintiff, whose purported election or failure to be elected is challenged. Service shall be in the manner in which a summons is required to be served, or, if the court so directs, by registered mail. The court may make any further requirements as to notice that appear to be proper under the circumstances.

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

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

(e) A member who prevails in an action under this section is entitled to reasonable attorney's fees and court costs.

(f) If the court finds that an action brought under this section is frivolous, unreasonable, or without foundation, it may award reasonable attorney's fees and court costs to the association.

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

Comment. Section 4685 restates former Section 1363.09, except that subdivision (b) is drawn from Corporations Code Section 7616(c) and the second sentence of subdivision (d) is drawn from Corporations Code Section 7527.

See also Sections 4080 ("association"), 4150 ("governing documents"), 4160 ("member"), 4163 ("member election").

Article 5. Inspection of Records

§ 4700. Scope of inspection right

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

- (1) The governing documents.
- (2) The membership list, including member names, property addresses, mailing addresses, and electronic mail addresses.
- (3) The agenda and minutes of a member meeting, a board meeting, or a meeting of a committee that exercises a power of the board.
- (4) A report prepared pursuant to Article 7 (commencing with Section 4800).
- (5) A balance sheet, income and expense statement, budget comparison, or general ledger. This paragraph applies to any record of the types described, regardless of whether the record is interim or final, audited or unaudited, prepared pursuant to a fixed schedule or on an ad hoc basis. For the purposes of this paragraph, a "general ledger" is a report that shows all transactions that occurred in an association account over a specified period of time. The records described in this paragraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.
- (6) An invoice, receipt, cancelled check, credit card statement, statement for services rendered, or reimbursement request.
- (7) A statement of deposits to and withdrawals from the reserve account, or showing the current balance of the reserve account.
- (8) An executed contract.
- (9) Written board approval of a vendor or contractor proposal or invoice.
- (10) A state or federal tax return.

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

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

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

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

(2) A record that is protected from disclosure by an evidentiary privilege. Examples include documents subject to the attorney-client privilege or relating to litigation in which the association is or may become involved. For the purposes of this section, a contract to provide maintenance, management, or legal services to an association is not privileged.

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

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

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

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

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

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

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

Subdivision (a)(1) is new.

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

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

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

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

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

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

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

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

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

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

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

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

Nothing in this section affects the scope of discovery in a civil or criminal case.

This section governs the right of a member to inspect a record, if that record exists. Nothing in this section mandates that any record be created or maintained. For record retention requirements, see Sections 4775-4780.

See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100 (“common interest development”), 4150 (“governing documents”), 4160 (“member”), 4170 (“person”), 4185 (“separate interest”).

§ 4705. Inspection procedure

4705. (a) A member may deliver to the board (Section 4035) a written request to inspect association records. The request shall identify the records to be inspected and shall state a purpose for the inspection that is reasonably related to the member’s interest as a member. The request may designate an agent to inspect the records on the member’s behalf.

(b) Except as provided in Sections 4710, 4715 and 4725, the association shall make the requested records available for inspection according to the following deadlines:

(1) For a record prepared in the current fiscal year, within 15 days after the request is delivered.

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

(3) For a record that has not yet been prepared, within 15 days after the request is delivered or the record is prepared, whichever is later.

(4) For the membership list, within 10 days.

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

(d) At the member’s request, copies of specifically identified records shall be delivered to the member by individual delivery (Section 4040). If a record exist in electronic form, the association shall comply with a member request that the record be provided in electronic form. Notwithstanding the other provisions of this subdivision, the association shall not provide a record in electronic form if the form of the record prevents a necessary redaction or allows the record to be altered by the requesting member.

Comment. Subdivision (a) of Section 4705 is new.

Subdivision (b) continues part of former Section 1365.2(j) without substantive change, except that the deadlines have been recast as calendar days rather than “business days.” Special deadlines for inspection of specific types of records have been subsumed within the general deadlines.

Subdivisions (c) and (d) continue former Section 1365.2(c) & (h) without substantive change.

See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest development”), 4160 (“member”).

§ 4710. Redaction

4710. (a) Before making a record available for inspection, the association shall redact all of the following information from the record:

- (1) Any financial account number.
- (2) Any password or personal identification number.
- (3) Any social security number or taxpayer identification number.
- (4) Any driver’s license number.

(5) Any other information, if it is reasonably probable that disclosure of the information will compromise the privacy of a member, lead to unauthorized use of a person’s identity or financial resources, or is reasonably likely to lead to fraud in connection with the association.

(b) Before providing a membership list, the association shall remove the name and other information of any person who has opted to have that information removed from the membership list pursuant to Section 4715.

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

Comment. Section 4710(a) restates former Section 1365.2(d)(1), except that the duty to redact certain information has been made mandatory.

Subdivision (c) restates former Section 1365.2(d)(4) without substantive change.

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

§ 4715. Optional removal from membership list

4715. (a) A member may elect, in writing, to have the member’s name and other information removed from the membership list that is available for inspection by the members.

(b) A member who requests the membership list may also request that the association deliver material to any member whose information has been removed from the membership list. The association shall deliver the material to those members by individual delivery (Section 4040), within 15 days after delivery of the request.

Comment. Section 4715 restates former Section 1365.2(a)(1)(I)(iii).

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

§ 4720. Fees

4720. (a) The association may charge a fee to recover the direct and actual cost to copy or deliver a record. The association shall inform the member of the fee

amount, and the member shall agree to pay the fee, before a copy is made or a record delivered.

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

Comment. Section 4720 continues former Section 1365.2(b)(1) & (c)(4)-(5) without substantive change, except that the authority to charge a fee for redaction has been generalized.

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

§ 4725. Permissible purpose

4725. (a) A member may only inspect and use an association record for a purpose that is reasonably related to the requesting member’s interest as a member. A member may not inspect or use an association record for a commercial purpose.

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

(c) Impermissible use of an association record includes, without limitation, the use of a record without association permission for any of the following purposes:

(1) To solicit money or property unless such money or property will be used solely to solicit the vote of the members in an election to be held by the association.

(2) Any purpose that the member does not reasonably and in good faith believe will benefit the association.

(3) Any commercial purpose.

(4) The sale of the record to any person.

Comment. Subdivision (a) of Section 4725 continues former Section 1365.2(e) without substantive change. See also Corp. Code § 8338 (use of membership list).

Subdivision (b) is comparable to Corporations Code Sections 8331(a) and 8332, but it applies to any record and not just the association’s membership list.

Subdivision (c) is comparable to Corporations Code Section 8338.

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

§ 4730. Denial of request

4730. (a) An association that denies a request for records under this article shall provide the requesting member a notice of denial, by individual delivery (Section 4040), within 15 days after delivery of the inspection request.

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

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

(2) An offer to attempt to resolve the matter through the association’s internal dispute resolution procedure provided pursuant to Article 2 (commencing with

Section 5050) of Chapter 4. The offer may include an alternative proposal for achieving the member's purpose, such as an offer to mail notices to the members on behalf of the requesting member.

Comment. Section 4730 is new.

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

§ 4735. Action to enforce

4735. (a) If an association has not complied with a document inspection request within the time provided, the requesting member may bring an action in the superior court to enforce the record inspection request. The action may be filed in the small claims division of the superior court if the amount of the demand does not exceed the jurisdiction of that division.

(b) If the court determines that there is no legal basis for the failure to comply with the record inspection request, it shall order compliance.

(c) If the court determines that disclosure is not required under this article, that disclosure would violate a member's constitutional rights, or that there is a reasonable probability that disclosure would lead to misuse of a record, it shall modify or set aside the record inspection request.

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

(1) If the association acted unreasonably in denying the request, the imposition of a civil penalty of up to \$500 against the association.

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

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

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

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

(e) The association bears the burden of proving the legal grounds for noncompliance with the records request.

(f) If the court finds that the association acted unreasonably in denying the record inspection request, it shall award reasonable costs and expenses, including reasonable attorney's fees, to the requesting member.

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

(h) Nothing in this section limits the right of the association to bring an action under Section 4740.

Comment. Subdivisions (a)-(c) of Section 4735 are comparable to former Section 1365.2(f) and Corporations Code Sections 8336 (action to enforce inspection right) and 8337 (costs and expenses).

Subdivision (d)(1) continues part of former Section 1365.2(f) without substantive change.

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

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

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

Subdivision (d)(5) is comparable to Corporations Code Sections 8331(g) and 8332.

Subdivision (e) is comparable to former Section 1365.2(a)(1)(I)(ii) and Corporations Code Sections 8331(f)(1) and 8332, except that it applies to all records and not just to a membership list.

Subdivisions (f)-(g) continue part of former Section 1365.2(f) without substantive change.

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

See also Sections 4080 ("association"), 4090 ("board meeting"), 4160 ("member").

§ 4740. Action to enjoin improper use of records

4740. An association may bring an action for injunctive relief and actual damages against any person who misuses association records. In addition, a court in its discretion may award exemplary damages for a fraudulent or malicious misuse of association records. If the association prevails in an action brought under this section, the court shall award the association reasonable costs and expenses, including reasonable attorney's fees.

Comment. Section 4740 is comparable to Corporations Code Section 8338(b)-(d).

See also Sections 4080 ("association"), 4170 ("person").

§ 4745. Liability

4745. An association, or an officer, director, employee, agent, or volunteer of an association, is not liable for damages that result from a failure to withhold or redact information pursuant to this article, unless the failure to withhold or redact the information was intentional, willful, or negligent.

Comment. Section 4745 restates former Section 1365.2(d)(3) without substantive change.

See also Sections 4080 ("association"), 4140 ("director").

§ 4750. Application of article

4750. (a) This article applies to a community service organization or similar entity that is related to the association. The members of the community service organization or similar entity shall have the same right to inspect records of that organization or entity that are granted to the members of an association under this article.

(b) This article does not apply to a common interest development in which separate interests are being offered for sale by a subdivider under the authority of a public report issued by the Department of Real Estate, so long as the subdivider or all subdividers offering those separate interests for sale, or any employees of those subdividers or any other person who receives direct or indirect compensation from any of those subdividers, comprise a majority of the members of the board of directors of the association. Notwithstanding the foregoing, this article applies to a common interest development no later than 10 years after the close of escrow for the first sale of a separate interest to a member of the general public pursuant to the public report issued for the first phase of the development.

(c) If two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, the members of each participating association shall have access to the records of the joint organization as if they were the records of the participating association.

(d) Notwithstanding Section 4025, a common interest development that is exempt from the requirements of this article pursuant to this section is governed by Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of the Corporations Code.

Comment. Subdivision (a) of Section 4750 continues former Section 1365.2(g) without substantive change.

Subdivision (b) continues former Section 1365.2(m) without substantive change.

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

Subdivision (d) is new.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4110 (“community service organization”), 4140 (“director”), 4160 (“member”), 4170 (“person”), 4185 (“separate interest”).

Article 6. Record Keeping

§ 4775. Duty to maintain records

4775. (a) An association shall maintain at least one copy of the following association records, for the periods specified in Section 4780:

(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 written waiver, consent, or approval received under Section 4610.

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

(6) Books and records of account.

(7) A tax return or other tax-related record.

(8) A deed or other record that relates to title of real property within the common interest development.

(9) A record that relates to the design, construction, or physical condition of the common interest development.

(10) A record that relates to a proposed modification of a member's separate interest.

(11) A record that relates to litigation involving the association or legal services provided to the association.

(12) An employment or payroll record.

(13) An insurance policy or record relating to insurance coverage or claims.

(14) A contract to which the association is a party.

(15) A loan document.

(16) A ballot, proxy, or other record that relates to an election.

(17) A reserve funding study.

(18) 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. Subdivisions (a)(2)-(3), (a)(6), and (b) of Section 4775 are comparable to Corporations Code Section 8320. The other provisions of subdivision (a) are new.

See also Sections 4080 ("association"), 4085 ("board"), 4090 ("board meeting"), 4100 ("common interest development"), 4150 ("governing documents"), 4160 ("member"), 4185 ("separate interest").

§ 4780. Record retention periods

4780. (a) Unless a longer period is required by law or by the governing documents, an association shall retain a record listed in Section 4775 for at least four years after its date of creation, except that a record with continuing legal or operational effect shall be retained during the period of its effect and for at least four years after the termination of its effect.

(b) The association shall retain the following records permanently:

(1) The original governing documents and each amendment of or addition to the governing documents.

(2) The minutes of a member meeting, board meeting, or meeting of a committee that exercises a power of the board.

(3) A deed or other record that relates to title of real property within the common interest development.

(4) A record that relates to the design, construction, or physical condition of the common interest development.

(c) A ballot cast in a member election shall be retained for the period provided in Section 4655.

(d) This section does not apply to a record that is discarded or destroyed before January 1, 2010.

Comment. Section 4780 is new. Subdivision (a) states a default retention period, but makes clear that other law or an association’s governing documents may impose a longer retention period. A special rule is provided for records that have “continuing legal or operational effect.” Such records might include a lease or other contract with a fixed term. Associations should determine whether administrative agencies, such as the Franchise Tax Board or Internal Revenue Service, impose longer retention requirements for some records.

Subdivision (c) reflects the rule provided in Section 4655 (ballot custody).

Subdivision (d) provides that the requirements of this section only apply to a record held by an association at the time that the section became operative. Note that other record retention requirements may govern documents that were held by the association before that date. See, e.g., Section 4770(b) (period during which records must be made available for member inspection); 22 Cal. Code Regs. § 1085-2 (four-year period for retention of employment records); 26 C.F.R. § 1.6001-1 (retention of federal tax records while material to assessment or collection of tax); 29 C.F.R. § 516.5 (three-year period for retention of payroll records).

See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100 (“common interest development”), 4150 (“governing documents”), 4160 (“member”).

§ 4785. Director inspection

4785. A director shall have the absolute right at any reasonable time to inspect and copy all association books, records, and documents of every kind and, subject to reasonable limitations in the governing documents, to inspect the common area. These rights shall be exercised pursuant to the standard provided in Section 7231 of the Corporations Code.

Comment. Section 4785 is comparable to Corporations Code Section 8334, except that the right to inspect the common area may be subject to reasonable limitations in the governing documents (e.g., a requirement of advance notice before entering a separate interest to inspect appurtenant exclusive use common area). The provision requiring compliance with Corporations Code Section 7231 is a specific expression of a general rule.

See also Sections 4080 (“association”), 4095 (“common area”), 4140 (“director”).

Article 7. Annual Reports

§ 4800. Annual budget report

4800. (a) From 30 to 90 days before the end of the fiscal year, the board shall prepare an annual budget report.

(b) The annual budget report shall include all of the following information:

(1) The estimated revenue and expenses for the operating and reserve accounts, on an accrual basis.

(2) The reserve funding study prepared pursuant to Section 5555.

(3) A summary of the association’s property, general liability, earthquake, flood, and fidelity insurance policies. For each policy, the summary shall include the name of the insurer, the type of insurance, the policy limit, and the amount of any deductible. To the extent that any of the required information is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it with the annual budget report.

(c) The board shall promptly deliver a copy of the current annual budget report to any member who requests a copy, at no cost to the member.

(d) The type used in the annual budget report shall be at least 12 points in size.

Comment. Section 4800 continues part of former Sections 1365(a) & (e) and 1365.2 without substantive change.

See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4160 (“member”).

§ 4805. Annual financial statement

4805. (a) Within 120 days after the end of the fiscal year, the board of an association that receives ten thousand dollars (\$10,000) or more in gross revenues or receipts during the fiscal year shall prepare an annual financial statement.

(b) If the association receives more than seventy-five thousand dollars (\$75,000) in a fiscal year, a licensee of the California Board of Accountancy shall conduct a review of the annual financial statement, using generally accepted accounting principles.

(c) The annual financial statement shall include all of the following information:

(1) A balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year.

(2) If the financial statement is reviewed by an independent accountant, a copy of the accountant’s report.

(3) If the financial statement is not reviewed by an independent accountant, the certificate of an authorized officer of the association that the financial statement was prepared without audit from the books and records of the association.

(4) If the association is incorporated, a statement of any transaction or indemnification of a type described in Section 8322 of the Corporations Code.

(d) The board shall promptly deliver a copy of the current annual financial statement to any member who requests a copy, at no cost to the member.

(e) The type used in the annual financial statement shall be at least 12 points in size.

Comment. Section 4805 is comparable to Corporations Code Section 8321, except that subdivision (b) continues former Section 1365(c) without substantive change.

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

§ 4810. Member handbook

4810. (a) Within 120 days after the end of the fiscal year, the board shall prepare a member handbook that contains all of the following information:

(1) A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses.

(2) The name and address of the person designated to receive official communications to the board, pursuant to Section 4035.

(3) Notice of a member’s right to receive copies of meeting minutes, pursuant to subdivision (d) of Section 4550.

(4) The statement required by Section 5670.

(5) A statement describing the association’s policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.

(6) A statement describing the association’s discipline policy, including any schedule of penalties for violations of the governing documents.

(7) A summary of alternative dispute resolution procedures, pursuant to Sections 5070 and 5115.

(8) A summary of any requirements for association approval of a physical change to property, pursuant to subdivision (c) of Section 5775.

(9) The location, if any, designated for posting of a general notice (Section 4045).

(10) Any other information that is required by law or the governing documents or that the board determines to be appropriate for inclusion.

(b) The board shall promptly deliver a copy of the current member handbook to any new member and to any member who requests a copy, at no cost to the member.

(c) The type used in the member handbook shall be at least 12 points in size.

Comment. Section 4810 is new.

Subdivision (a)(5) continues former Section 1365(e) without substantive change.

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

§ 4815. Community service organization report

4815. (a) Unless the governing documents impose more stringent standards, a community service organization that receives 10 percent or more of its funding from an association or its members shall prepare and distribute to the board an annual report that includes all of the following information:

(1) A financial statement.

(2) A detailed statement of administrative costs that identifies the person paid for each cost.

(3) If the report is not consistent with the requirements of Article 5 (commencing with Section 4700), a statement describing the noncompliance in detail.

(4) If a community service organization is responsible for the maintenance of major components for which an association would otherwise be responsible, information regarding those components that the association requires to complete the disclosures and reserve reports required under Article 3 (commencing with Section 5550) of Chapter 5.

(b) An association may rely upon information received from a community service organization.

Comment. Section 4815 restates former Section 1365.3 without substantive change, except that the report must be made annually.

See also Sections 4080 (“association”), 4110 (“community service organization”), 4150 (“governing documents”), 4160 (“member”), 4170 (“person”).

§ 4820. Notice of availability

4820. (a) When a report is prepared pursuant to Section 4800, 4805, 4810, or 4815, the board shall deliver individual notice (Section 4040) to all members of the availability of the report.

(b) The notice required by this section shall be given when the association adopts a reserve funding plan pursuant to Section 5560.

(c) The notice of availability shall include a general description of the content of the report and instructions on how to request, at no cost, a complete copy of the report.

(d) A board may deliver, by individual notice (Section 4040) to all members, a complete copy of a report instead of the notice of availability of the report.

Comment. Section 4820 is new. It is consistent with former Section 1365(b) & (d). Nothing in this section would prevent an association from delivering a single notice of availability for multiple reports that are prepared at the same time, so long as the requirements of this section are met for each report.

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

§ 4825. Financial statement

4825. A financial statement required by this article shall be prepared in conformity with generally accepted accounting principles or some other basis of accounting that reasonably sets forth the assets and liabilities and the income and expenses of the association or community service organization and discloses the accounting basis used in its preparation.

Comment. Section 4825 is similar to Corporations Code Section 5012.

See also Sections 4080 (“association”), 4110 (“community service organization”).

§ 4830. Judicial enforcement

4830. (a) Any member may bring an action in superior court to enforce the requirements of this article. The court may, for good cause shown, extend the time for compliance with the requirements of this article.

(b) In any action or proceeding under this section, if the court finds the failure of the association to comply with the requirements of this article to be without justification, the court may award the member reasonable expenses, including attorney’s fees, in connection with the action or proceeding.

Comment. Section 4830 generalizes the substance of Corporations Code Section 8323.

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

Article 8. Conflict of Interest

§ 4855. Interested director

4855. (a) Notwithstanding any other law, and regardless of whether an association is incorporated or unincorporated, the provisions of Section 310 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 member.

(2) An assessment against the director or member for damage to the common area or facilities.

(3) A request, by the director or 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 member.

(5) Review of a proposed physical change to the separate interest of the director or member.

(6) A grant of exclusive use common area to the director or 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 4855 continues former Section 1365.6 without substantive change.

Subdivisions (b) and (c) are new.

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

Article 9. Managing Agent

§ 4900. Prospective managing agent disclosure

4900. (a) A prospective managing agent of a common interest development shall provide a written disclosure to the board before entering into a management agreement. The disclosure shall be provided as soon as is practicable after entering into negotiations, but in no event more than 90 days before entering into an agreement.

(b) The disclosure required under this section shall contain all of the following information:

(1) The name and business address of each owner or general partner of the managing agent. If the managing agent is a corporation, the disclosure shall include the name and business address of each shareholder owning more than 10 percent of the shares of the corporation and each director or officer of the corporation.

(2) For each person named in paragraph (1), a list of any relevant license or professional certification or designation held by that person. A license, certification, or designation is relevant if it relates to a service to be provided by the managing agent, including architectural design, construction, engineering, real estate, accounting, real property management, or community association management. The list shall indicate the type of license, certification, or designation, the issuing authority, the issuance date, and any expiration date.

Comment. Section 4900 restates former Section 1363.1 without substantive change.

See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest development”), 4140 (“director”), 4155 (“managing agent”), 4170 (“person”).

§ 4905. Trust fund account

4905. (a) A managing agent who receives funds belonging to an association, other than for deposit into an escrow account or account under the control of the association, shall deposit the funds into a trust fund account.

(b) The trust fund account shall be maintained in California, in a federally insured financial institution. The account shall be maintained in the name of the managing agent as trustee for the association or in the name of the association.

(c) On the written request of the board, the trust fund account shall be created as an interest bearing account. No interest earned on funds in the account shall inure directly or indirectly to the benefit of the managing agent or to an employee of the managing agent.

(d) The managing agent shall inform the board of the nature of the trust fund account, including a statement of how any interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and whether there are any notice requirements or penalties for withdrawal of funds from the account.

(e) Funds in a trust fund account may only be disbursed in accordance with written instructions from the association that is entitled to the funds.

(f) The managing agent shall maintain a separate record of the receipt and disposition of all funds described in this section, including any interest earned on the funds.

(g) The managing agent shall not commingle the funds of an association with the funds of any other person, except as provided in subdivision (h).

(h) A managing agent who commingled the funds of two or more associations on or before February 26, 1990, may continue to do so if all of the following requirements are met:

(1) The board of each affected association has given its written assent to the commingling.

(2) The managing agent maintains a fidelity and surety bond in an amount that is adequate to protect each association and that provides each association at least 10 days notice before cancellation. The managing agent shall provide each affected board with the name and address of the bonding company, the amount of the bond, and the expiration date of the bond. If there are any changes in the bond coverage or the company that provides the coverage, the managing agent shall disclose that fact to the board of each affected association as soon as practical, but in no event more than 10 days after the change.

(3) The managing agent provides a written statement to each affected board describing any benefit received by the managing agent from the commingled account or the financial institution where the funds will be on deposit.

(4) A completed payment on behalf of an association is deposited within 24 hours or the next business day and does not remain commingled for more than 10 calendar days. As used in this subdivision, "completed payment" means funds received that clearly identify the account to which the funds are to be credited.

(i) The prevailing party in an action to enforce this section shall be entitled to recover reasonable legal fees and court costs.

(j) As used in this section, “financial institution” has the meaning provided in Section 31041 of the Financial Code.

Comment. Section 4905 restates former Section 1363.2 without substantive change.

See also Sections 4080 (“association”), 4085 (“board”), 4155 (“managing agent”), 4170 (“person”).

Article 10. Government Assistance

§ 4950. Director training course

4950. To the extent existing funds are available, the Department of Consumer Affairs and the Department of Real Estate shall develop an on-line education course for the board of directors of an association regarding the role, duties, laws, and responsibilities of directors and prospective directors, and the nonjudicial foreclosure process.

Comment. Section 4950 continues former Section 1363.001 without substantive change.

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

§ 4955. Attorney general

4955. (a) Upon receiving a complaint from a member, director, or officer that an association has violated the provisions of Article 3 (commencing with Section 4575), Article 4 (commencing with Section 4625), Article 5 (commencing with Section 4700), Article 6 (commencing with Section 4775), or Article 7 (commencing with Section 4800), the Attorney General may, in the name of the people of the State of California, send a notice of the complaint to the principal office of the association (or, if there is no office, to the office or residence of the chief executive officer or secretary, of the corporation, as set forth in the most recent statement filed pursuant to Section 8210 of the Corporations Code).

(b) If the answer to the notice of the complaint is not satisfactory, or if there is no answer within 30 days, the Attorney General may institute, maintain, or intervene in a suit, action, or proceeding of any type in any court or tribunal of competent jurisdiction or before any administrative agency for relief by way of injunction, the dissolution of entities, the appointment of receivers, or any other temporary, preliminary, provisional or final remedy as may be appropriate to protect the rights of members or to undo the consequences of the violation. In any action, suit, or proceeding under this section, all persons and entities responsible for or affected by the violation may be joined as parties.

(c) If the violation involves assets held in charitable trust, the Attorney General may bring an action under this section without having received a complaint, and without first giving notice of a complaint.

Comment. Section 4955 is drawn from Corporations Code Section 8216, which authorizes the Attorney General to act on a complaint that a nonprofit mutual benefit corporation is not complying with the law governing member meetings, voting, and record inspection. Section 4955

would continue that authority with respect to the provisions of this part that govern the same matters.

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

§ 4960. State registry

4960. (a) To assist with the identification of common interest developments, each association shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

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

(2) The name of the association.

(3) The street address of the association’s onsite office, or, if none, of the responsible officer or managing agent of the association.

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

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

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

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

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

(9) The type of common interest development, as defined in subdivision (c) of Section 4100.

(10) The number of separate interests in the development.

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

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

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

(c) The association shall notify the Secretary of State of any change in the street address of the association’s onsite office or of the responsible officer or managing

agent of the association in the form and for a fee prescribed by the Secretary of State, within 60 days of the change.

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

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

Comment. Section 4960 continues former Section 1363.6 without substantive change.

See also Sections 4080 ("association"), 4100 ("common interest development"), 4155 ("managing agent").

CHAPTER 4. DISPUTE RESOLUTION AND ENFORCEMENT

Article 1. Disciplinary Action

§ 5000. Authority to impose disciplinary fine

5000. An association shall not fine a member for a violation of the governing documents unless, at the time of the violation, the governing documents expressly authorize the use of a fine and include a schedule of the amounts that can be assessed for each type of violation.

Comment. Section 5000 restates former Section 1363(g) without substantive change, with two exceptions:

(1) It does not continue language relating to the distribution of copies of the enforcement policy. Distribution of the governing documents is governed by other law. See Sections 4700(a)(1) (record inspection), 5825 (seller's disclosure), 6115 (notice of proposed rule change).

(2) It provides that the authority to fine and the schedule of fine amounts must exist at the time of the violation. This prevents ex post facto punishment.

See also Sections 4080 ("association"), 4150 ("governing documents"), 4160 ("member").

§ 5005. Due process hearing

5005. (a) The board shall only impose discipline on a member or assess a member for damage to the common area and facilities at a meeting of the board at which the member shall have an opportunity to be heard.

(b) At least 10 days before the meeting, the board shall deliver an individual notice to the member (Section 4040) that includes all of the following information:

(1) If the member is alleged to have violated the governing documents, the provision of the governing documents that the member is alleged to have violated,

a brief summary of the facts constituting the alleged violation, and the penalty that may be imposed for the violation.

(2) If the member is alleged to be liable for damage to the common area and facilities, a brief description of the facts giving rise to the allegation and the amount to be assessed against the member for the damage.

(3) The time, date, and location of the meeting at which the matter will be heard.

(4) A statement that the member has a right to attend the meeting, address the board, and request that the matter be considered in closed executive session.

(c) Within 15 days after the meeting, the board shall deliver a written decision to the member, by individual notice (Section 4040). If the board imposes a penalty, the written decision shall state the provision of the governing documents violated and the penalty for the violation. If the board assesses the member for damage to the common area and facilities, the written decision shall state the basis for the member's liability and the amount assessed.

Comment. Section 5005 restates former Section 1363(h) without substantive change, with the following changes:

(1) Subdivision (a) is new. It states expressly what is clearly implied.

(2) The application of the section is extended to include an assessment against a member for damage to association property. See Section 5640(a) (assessment for damage to common area and facilities).

See also Sections 4085 ("board"), 4150 ("governing documents"), 4160 ("member").

§ 5015. Responsibility for guest, invitee, or tenant

5015. For the purposes of this article, a member is responsible for a violation of the governing documents by the member's guest, invitee, or tenant, or a resident of the member's separate interest.

Comment. Section 5015 is consistent with former Section 1363(g), except that the rule has been broadened to provide that a member is responsible for a violation by a tenant or a resident of the member's separate interest.

See also Sections 4150 ("governing documents"), 4160 ("member").

§ 5020. Removing vehicle from common interest development

5020. The removal of a vehicle from a common interest development by the association is governed by Section 22658 of the Vehicle Code.

Comment. Section 5020 is new.

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

Article 2. Internal Dispute Resolution

§ 5050. Application of article

5050. (a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this part, 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.

(b) This article supplements, and does not replace, Article 3 (commencing with Section 5075), 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 5005 or 5620.

Comment. Subdivisions (a) and (b) of Section 5050 continue former Section 1363.810 without substantive change.

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 involve 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 5005 or 5620. Nor would it preclude the use of this article before a final decision is made under Section 5005. Prior to making a final decision, an association could defer or suspend action under Section 5005 and instead proceed under this article.

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

§ 5055. Fair, reasonable, and expeditious dispute resolution procedure required

5055. (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 5065 applies and satisfies the requirement of subdivision (a).

Comment. Section 5055 continues former Section 1363.820 without substantive change.

See also Section 4080 (“association”).

§ 5060. Minimum requirements of association procedure

5060. A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.

(c) If the procedure is invoked by a member, the association shall participate in the procedure.

(d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the association’s board of directors.

(e) A resolution of a dispute pursuant to the procedure that is not in conflict with the law or the governing documents, binds the association and is judicially

enforceable. An agreement reached pursuant to the procedure that is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.

(f) The procedure shall provide a means by which the member and the association may explain their positions.

(g) A member of the association shall not be charged a fee to participate in the process.

Comment. Section 5060 continues former Section 1363.830 without substantive change.

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

§ 5065. Default meet and confer procedure

5065. (a) This section applies in an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.

(3) The association’s board of directors shall designate a member of the board to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board of directors to its designee or the agreement is ratified by the board of directors.

(d) A member of the association may not be charged a fee to participate in the process.

Comment. Section 5065 continues former Section 1363.840 without substantive change.

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

§ 5070. Notice in member handbook

5070. The member handbook (Section 4810) shall include a description of the internal dispute resolution process provided pursuant to this article.

Comment. Section 5070 continues former Section 1363.850 without substantive change.

**Article 3. Alternative Dispute Resolution
Prerequisite to Civil Action**

§ 5075. Definitions

5075. As used in this article:

(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the dispute resolution process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this part.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents of a common interest development.

Comment. Section 5075 continues former Section 1369.510 without substantive change. The term “decisionmaking process” has been replaced with the more technically accurate term “dispute resolution process.” This is a nonsubstantive change.

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

§ 5080. ADR prerequisite to enforcement action

5080. (a) An association or an owner or a member of a common interest development may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.

(c) This section does not apply to a small claims action.

Comment. Section 5080 continues former Section 1369.520 without substantive change, except that former Section 1369.520(d) is obsolete and is not continued. That subdivision provided that the alternative dispute resolution requirements do not apply to an assessment dispute, except as otherwise provided by law. The application of this article to an assessment dispute is now governed by Article 5 (commencing with Section 5600) of Chapter 5.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4160 (“member”).

§ 5085. Request for resolution

5085. (a) Any party to a dispute may initiate the process required by Section 5080 by serving on all other parties to the dispute a request for resolution. The request for resolution shall include all of the following:

- (1) A brief description of the dispute between the parties.
- (2) A request for alternative dispute resolution.
- (3) A notice that the party receiving the request for resolution is required to respond within 30 days of service or the request will be deemed rejected.
- (4) If the party on whom the request is served is the owner of a separate interest, a copy of this article.

(b) Service of the request for resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a request for resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

Comment. Section 5085 continues former Section 1369.530 without substantive change. See also Section 4185 (“separate interest”).

§ 5090. ADR process

5090. (a) A party on whom a request for resolution is served may agree to participate in alternative dispute resolution by delivering a written acceptance to the party that served the request for resolution. The written acceptance shall be delivered as an individual notice (Section 4040).

(b) The parties shall complete the alternative dispute resolution within 90 days after delivery of the written acceptance, unless this period is extended by written stipulation signed by both parties.

(c) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(d) The costs of the alternative dispute resolution shall be borne by the parties.

Comment. Section 5090 continues former Section 1369.540 without substantive change, except that a procedure is added in subdivision (a) for written acceptance of a request for resolution.

§ 5095. Tolling of statute of limitations

5095. If a request for resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

- (a) The period provided in Section 5085 for response to a request for resolution.

(b) If the request for resolution is accepted, the period provided by Section 5090 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 5090.

Comment. Section 5095 continues former Section 1369.550 without substantive change.

§ 5100. Certification of efforts to resolve dispute

5100. (a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions is satisfied:

(1) Alternative dispute resolution has been completed in compliance with this article.

(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.

(3) Preliminary or temporary injunctive relief is necessary.

(b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

Comment. Section 5100 continues former Section 1369.560 without substantive change.

§ 5105. Stay of litigation for dispute resolution

5105 (a) After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(b) The costs of the alternative dispute resolution shall be borne by the parties.

Comment. Section 5105 continues former Section 1369.570 without substantive change.

§ 5110. Attorney's fees

5110. In an enforcement action in which fees and costs may be awarded, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

Comment. Section 5110 generalizes former Section 1369.580 so that it applies to any enforcement action and not just to an action to enforce the governing documents.

§ 5115. Notice in member handbook

5115. The member handbook (Section 4810) shall include a summary of the provisions of this article that specifically references this article. The summary shall include the following language: "Failure of a member of the association to comply with the alternative dispute resolution requirements of Civil Code Section 5080 may result in the loss of your right to sue the association or another member

of the association regarding enforcement of the governing documents or the applicable law.”

Comment. Section 5115 restates former Section 1369.590 without substantive change. See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

Article 4. Civil Actions

§ 5125. Enforcement of governing documents

5125. (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

(c) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney’s fees and costs.

Comment. Section 5125 continues former Section 1354 without substantive change.

See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”), 4185 (“separate interest”).

§ 5130. Enforcement of this part

5130. In addition to any other remedy provided by law, a member may bring an action in superior court to enforce a provision of this part.

Comment. Section 5130 is new. Relief under this section may include a writ of mandate, an injunction, or other appropriate relief.

See also Section 4160 (“member”).

CHAPTER 5. FINANCES

Article 1. Accounting

§ 5500. Accounting

5500. (a) The board shall maintain separate operating and reserve accounts.

(b) The board shall maintain current income and expense records for each account, on an accrual basis.

(c) If the reserve account includes funds received by the association as a compensatory damage award or settlement in litigation involving a construction or design defect, the deposit or withdrawal of those funds shall be itemized separately.

(d) On at least a quarterly basis, the board shall reconcile the income and expense record for each account against the most recent statement provided by the financial institution for that account.

Comment. Subdivisions (a)-(b) of Section 5500 are new.

Subdivision (c) restates former Section 1365(a)(2)(B)(iii) without substantive change.

Subdivision (d) restates and simplifies former Section 1365.5(a) without substantive change.

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

Article 2. Use of Reserve Funds

§ 5510. Use of reserve funds

5510. (a) Funds on deposit in the reserve account may only be used for the following purposes:

(1) The maintenance, repair, or replacement of a major component that the association is required to maintain.

(2) Litigation that relates to the maintenance, repair, or replacement of a major component that the association is required to maintain.

(3) A temporary transfer of funds to the operating account pursuant to Section 5515.

(b) The withdrawal of funds from the reserve account requires either the signature of two directors or the signature of one director and an officer who is not a director.

Comment. Subdivision (a) of Section 5510 restates former Section 1365.5(c)(1) without substantive change.

Subdivision (b) restates former Section 1365.5(b) without substantive change.

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

§ 5515. Temporary transfer of reserve funds

5515. (a) The board may authorize, at a board meeting, a temporary transfer of funds from the reserve account to the operating account in order to address a short term cash flow requirement or other expense.

(b) Notice of the meeting at which the transfer is to be authorized must include the following information:

(1) A statement that the board will consider a transfer of funds from the reserve account to the operating account.

(2) The reason for the proposed transfer.

(3) Options for repayment of the transferred amount.

(4) Whether a special assessment may be necessary for repayment of the transferred amount.

(c) If the board authorizes the transfer, the minutes of the meeting shall include a written description of the amount to be transferred, the reasons for the transfer, and when and how the transferred amount will be repaid to the reserve account.

(d) Funds transferred under this section shall be repaid to the reserve account within one year of the date of the initial transfer, except that the board may delay

repayment in the same manner that it would authorize a new transfer. A board may only delay repayment if it makes a written finding, supported by documentation, that the delay would be in the best interest of the common interest development.

(e) The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the transferred funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 5580. The board may, in its discretion, extend the date the payment on the special assessment is due. An extension of the due date does not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

Comment. Section 5515 restates former Section 1365.5(c)(2) without substantive change.

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

§ 5520. Use of reserve funds for litigation

5520. (a) If funds in the reserve account are expended or transferred for the purpose of litigation, the board shall provide general notice to the members (Section 4045) of the expenditure or transfer. The notice shall inform the members of their rights under subdivision (b).

(b) The board shall make an accounting, at least quarterly, of any funds in the reserve account that are expended or transferred for the purpose of litigation. A member may inspect the accounting pursuant to Article 5 (commencing with Section 4700) of Chapter 3.

Comment. Section 5520 restates former Section 1365.5(d) without substantive change.

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

Article 3. Reserve Funding

§ 5550. Inspection of major components

5550. At least once every three years, the board shall conduct a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to maintain.

Comment. Section 5550 restates part of former Section 1365.5(e) without substantive change, except that an exception from the inspection requirement, for major components with a replacement value of less than half of the association’s operating budget, is not continued.

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

§ 5555. Reserve funding study

5555. (a) At least once every three years, the board shall prepare a reserve funding study. The board shall review the study annually and make any necessary adjustments to the study.

(b) The study shall describe each major component that the association is obligated to maintain and that has a remaining useful life of less than 30 years.

The study shall provide at least the following information for each included component, as of the end of the fiscal year for which the study is prepared or updated:

- (1) An identifying description of the component.
- (2) The total useful life of the component, in years.
- (3) The estimated repair and replacement cost of the component over its useful life.
- (4) The average annual repair and replacement cost for the component. This is calculated by dividing the lifetime repair and replacement cost by the total useful life of the component.
- (5) The number of years the component has been in service.
- (6) The required balance for the component. This is calculated by one of the two following methods: (A) by multiplying the average annual repair and replacement cost and the number of years that the component has been in service, or (B) by a generally accepted alternative method that is described in the study.
- (c) The study shall include a summary page in the following form, with the indicated attachments:

Summary of Reserve Funding Study

- (1) The information provided in this summary is current as of the end of fiscal year _____. It is based on a reserve study prepared by _____ on _____. A copy of the complete study is available from the association on request, at no charge.
- (2) **Current Fiscal Year Projection:** At the end of this fiscal year, the balance in the reserve account is projected to be \$_____. This figure includes only assets held in cash or cash equivalents and projected income.

The total required balance for all components included in the reserve funding study is \$_____. A description of the method used to calculate the required balance is attached.

The balance of the reserve account is _____% of the total required balance for all components included in the reserve funding study.

If the balance of the reserve account is less than the total required balance for all components included in the reserve funding study, the difference is \$_____. The difference per separate interest is \$_____.

Note: If the units in this development do not pay equal assessments, then the proportional share of the difference, for each class of unit, is attached.

- (3) **Five Year Projection:** The tables below provide projections for each of the five fiscal years following the current fiscal year. Table 1 shows the projected balance in the reserve account if the most recently approved reserve funding plan is implemented. Table 2 shows the projected balance in

the reserve account if the most recently approved reserve funding plan is not implemented.

Table 1. Five Year Projection with Implementation of Funding Plan

Fiscal Year	Projected Balance	Total Required Balance for all Components Included in the Reserve Funding Study	Ratio of Projected Balance to Required Balance (as percentage)

Table 2. Five Year Projection without Implementation of Funding Plan

Fiscal Year	Projected Balance	Total Required Balance for all Components Included in the Reserve Funding Study	Ratio of Projected Balance to Required Balance (as percentage)

(4) The current regular assessment per unit is \$_____ per _____.

Note: If the units in this development do not pay equal assessments, then a schedule showing the current regular assessment for each class of unit is attached.

- (5) Additional regular assessments that have already been approved for any purpose are listed in the schedule below:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

Note: If the units in this development do not pay equal assessments, then a schedule showing the approved regular assessments for each class of unit is attached.

- (6) Special assessments that have been approved for any purpose are listed in the schedule below:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

Note: If the units in this development do not pay equal assessments, then a schedule showing the approved special assessments for each class of unit is attached.

- (7) If the association has any outstanding loans with an original term of more than one year, information about those loans is included in the schedule below:

Lender	Amount owed	Interest rate	Annual payment	Date when loan to be retired

- (8) Based on the most recent reserve study and other information available to the board of directors, will the current regular assessment, approved increases in the regular assessment, and approved special assessments provide sufficient reserve funds at the end of each year to meet the association's obligation for repair and replacement of major components over the next 30 years?

Yes _____ No _____

(9) If the answer to question (8) is no, please refer to the most recently approved reserve funding plan for a description of any additional assessment increases or special assessments that may be proposed in order to provide sufficient reserve funds at the end of each year to meet the association's obligation for repair and replacement of major components over the next 30 years.

(10) 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. A statement describing the procedures used to make the calculations used in this summary is attached.

(d) The summary prepared pursuant to subdivision (c) shall be included with the notice of availability of the annual budget report that is delivered to members pursuant to Section 4820. The form may be supplemented or modified in order to make the information provided clearer or more complete, so long as the minimum information required by subdivision (c) is provided.

(e) The summary prepared pursuant to subdivision (c) shall not be admissible in evidence to show improper financial management of an association. Other relevant and competent evidence of the financial condition of the association is not made inadmissible by this subdivision.

(f) A component 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 summary prepared pursuant to subdivision (c).

Comment. Subdivision (a) of Section 5555 is drawn from former Section 1365.5(e).

Subdivision (b)(1) restates former Sections 1365.2.5(a)(5) and 1365.5(e)(1) without substantive change.

Subdivision (b)(2) is consistent with former Section 1365(a)(2)(A) and is required in order to perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

Subdivision (b)(3) is consistent with former Sections 1365(a)(2)(A) and 1365.5(e)(3) and is required in order to perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

Subdivision (b)(4) is required in order to perform the calculation required by former Sections 1365.2.5(a)(6) and 1365.5(e)(4).

Subdivision (b)(5) is consistent with former Section 1365(a)(2)(A) and is required in order to perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

Subdivision (b)(6) is required in order to perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

Subdivision (c) restates the disclosure requirements of former Sections 1365(a)(2) and 1365.2.5, as follows:

Item (1) is drawn from Sections 1365(a)(2)(B) and 1365.2.5(a)(6).

Item (2) is drawn from former Sections 1365(a)(2)(B)(i)-(ii) & (C)-(D) and 1365.2.5(a)(6).

Item (3) is drawn from former Sections 1365(a)(2)(B)(i)-(ii) & (C) and 1365.2.5(a)(7).

Item (4) is drawn from Section 1365.2.5(a)(1).

Items (5) and (6) are drawn from former Section 1365.2.5(a)(2).

Item (7) is drawn from former Section 1365(a)(3)(D).

Item (8) is drawn from former Section 1365.2.5(a)(3).

Item (9) is drawn from former Section 1365.2.5(a)(4), except that the schedule of proposed assessment increases will be set out in the reserve funding plan. See Section 5560.

Item (10) is drawn from former Section 1365.2.5(a)(7).

Subdivision (d) restates former Section 1365.2.5(b)(3) without substantive change.

Subdivision (e) restates the second paragraph of former Section 1365(a)(4) without substantive change.

Subdivision (f) restates former Section 1365.2.5(b)(2) without substantive change.

See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4160 (“member”), 4185 (“separate interest”).

§ 5560. Reserve funding plan

5560. (a) At least once every three years, the board shall prepare a reserve funding plan that describes how the association will contribute sufficient funds to the reserve account to meet the association’s obligation to repair and replace the major components included in the most recent reserve funding study.

(b) The plan may provide for an increase in the general assessment, a special assessment, borrowing, use of other assets, deferral of selected replacement or repairs, or other mechanisms.

(c) If the plan proposes an increase in the general assessment, it shall describe the proposed increase in the following form:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

(d) If the plan proposes an increase in one or more special assessments, it shall describe the proposed increase in the following form:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

(e) If the separate interests in the development do not pay equal assessments, the plan shall indicate the amount of any increase or special assessment for each class of separate interest.

(f) The plan shall be considered by the board at a board meeting.

(g) Board approval of the plan does not constitute approval of an assessment increase described in the plan. Any assessment increase must be considered separately by the board and is subject to the procedure provided in Section 5580.

(h) The plan may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the plan is prepared.

(i) The reserve funding plan may be supplemented or modified in order to make the information provided clearer or more complete, so long as the minimum information required by this section is provided.

Comment. Section 5560 restates former Sections 1365(a)(3)-(4) and 1365.5(e)(5) with one substantive change: subdivision (i) is new. It is comparable to the second sentence of former Section 1365.2.5(b)(3).

See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4185 (“separate interest”).

Article 4. Assessments

§ 5575. Levy of assessment

5575. (a) An association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title.

(b) An association shall not levy an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

Comment. Subdivision (a) of Section 5575 continues the first sentence of former Section 1366(a) without substantive change.

Subdivision (b) continues former Section 1366.1 without substantive change.

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

§ 5580. Assessment increase

5580. (a) Subject to the limitations of Section 5575 and subdivision (b), the board may increase the regular assessment by any amount that is required to fulfill its obligations and may impose a special assessment of any amount that is required to fulfill its obligations. This subdivision supersedes any contrary provision of the governing documents.

(b) In the following circumstances, an assessment increase or special assessment may only be adopted with the approval of an affirmative majority of the votes cast in a member election at which at least fifty percent of the voting power is represented:

(1) The association has not complied with Section 4800 for the fiscal year in which the assessment increase or special assessment would take effect.

(2) The total increase in the regular assessment for the fiscal year would be more than 20 percent of the regular assessment for the preceding fiscal year.

(3) The total for all special assessments imposed in the fiscal year would be more than 5 percent of the budgeted gross expenses of the association for the fiscal year in which the special assessment would be imposed.

(c) Subdivision (b) does not apply to an assessment increase that is required to address the following emergency expenses:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or replace any part of the development that the association is obligated to maintain, where a threat to personal safety is discovered on the property.

(3) An extraordinary expense necessary to repair or replace any part of the development that the association is obligated to maintain that could not have been reasonably foreseen by the board in preparing and distributing the budget report under Section 4800. Before imposing an assessment under this subdivision, the board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(d) The association shall provide the members with individual notice (Section 4040) of any increase in the regular or special assessments of the association at least 30 days before the increased assessment takes effect.

Comment. Subdivisions (a)-(c) and (e) of Section 5580 restate the last two sentences of former Section 1366(a), and former Section 1366(b), without substantive change. Subdivision (a) makes clear that a board's authority to impose an assessment increase that is required to fulfill its legal obligations may not be limited by the governing documents.

Subdivision (d) restates former Section 1366(d) without substantive change, except that the prohibition on giving notice more than 60 days before the increase takes effect is not continued.

See also Sections 4080 ("association"), 4085 ("board"), 4150 ("governing documents"), 4160 ("member").

§ 5585. Exemption from execution

5585. (a) A regular assessment imposed or collected to perform an obligation of an association under the governing documents or this title is exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision.

(b) This section does not apply to a consensual pledge, lien, or encumbrance that is approved by a majority of a quorum of the members (Section 4070), or to any state tax lien, or to any lien for labor or materials supplied to the common area.

Comment. Section 5585 continues former Section 1366(c) without substantive change.

See also Sections 4080 ("association"), 4095 ("common area"), 4150 ("governing documents"), 4160 ("member").

Article 5. Payment and Collection of Assessment

§ 5600. Payment

5600. (a) The association shall provide a mailing address for receipt of an assessment payment that is sent by overnight delivery. The address shall be included in the member handbook (Section 4810).

(b) On the request of a member, the association shall provide that member with a receipt for a payment made to the association. The receipt shall indicate the date and amount of the payment and the person who received the payment for the association.

(c) A payment made for a delinquent assessment shall first be applied to the assessment owed. Only after the assessment owed is paid in full shall the payment be applied to collection costs, a late fee, or interest.

Comment. Section 5600 continues former Section 1367.1(b) without substantive change. See also Sections 4080 (“association”), 4160 (“member”), 4170 (“person”).

§ 5605. Delinquency

5605. (a) An assessment becomes delinquent 15 days after it is due, unless the declaration provides a longer time period, in which case the longer time period applies.

(b) If an assessment is delinquent, the association may recover all of the following amounts:

(1) The unpaid amount of the assessment.

(2) The reasonable cost incurred in collecting the delinquent assessment, including a reasonable attorney’s fee.

(3) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case the late charge shall not exceed the amount specified in the declaration.

(4) Interest on the delinquent assessment, the reasonable cost of collection, and the late charge. The annual interest rate shall not exceed 12 percent, commencing 30 days after the assessment becomes due, unless the declaration specifies a lower rate of interest, in which case the lower rate of interest applies.

(c) An association is exempt from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

(d) The amount described in subdivision (b) becomes a debt of the member at the time the assessment or other sum is levied.

Comment. Subdivisions (a)-(c) of Section 5605 restate former Section 1366(e)-(f) without substantive change.

Subdivision (d) continues the first sentence of former Sections 1367(a) and 1367.1(a) without substantive change.

See also Sections 4080 (“association”), 4135 (“declaration”), 4160 (“member”).

§ 5610. Assignment or pledge

5610. (a) Except as otherwise provided in this section, an association may not voluntarily assign or pledge to a third party the association’s right to collect a payment or assessment, or to enforce or foreclose a lien.

(b) An association may assign or pledge the association’s right to collect a payment or assessment, or to enforce or foreclose a lien, to a financial institution

or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association.

(c) An association may assign an unpaid obligation of a former member to a third party for purposes of collection.

Comment. Section 5610 restates the first sentence of former Section 1367.1(g) without substantive change.

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

§ 5615. Pre-lien notice

5615. (a) At least 30 days before recording a lien on the separate interest of the owner of record to collect a debt that is past due under this article, the association shall deliver to the owner of record, by certified mail, a written notice of delinquency.

(b) The notice of delinquency shall include the following information.

(1) An itemized statement of the charges owed, including any collection costs, late fee, and interest.

(2) A general description of the collection and lien enforcement procedures of the association and the method by which the amount due was calculated.

(c) The notice of delinquency shall include the following statement, in bold 14 point type:

IMPORTANT NOTICE

IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION. However, before the association can initiate foreclosure, you have the right to request alternative dispute resolution with a neutral third party under Civil Code Section 5655(a)(2).

You have the right to inspect association records under Civil Code Section 4700.

You have the right to request a meeting with a representative of the board under Civil Code Section 5625.

If you wish to request a payment plan, you have the right to request a meeting with the board under Civil Code Section 5620.

If the association determines that the assessment is not delinquent, you will not be liable for any collection costs, late fee, or interest.

Comment. Section 5615 continues part of former Section 1367.1(a) without substantive change.

Subdivision (c) provides a standardized form for the disclosure of required statements.

See also Sections 4080 (“association”), 4085 (“board”), 4185 (“separate interest”).

§ 5620. Payment plan

5620. (a) A member that owes a delinquent assessment may deliver a written request (Section 4035) to meet with the board to discuss a payment plan for the debt. If the association has adopted standards for payment plans, the association shall provide a copy of the standards to the member.

(b) The association shall meet with the member and consider the request within 45 days after receipt of the request, either at a regularly scheduled board meeting or at a specially scheduled meeting between the member and a committee appointed by the board for that purpose. The board shall deliver individual notice (Section 4040) to the member stating the date, time, and location of the meeting at which the request will be considered.

(c) A payment plan may incorporate an assessment that will accrue during the payment plan period. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan.

(d) A payment plan does not affect an association's ability to record a lien on the owner's separate interest to secure payment of a delinquent assessment. In the event of a default on any payment plan, the association may resume its efforts to collect all delinquent assessments.

Comment. Section 5620 continues former Section 1367.1(c)(3) without substantive change, except that a special rule that applies to an interest in a time share is not continued. Such an interest is expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212.

Subdivision (b) simplifies the former provision on the timing of a meeting to request a payment plan.

See also Sections 4080 ("association"), 4085 ("board"), 4090 ("board meeting"), 4160 ("member"), 4185 ("separate interest").

§ 5625. Pre-lien meeting

5625. Before recording a lien for delinquent assessments, an association shall offer the owner and, if so requested by the owner, participate in internal dispute resolution pursuant to Article 2 (commencing with Section 5050) of Chapter 4.

Comment. Section 5625 restates former Section 1367.1(c)(1)(A) and the second sentence of former Section 1367.4(b)(2) without substantive change.

See also Section 4080 ("association").

§ 5630. Lien creation and priority

5630. (a) An association that has complied with Sections 5615 and 5625 may record a notice of delinquent assessment in the county in which the common interest development is located. Recording of the notice of delinquent assessment creates a lien against the property for which the delinquent assessment is owed.

(b) The recorded notice of delinquent assessment shall state the following information:

(1) The amount owed, including an itemized statement of any delinquent assessment amount, reasonable cost of collection, late fees, or interest.

(2) A legal description of the separate interest against which the lien is imposed.

(3) The name of the record owner of the separate interest against which the lien is imposed.

(c) A lien may not be enforced by nonjudicial foreclosure unless the recorded notice of delinquent assessment states the name and address of the trustee that is authorized by the association to enforce the lien by sale.

(d) The recorded notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association.

(e) A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association's records, no later than 10 days after recordation.

(f) Unless the governing documents provide otherwise, a lien created pursuant to this section has priority over a subsequently recorded lien.

(g) The decision to record a lien for a delinquent assessment shall be made only by the board, at a meeting of the board, and may not be delegated to an agent of the association.

(h) Nothing in this article or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits an action against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) An association that fails to comply with Section 5615 or 5625 before recording a lien shall provide a new notice under Section 5615. Any additional costs that accrue from the failure to comply with Section 5615 or 5625 shall be borne by the association and not by the owner of the separate interest.

Comment. Subdivisions (a)-(e) of Section 5630 restate the first six sentences of former Section 1367.1(d) without substantive change. Subdivision (a) is consistent with the substance of former Section 1367.1(l)(1).

Subdivision (f) restates former Section 1367.1(f) without substantive change.

Subdivision (g) restates former Section 1367.1(c)(2) without substantive change, except that the provision limiting the provision to liens recorded on or after January 1, 2006, is not continued. See Section 5675 (application of article).

Subdivision (h) restates former Section 1367.1(h) without substantive change.

Subdivision (i) restates former Section 1367.1(l) without substantive change.

See also Sections 4080 ("association"), 4085 ("board"), 4100 ("common interest development"), 4135 ("declaration"), 4150 ("governing documents"), 4170 ("person"), 4185 ("separate interest").

§ 5635. Lien release

5635. (a) Within 21 days after the payment of the sums stated in a recorded notice of delinquent assessment, the association shall record a lien release or notice of rescission in the county in which the notice of delinquent assessment is recorded. The association shall deliver to the record owner of the separate interest, by individual notice (Section 4040), a copy of the lien release or notice of rescission.

(b) Within 21 days after a determination that a notice of delinquent assessment was recorded in error, the association shall record a lien release or notice of rescission in the county in which the notice of delinquent assessment is recorded. The association shall deliver to the record owner of the separate interest, by individual notice (Section 4040), a copy of the lien release or notice of rescission and a declaration that the notice of delinquent assessment was recorded in error.

(c) If a notice of delinquent assessment is recorded in error, the association shall reverse any collection cost, late fee, or interest that results from the error. The association shall bear any cost of alternative dispute resolution that relates to the error.

Comment. Subdivision (a) of Section 5635 restates the seventh sentence of former Section 1367.1(d) without substantive change.

Subdivision (b) restates former Section 1367.1(i) without substantive change.

Subdivision (c) restates former Section 1367.5 without substantive change. The requirement that the error be discovered as a result of alternative dispute resolution is not continued.

See also Sections 4080 (“association”), 4135 (“declaration”), 4185 (“separate interest”).

§ 5640. Lien for damage or fine

5640. (a) Unless the governing documents provide otherwise, a monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member, a resident of the member’s separate interest, or the member’s guest, invitee, or tenant is responsible may become a lien against the member’s separate interest that is enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(b) A fine imposed by the association for a violation of the governing documents, however described, shall not become a lien against the member’s separate interest that is enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c. This subdivision does not apply to a penalty for late payment of a regular or special assessment.

Comment. Subdivision (a) of Section 5640 restates the eight and ninth sentences of former Section 1367.1(d) without substantive change, except that the section makes clear that a member may be liable for damage caused by a resident of the member’s separate interest or an invitee.

Subdivision (b) restates former Section 1367.1(e) without substantive change.

See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

§ 5645. Collection generally

5645. (a) Except as otherwise provided in this article, 30 days after recording a notice of delinquent assessment, an association may enforce the resulting lien in any manner permitted by law, including sale by the court, sale by the trustee designated in the recorded notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a.

(b) If the amount of the lien is within the jurisdictional limit of the small claims division of the superior court, the association may bring an action to collect the debt in the small claims division pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure. An association may enforce a judgment of the small claims division as provided in Article 8 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of Part 1 of the Code of Civil Procedure. The amount recovered in an action in the small

claims division, which may not exceed the jurisdictional limit of the small claims division, is the sum of the following:

(1) The amount owed as of the date of filing the complaint.

(2) In the discretion of the court, an additional amount equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest.

Comment. Subdivision (a) of Section 5645 restates the second sentence of former Section 1367.1(g) without substantive change.

Subdivision (b) restates former Section 1367.4(b)(1) without substantive change.

See also Section 4080 ("association").

§ 5650. Prohibition on foreclosure for small amount

5650. (a) An association may only foreclose on a lien, judicially or nonjudicially, if the debt is twelve months or more overdue or the amount owed, excluding any accelerated assessment, collection cost, late charge, or interest, is one thousand eight hundred dollars (\$1,800) or more.

(b) Subdivision (a) does not apply to a separate interest owned by the declarant.

(c) This section applies to a lien recorded on or after January 1, 2006.

Comment. Subdivision (a) of Section 5650 restates the introduction of former Section 1367.4(b) without substantive change.

Subdivision (b) restates former Section 1367.4(d) without substantive change, except that the exemption of time share units is superfluous and has not been continued. A time share unit is not subject to this section. See Bus. & Prof. Code § 11211.7. The reference to "developers" has been replaced with a reference to the declarant. See Section 4130 ("declarant" defined).

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

§ 5655. Foreclosure

5655. (a) Before commencing foreclosure to enforce a lien created under this article, the association shall satisfy all of the following requirements:

(1) The decision to foreclose shall be made by the board at least 30 days before any public sale. The decision may not be delegated to a committee or agent. The vote approving foreclosure shall be recorded in the minutes. The board shall maintain the confidentiality of the owner of the separate interest by identifying the matter in the minutes by the parcel number of the property only.

(2) The association shall offer to participate in either internal dispute resolution pursuant to Article 2 (commencing with Section 5050), or alternative dispute resolution pursuant to Article 3 (commencing with Section 5075), of Chapter 4. The decision of whether to participate and the type of alternative dispute resolution to use shall be made by the owner of the separate interest, except that binding arbitration may not be used if the association intends to commence a judicial foreclosure.

(3) The association shall serve notice of its decision to foreclose on the owner or the owner's legal representative, in accordance with the manner of service of

summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(b) Any sale by a trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d, plus the cost of service for either of the following documents:

(1) The notice of default recorded pursuant to subdivision (c).

(2) The decision of the board to foreclose on the separate interest provided pursuant to paragraph (3) of subdivision (a).

(c) If the association records a notice of default pursuant to Section 2924, the association shall serve a copy of the notice of default on the owner or the owner's legal representative in the same manner as service of a summons under Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(d) If the owner of the separate interest does not occupy the separate interest, a notice required under this section may be delivered by first class mail to the mailing address shown in the association's records. If the owner has not provided the association with a mailing address, the address of the separate interest is deemed to be the owner's mailing address.

(e) For the purposes of this section, the "owner's legal representative" means a person designated by the owner as the owner's legal representative in a notice delivered to the board (Section 4035).

Comment. Subdivision (a)(1) of Section 5655 restates former Sections 1367.1(c)(2) and 1367.4(c)(2) without substantive change.

Subdivision (a)(2) restates former Sections 1367.1(c)(1)(B) and 1367.4(c)(1) without substantive change.

Subdivision (a)(3) restates former Section 1367.4(c)(3) without substantive change.

Subdivision (b) restates the third and fourth sentences of former Section 1367.1(g) without substantive change.

Subdivisions (c)-(e) restate former Section 1367.1(j) without substantive change, except that subdivisions (d) and (e) have been generalized to apply to any notice given under the section.

See also Sections 4080 ("association"), 4085 ("board"), 4170 ("person"), 4185 ("separate interest").

§ 5660. Right of redemption after trustee sale

5660. A separate interest sold by a trustee under this article is subject to a right of redemption for 90 days after the sale. In addition to the requirements of Section 2924f, notice of sale in connection with an association's foreclosure of a separate interest shall include a statement that the property is being sold subject to the right of redemption created in this section.

Comment. Section 5660 restates former Section 1367.4(c)(4) without substantive change.

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

§ 5665. Recorded association information

5665. (a) In order to facilitate the collection of a regular assessment, special assessment, transfer fee, or similar charge, the board is authorized to record a statement or amended statement identifying relevant information for the association. This statement may include any or all of the following information:

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

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

(3) A daytime telephone number of the person identified in paragraph (2).

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

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

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

(b) The county recorder is authorized to charge a fee for recording the document described in subdivision (a), based on the number of pages in the document and the recorder's per-page recording fee.

Comment. Section 5665 restates former Section 1366.2 without substantive change.

See also Sections 4080 ("association"), 4085 ("board"), 4135 ("declaration"), 4155 ("managing agent"), 4170 ("person"), 4185 ("separate interest").

§ 5670. Statement of collection procedure

5670. The member handbook (Section 4810) shall include the following statement:

NOTICE REGARDING ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND FORECLOSURE

An assessment becomes delinquent 15 days after it is due, unless the governing documents provide for a longer time. The failure to pay an association assessment may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure.

An association may not use judicial or nonjudicial foreclosure to enforce a lien that is recorded on or after January 1, 2006, if the debt is less than twelve months

overdue and the amount of the delinquent assessments or dues, exclusive of any accelerated assessment, late charge, fee, attorney's fee, interest, or cost of collection, is less than one thousand eight hundred dollars (\$1,800).

An association may use judicial or nonjudicial foreclosure to collect a debt if it is more than twelve months overdue or if the amount owed for assessments or dues is more than one thousand eight hundred dollars (\$1,800). Foreclosure is subject to the conditions set forth in Civil Code Sections 5650 and 5655.

When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Civil Code Sections 5645, 5650, and 5655.)

In a judicial or nonjudicial foreclosure, the association may recover the delinquent assessment, the reasonable cost of collection including a reasonable attorney's fee, a late charge, and interest. The association may not use nonjudicial foreclosure to collect a fine or penalty. Unless the governing documents provide otherwise, an association may use nonjudicial foreclosure to collect the cost to repair damage to the common area that is caused by a member or the member's guests. (Civil Code Section 5640.)

The association must comply with the requirements of Civil Code Sections 5615, 5620, and 5625 when collecting a delinquent assessment. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied the requirements. Any additional cost that results from satisfying the requirements is the responsibility of the association. (Civil Code Section 5630.)

At least 30 days before recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedure and the method used to calculate the amount owed. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Civil Code Section 5615.)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Civil Code Section 5635.)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

On the request of a member, the association shall provide that member with a receipt for a payment made to the association. The receipt shall indicate the date and amount of the payment and the person who received the payment for the association. The association must inform owners of a mailing address for the overnight delivery of payments. (Civil Code Section 5600.)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association under Civil Code Section 5625. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party under Civil Code Section 5655, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for a late charge, interest, or the cost of collection, if it is established that the assessment was paid properly on time. (Civil Code Section 5635.)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform the owner of the standards for payment plans, if any exist. (Civil Code Section 5620)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. A payment plan must conform with the payment plan standards of the association, if they exist. (Civil Code Section 5620)

Comment. Section 5670 restates former Section 1365.1 without substantive change, except for the following changes:

(1) A special rule that applies to an interest in a time share is not continued. Such an interest is expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212. Related references to time share interests are not continued.

(2) The substance of former Section 1365.1(c) is generalized in Section 4040.

See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”), 4170 (“person”), 4185 (“separate interest”).

§ 5675. Application of article

5675. (a) Except as otherwise provided, this article applies to a lien created on or after January 1, 2003.

(b) A lien created before January 1, 2003, is governed by the law in existence at the time the lien was created.

Comment. Section 5675 is new. A lien created between January 1, 1986, and January 1, 2003, is governed by former Section 1367. Note that Section 5650 only applies to a lien created on or after January 1, 2006.

Article 6. Insurance and Liability

§ 5680. Limitation of director and officer liability

5680. (a) An association officer or director is not personally liable for a tortious act or omission of the officer or director, in excess of the amount of insurance coverage specified in paragraph (6), if all of the following requirements are met:

(1) The officer or director is a volunteer.

(2) The officer or director is a tenant of a separate interest or an owner of no more than two separate interests.

(3) The association is exclusively residential.

(4) The act or omission was performed within the scope of the officer’s or director’s association duties.

(5) The act or omission was performed in good faith.

(6) The act or omission was not willful, wanton, or grossly negligent.

(7) The association maintained and had in effect, at the time of the act or omission and at the time that a claim is made, insurance coverage for the general liability of the association and for the individual liability of an officer or director of the association for negligent acts or omissions in that capacity. In an association with 100 or fewer separate interests, the coverage for each type of liability shall be at least five hundred thousand dollars (\$500,000). In an association of more than 100 separate interests, the coverage for each type of liability shall be at least one million dollars (\$1,000,000).

(b) For the purposes of this section, “volunteer” does not include the declarant or a person who receives direct or indirect compensation as an employee of the declarant, or as an employee of a financial institution that purchased a separate interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property. Payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director’s or officer’s status as a volunteer.

(c) Nothing in this section limits the liability of the association for its negligent act or omission or for any negligent act or omission of an officer or director of the association.

(d) For the purposes of this section, an officer’s or director’s association duties include making a decision on whether to conduct an investigation of the common interest development for latent deficiencies before the expiration of the applicable statute of limitations and whether to commence a civil action against the builder for defects in design or construction. This subdivision is intended to clarify the application of this section. It is not intended to expand or limit the fiduciary duties owed by a director or officer.

Comment. Section 5680 restates former Section 1365.7 without substantive change. See also Corp. Code § 7231 (standard of care and liability of director of nonprofit mutual benefit corporation).

See also Sections 4080 (“association”), 4100 (“common interest development”), 4130 (“declarant”), 4140 (“director”), 4170 (“person”), 4185 (“separate interest”).

§ 5685. Limitation of member liability

5685. (a) It is the intent of the Legislature to offer civil liability protection to owners of separate interests in a common interest development that has common area that is owned as tenancy-in-common if the association carries a certain level of prescribed insurance that covers a cause of action in tort.

(b) A cause of action in tort against a member arising solely by reason of an ownership interest as a tenant in common in the common area shall be brought only against the association and not against the individual members, if both of the insurance requirements are met:

(1) The association maintained and has in effect for this cause of action, one or more policies of insurance which include coverage for general liability of the association.

(2) The coverage described in paragraph (1) is in the following minimum amounts:

(A) At least two million dollars (\$2,000,000) if the common interest development consists of 100 or fewer separate interests.

(B) At least three million dollars (\$3,000,000) if the common interest development consists of more than 100 separate interests.

Comment. Section 5685 continues former Section 1365.9 without substantive change.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4160 (“member”), 4185 (“separate interest”).

§ 5690. Notice of change in coverage

5690. (a) If an insurance policy described in the annual budget report pursuant to Section 4800 lapses or is canceled, and is not immediately renewed, restored, or replaced, or if there is a significant change to the policy, such as a reduction in coverage or limits or an increase in the deductible, the association shall give individual notice (Section 4040) of the change to the members as soon as reasonably practicable.

(b) If the association receives notice of nonrenewal of a policy described in the annual budget report pursuant to Section 4800 and a replacement policy will not be in effect by the date that the existing policy will lapse, the association shall immediately give individual notice (Section 4040) of that fact to the members.

Comment. Section 5690 restates part of former Section 1365(f) without substantive change. See also Sections 4080 (“association”), 4160 (“member”).

CHAPTER 6. PROPERTY MAINTENANCE AND USE

Article 1. Maintenance

§ 5700. Maintenance responsibility generally

5700. Unless the declaration provides otherwise, the responsibility for repair, replacement, and maintenance is as follows:

(a) The association is responsible for the repair, replacement, and maintenance of the common area, other than exclusive use common area.

(b) The owner of a separate interest is responsible for the maintenance of the separate interest and any exclusive use common area appurtenant to the separate interest.

(c) Upon approval of the majority of all members (Section 4065), responsibility for the repair and maintenance of the separate interests occasioned by the presence of wood-destroying pests or organisms may be delegated to the association, which may recover its costs through a special assessment.

Comment. Subdivisions (a) and (b) of Section 5700 continue former Section 1364(a) without substantive change.

Subdivision (c) generalizes part of former Section 1364(b)(2).

See also Sections 4080 (“association”), 4095 (“common area”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4185 (“separate interest”).

§ 5705. Temporary removal of occupant to perform treatment of wood-destroying pests

5705. (a) The association may cause the temporary, summary removal of any occupant of a common interest development as may be necessary for prompt, effective treatment of wood-destroying pests or organisms.

(b) The association shall give individual notice (Section 4040) of the need to temporarily vacate a separate interest to the occupant and, if the owner is different from the occupant, to the owner. Notice shall be given not less than 15 days nor more than 30 days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation.

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

(d) The costs of temporary relocation of an occupant pursuant to this section shall be borne by the owner of the separate interest affected.

Comment. Section 5705 continues former Section 1364(b)-(e) without substantive change, except for the following changes:

(1) The specific notice delivery provisions of former Section 1364(d)(3) have not been continued. Rules for delivery of notice are generalized in Sections 4035-4055.

(2) Former Section 1364(c), governing the cost of relocation, has been restated in subdivision (d) so as to make clear that it only applies to a relocation involving wood destroying organisms.

(3) Redundant language on the responsibility for maintenance and repair has not been continued.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4105 (“community apartment project”), 4115 (“condominium”), 4135 (“declaration”), 4160 (“member”), 4170 (“person”), 4175 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”).

§ 5710. Exclusive use communication wiring

5710. Notwithstanding the governing documents, the owner of a separate interest is entitled to reasonable access to the common areas for the purpose of maintaining the internal and external communication wiring that is exclusive use common area pursuant to Section 4145. The access shall be subject to the consent of the association, whose approval shall not be unreasonably withheld, and which may include the association’s approval of communication wiring upon the exterior of the common area, and other conditions as the association determines reasonable. For the purposes of this section, “wiring” includes nonmetallic transmission lines.

Comment. Section 5710 continues former Section 1364(f) without substantive change, except that the reference to “telephone wiring” has been generalized to accommodate non-telephonic communication technology and nonmetallic transmission media (e.g., fiber optic).

See also Sections 4080 (“association”), 4095 (“common area”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4185 (“separate interest”), 4190 (“stock cooperative”).

Article 2. Limitation of Association Authority to Regulate Property Use

§ 5725. Application of article

5725. This article includes provisions that limit the authority of an association to regulate the use of a member’s separate interest. Nothing in this article is intended to affect the application of any other provision that limits the authority of an association to regulate the use of a member’s separate interest, including, but not limited to, the following provisions:

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

Comment. Section 5725 is new. It provides a non-exclusive list of provisions outside of this part that limit the authority of an association to regulate separate interest property use.

See also Sections 4080 (“association”), 4160 (“member”), 4185 (“separate interest”).

§ 5730. Display of flag or other noncommercial display

5730. (a) Except as otherwise provided in this section, the governing documents of an association may not prohibit the display of the flag of the United States or any other noncommercial sign, poster, flag, or banner within a member’s separate interest or exclusive use common area.

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

- (1) The display endangers public health or safety.
 - (2) The display violates a local, state, or federal statute or regulation.
 - (3) The display includes the painting of architectural surfaces, or includes lights, roofing, siding, paving materials, plants, or balloons, or any other building, landscaping, or architectural materials.
 - (4) The display is not a flag and is more than 9 square feet in size.
- (c) An association may prohibit the display of a flag other than the flag of the United States, if the flag is more than 15 square feet in size.

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

Comment. Section 5730 continues former Sections 1353.5 and 1353.6 without substantive change, except that Section 5730(b)(2) now applies to a flag of the United States.

See also Sections 4080 ("association"), 4095 ("common area"), 4145 ("exclusive use common area"), 4150 ("governing documents"), 4160 ("member"), 4185 ("separate interest").

§ 5735. Pets

5735. (a) No governing documents shall prohibit the owner of a separate interest within a common interest development from keeping at least one pet within the common interest development, subject to reasonable rules and regulations of the association. This section may not be construed to affect any other rights provided by law to an owner of a separate interest to keep a pet within the development.

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

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

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

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

Comment. Section 5735 continues former Section 1360.5 without change.

See also Sections 4080 ("association"), 4100 ("common interest development"), 4150 ("governing documents"), 4185 ("separate interest").

§ 5740. Roofing materials

5740. (a) An association may not require that a homeowner install or repair a roof in a manner that is in violation of Section 13132.7 of the Health and Safety Code.

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

Comment. Section 5740 continues former Section 1353.7 without substantive change. See also Section 5775(a)(3) (“Notwithstanding a contrary provision of the governing documents, a decision on a proposed change may not violate any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety.”).

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

§ 5745. Television antenna or satellite dish

5745. (a) Except as otherwise provided in this section, a provision of the governing documents is void to the extent that it would prohibit or restrict the use or installation of an antenna.

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

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

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

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

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

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

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

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

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

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

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

Comment. Section 5745 restates former Section 1376 without substantive change. Restrictions on antennas may also be governed by federal regulation. See 47 C.F.R. § 1.4000.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

§ 5750. Marketing restriction

5750. (a) A provision of the governing documents that arbitrarily or unreasonably restricts a member’s ability to market the member’s interest in a common interest development is void.

(b) An association shall not charge a fee in connection with the marketing of a member’s interest that exceeds the actual cost to the association that results from the marketing of the member’s interest.

(c) An association shall not require that a member use a particular real estate broker to market the member’s interest.

(d) For the purposes of this section, “market” and “marketing” mean listing, advertising, or obtaining or providing access to show the member’s interest.

Comment. Subdivision (a) of Section 5750 restates former Section 1368.1(a) without substantive change. The phrase “rule or regulation” has been generalized to include any provision of the association’s governing documents.

Subdivision (b) restates former Section 1368.1(b)(1) without substantive change. Subdivision (b) is a specific application of the general rule provided in 5750(b).

Subdivision (c) restates former Section 1368.1(b)(2) without substantive change. Language making clear that the provision does not affect marketing by an association is not continued because the restated language makes clear that the limitation only affects marketing by an individual member.

Subdivision (d) continues former Section 1368.1(c) without substantive change.

Subdivision (e) continues former Section 1368.1(d) without substantive change.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4150 (“governing documents”), 4160 (“member”).

§ 5755. Low water-using plants

5755. The architectural guidelines of a common interest development shall not prohibit or include conditions that have the effect of prohibiting the use of low water-using plants as a group.

Comment. Section 5755 continues former Section 1353.8 without change.

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

§ 5760. Improvements to separate interest

5760. (a) Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable law.

(b) Subject to the governing documents and applicable law, the owner of a separate interest may make any improvement or alteration within the boundaries of the separate interest that does not impair the structural integrity or mechanical systems or lessen the support of any part of the common interest development.

(c) Subject to the governing documents and applicable law, the owner of a separate interest may modify the separate interest, at the owner’s expense, to facilitate access for a person who is blind, visually handicapped, deaf, or physically disabled, or to alter conditions that could be hazardous to the disabled

person. This may include a modification of the route from the public way to the door of the separate interest if the separate interest is on the ground floor or is already accessible by an existing ramp or elevator.

(d) A modification made pursuant to subdivision (c) is subject to the following conditions:

(1) The modification shall be consistent with applicable building code requirements.

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

(3) A modification of the common area shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by a disabled person who requires the modification.

(4) The owner shall submit plans and specifications for a proposed modification to the association for review to determine whether the proposed modification complies with this section. The association shall not deny approval of the proposed modification without good cause.

Comment. Section 5760 generalizes the substance of former Section 1360 so that it applies to any separate interest and not just a separate interest that is contained within the boundaries of a building. See also Section 5775 (association decision on modification of separate interest must comply with Fair Employment and Housing Act); Gov't Code § 12927 (accommodation of disability under Fair Employment and Housing Act).

See also Sections 4080 ("association"), 4095 ("common area"), 4100 ("common interest development"), 4150 ("governing documents"), 4170 ("person"), 4185 ("separate interest").

Article 3. Architectural Review

§ 5775. Architectural review and decisionmaking

5775. (a) This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

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

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

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

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

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors of the association that made the decision, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors or a body that has the same membership as the board of directors, at a meeting that satisfies the requirements of Article 2 (commencing with Section 4500) of Chapter 3. Reconsideration by the board does not constitute dispute resolution within the meaning of Section 5055.

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

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

Comment. Section 5775 continues former Section 1378 without substantive change.

See also Sections 4080 ("association"), 4085 ("board"), 4095 ("common area"), 4140 ("director"), 4150 ("governing documents"), 4160 ("member"), 4185 ("separate interest").

CHAPTER 7. PROPERTY OWNERSHIP AND TRANSFER

Article 1. Ownership Rights and Interests

§ 5800. Ownership of common area

5800. Unless the declaration provides otherwise, in a condominium project, or in a planned development in which the common area is owned by the owners of the separate interests, the common area is owned by the owners of the separate interests as tenants in common, with one share for each separate interest.

Comment. Section 5800 restates former Section 1362 without substantive change.

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

§ 5805. Appurtenant rights and easements

5805. Unless the declaration provides otherwise:

(a) In a community apartment project, condominium, or a planned development in which the common area is owned in common by the owners of the separate interests, there are appurtenant to each separate interest nonexclusive rights of ingress, egress, and support, if necessary, through the common areas. The common area is subject to these rights.

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

Comment. Section 5805 restates former Section 1361 without substantive change.

See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment project”), 4115 (“condominium”), 4175 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”).

§ 5810. Access to separate interest property

5810. Except as otherwise provided by law, an order of the court, or an order pursuant to a final and binding arbitration decision, an association may not deny a member or other occupant of a separate interest physical access to the separate interest, either by restricting access through the common area, or by restricting access solely to the separate interest.

Comment. Section 5810 continues former Section 1361.5 without substantive change.

See also Sections 4080 (“association”), 4095 (“common area”), 4160 (“member”), 4185 (“separate interest”).

Article 2. Transfer Disclosure

§ 5825. Disclosure to prospective purchaser

5825. As soon as practicable before the transfer of title to a separate interest or the execution of a real property sales contract for a separate interest, as defined in Section 2985, the owner of the separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall provide the following documents to the prospective purchaser:

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

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

(c) A copy of the most recent documents distributed pursuant to Article 7 (commencing with Section 4800) of Chapter 3.

(d) A true statement in writing obtained from an authorized representative of the association as to the amount of the association’s current regular and special assessments and fees, any assessments levied upon the owner’s interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner’s interest and unpaid on the date of the statement. The statement obtained from an authorized representative

shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Article 5 (commencing with Section 5600) of Chapter 5.

(e) A copy or a summary of any notice previously sent to the owner pursuant to Section 5005 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(f) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 6200, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 6210. Disclosure of the preliminary list of defects pursuant to this paragraph does not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(g) A copy of the latest information provided for in Section 6210.

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

Comment. Section 5825 continues former Section 1368(a) without substantive change.

Former section 5825(g) has not been continued. It provided that a community association manager is an agent for the purposes of general agency law. That provision was superfluous and included an erroneous cross-reference. There is no need to state the application of general agency law to a common interest development.

See also Sections 4080 ("association"), 4100 ("common interest development"), 4140 ("director"), 4150 ("governing documents"), 4160 ("member"), 4165 ("operating rule"), 4185 ("separate interest").

§ 5830. Information to be provided by association

5830. (a) A member may request, in writing, that the association provide the member with the documents described in Section 5825.

(b) Within 15 days after the request is delivered to the board (Section 4035), the association shall provide the requesting member with a copy of the requested documents.

(c) If the requested documents are maintained in electronic form, the requesting member shall have the option of receiving them by electronic transmission or on machine readable storage media.

(d) The association may charge a reasonable fee to recover the actual cost to procure, prepare, and reproduce the requested documents.

Comment. Section 5830 continues former Section 1368(b) without substantive change, except that the deadline for response to a request for documents is extended to 15 days.

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

§ 5835. Related requirements

5835. In addition to the requirements of this article, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

Comment. Section 5835 restates former Section 1368(f) without substantive change.

See also Section 4185 (“separate interest”).

§ 5840. Enforcement of article

5840. Any person or entity who willfully violates this article is liable to the purchaser of a separate interest that is subject to this section for actual damages caused by the violation and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys’ fees.

Comment. Section 5840 restates former Section 1368(d) without substantive change.

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

§ 5845. Validity of title unaffected

5845. Nothing in this article affects the validity of title to real property transferred in violation of this section.

Comment. Section 5845 restates former Section 1368(e) without substantive change.

Article 3. Transfer Fee

§ 5875. Transfer fee

5875. Except as provided in Section 5880, an association or community service organization or similar entity may not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

- (a) An amount not to exceed the association’s actual costs to change its records.
- (b) A fee under Section 5830.

Comment. Section 5875 continues former Section 1368(c)(1) without substantive change.

See also Sections 4080 (“association”), 4110 (“community service organization”).

§ 5880. Exemption from transfer fee limitations

5880. Section 5875 does not apply to a community service organization or similar entity of either of the following types:

- (a) An entity that satisfies both of the following conditions:
 - (1) It was established before February 20, 2003.

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

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

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

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

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

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

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

Comment. Section 5880 restates former Section 1368(c)(2) without substantive change. See also Sections 4110 (“community service organization”), 4185 (“separate interest”).

Article 4. Restrictions on Transfers

§ 5900. Grant of exclusive use

5900. (a) Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board of directors may grant exclusive use of any portion of the common area to a member.

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

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

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

(3) A grant of exclusive use to eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(4) A grant of exclusive use to eliminate or correct encroachments due to errors in construction of any improvements.

(5) A grant of exclusive use to permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes

are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(6) A grant of exclusive use to fulfill the requirement of a public agency.

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

(8) A grant in connection with an expressly zoned industrial or commercial development, or any grant within a subdivision of the type defined in Section 4020.

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

Comment. Section 5900 restates former Section 1363.07 without substantive change, with the following exceptions:

(1) The section is no longer limited in its application to a common area that the association owns or in which the association has an easement right. It now applies to any common area.

(2) The substance of former subdivision (a)(1)(F) is continued in Section 4020.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

§ 5905. Partition of condominium project

5905. (a) Except as provided in this section, the common area in a condominium project shall remain undivided, and there shall be no judicial partition of the common area. Nothing in this section shall be deemed to prohibit partition of a cotenancy of a separate interest in a condominium.

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

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

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

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

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

Comment. Section 5905 restates former Section 1359 without substantive change.

See also Sections 4095 (“common area”), 4115 (“condominium”), 4125 (“condominium project”), 4135 (“declaration”), 4185 (“separate interest”).

§ 5910. Lien for work performed in condominium project

5910. (a) In a condominium project, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the condominium project or the owner’s agent or contractor shall be the basis for the filing of a lien against the property of any other owner in the condominium project unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services.

(b) Express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs to the condominium.

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

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

Comment. Section 5910 continues former Section 1369 without substantive change.

See also Sections 4080 (“association”), 4095 (“common area”), 4115 (“condominium”), 4125 (“condominium project”).

Article 5. Transfer of Separate Interest

§ 5925. Community apartment project

5925. In a community apartment project, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the community apartment project. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner’s entire estate also includes the owner’s membership interest in the association.

Comment. Section 5925 continues former Section 1358(a) without substantive change.

See also Sections 4080 (“association”), 4105 (“community apartment project”), 4185 (“separate interest”).

§ 5930. Condominium project

5930. In a condominium project the common area is not subject to partition, except as provided in Section 5905. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner’s entire estate also includes the owner’s membership interest in the association.

Comment. Section 5930 continues former Section 1358(b) without substantive change.

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

§ 5935. Planned development

5935. In a planned development, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner’s entire estate also includes the owner’s membership interest in the association.

Comment. Section 5935 continues former Section 1358(c) without substantive change, except that language suggesting that a planned development may not include common area is not continued. All common interest developments included common area. See Section 4100 (“common interest development” defined).

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4175 (“planned development”), 4185 (“separate interest”).

§ 5940. Stock cooperative

5940. In a stock cooperative, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the ownership interest in the corporation, however evidenced. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner’s entire estate also includes the owner’s membership interest in the association.

Comment. Section 5940 continues former Section 1358(d) without substantive change.

See also Sections 4080 (“association”), 4185 (“separate interest”), 4190 (“stock cooperative”).

§ 5945. Transfer of exclusive use common area

5945. Nothing in this article prohibits the transfer of exclusive use common area, independent of any other interest in a common interest development, if authorization to separately transfer exclusive use common area is expressly stated in the declaration and the transfer occurs in accordance with the terms of the declaration.

Comment. Section 5945 continues the next to last paragraph of former Section 1358 without substantive change.

See also Sections 4100 (“common interest development”), 4135 (“declaration”), 4145 (“exclusive use common area”).

§ 5950. Severability of interests

5950. Any restriction on the severability of the component interests in real property which are contained in the declaration shall not be deemed conditions repugnant to the interest created within the meaning of Section 711 of the Civil Code. However, these restrictions shall not extend beyond the period in which the right to partition a project is suspended under Section 5905.

Comment. Section 5950 continues the last paragraph of former Section 1358 without substantive change.

See also Section 4135 (“declaration”).

CHAPTER 8. GOVERNING DOCUMENTS

Article 1. General Provisions

§ 6000. Creation of common interest development

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

(1) A declaration.

(2) A condominium plan, if any exists.

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

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

Comment. Subdivision (a) of Section 6000 continues part of former Section 1352 without substantive change. It governs the application of this part and is not intended to govern the date of creation of a common interest development for other purposes. See *City of West Hollywood v. Beverly Towers, Inc.*, 52 Cal. 3d 1184, 805 P.2d 329, 278 Cal. Rptr. 375 (1991) (failure to convey unit not determinative of whether condominium project exists for purposes of local planning law).

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

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4120 (“condominium plan”), 4135 (“declaration”), 4185 (“separate interest”).

§ 6005. Document authority

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

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

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

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

Comment. Section 6005 is new.

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

Subdivision (c) is consistent with Section 6100(c) providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

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

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

Article 2. Declaration

§ 6025. Content of declaration

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

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

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

(c) The name of the association.

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

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

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

See also Sections 4080 (“association”), 4105 (“community apartment project”), 4100 (“common interest development”), 4125 (“condominium project”), 4130 (“declarant”), 4135 (“declaration”), 4160 (“member”), 4175 (“planned development”), 4190 (“stock cooperative”).

§ 6030. Disclosure of airport in vicinity

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

“NOTICE OF AIRPORT IN VICINITY

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

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

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

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

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

§ 6035. Disclosure of BCDC jurisdiction

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

“NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION

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

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

Comment. Section 6035 continues former Section 1353(a)(3)-(4) without substantive change. See also Sections 4100 (“common interest development”), 4135 (“declaration”).

§ 6040. Amendment authorized

6040. (a) Unless a declaration expressly provides otherwise, any provision of the declaration can be amended.

(b) If a provision of a declaration can be amended, it can be amended at any time.

(c) The Legislature finds that there are common interest developments that have been created with deed restrictions that do not provide a means for the property owners to extend the term of the declaration. The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method for protecting the common plan of developments and to provide for a mechanism for financial support for the upkeep of common areas including, but not limited to, roofs, roads, heating systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the supply of affordable housing units could be impacted adversely. The Legislature further finds and declares that it is in the public interest to provide a vehicle for extending

the term of the declaration if owners having more than 50 percent of the votes in the association choose to do so.

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

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

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

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

§ 6045. Approval of amendment

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

(b) If the governing documents do not provide a procedure for approval of an amendment of the declaration, an amendment may be approved by a majority of all members (Section 4065) and by any person whose approval of a declaration amendment is specifically required under the governing documents.

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

Comment. Section 6045 is comparable to the provisions of former Section 1355 that relate to approval of an amendment of the declaration. Note that a court may order modification of amendment approval requirements in some circumstances. See Section 4620.

See also Sections 4085 (“board”), 4135 (“declaration”), 4150 (“governing documents”), 4160 (“member”).

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

6050. Notwithstanding Section 6045, the deletion of a provision of the declaration may be approved by the board (Section 4060) and by a majority of a quorum of the members (Section 4070) if all of the following conditions are satisfied:

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

(b) The provision to be deleted authorizes access by the developer over or across the common area for the purposes of (1) completion of construction of the development, and (2) the erection, construction, or maintenance of structures or other facilities designed to facilitate the completion of construction or marketing of separate interests.

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

Comment. Section 6050 is comparable to former Section 1355.5 but applies only to the amendment of a declaration. The requirement of former Section 1355.5(c), mandating that members be given notice before the board approves the amendment, is not continued. Member notice is required before board meetings and before a member vote is held.

See also Sections 4085 (“board”), 4095 (“common area”), 4135 (“declaration”), 4160 (“member”), 4185 (“separate interest”), 4520 (notice of board meeting), 4595 (notice of regular member meeting).

§ 6055. Effective date of amendment

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

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

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

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

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

Article 3. Articles of Incorporation

§ 6060. Content of articles

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

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

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

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

(4) The name and address of the association’s managing agent, if any.

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

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

See also Sections 4080 (“association”), 4100 (“common interest development”), 4155 (“managing agent”).

Article 4. Condominium Plan

§ 6075. Content of condominium plan

6075. A condominium plan shall include all of the following:

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

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

(c) A certificate consenting to the recordation of the condominium plan pursuant to this part signed and acknowledged by all of the following persons:

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

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

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

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

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

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

Comment. Section 6075 continues former Section 1351(e) without substantive change, except that the last paragraph is not continued. That paragraph is continued without substantive change in Section 5060.

See also Sections 4095 (“common area”), 4105 (“community apartment project”), 4120 (“condominium plan”), 4125 (“condominium project”), 4170 (“person”), 4185 (“separate interest”), 4190 (“stock cooperative”).

§ 6080. Amendment of condominium plan

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

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

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

Article 5. Operating Rules

§ 6100. Requirements for validity and enforceability

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

(a) The rule is in writing.

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

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

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

(e) The rule is reasonable.

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

See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4165 (“operating rule”).

§ 6110. Application of rulemaking procedures

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

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

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

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

(4) Any standards for delinquent assessment payment plans.

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

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

(7) Any procedure for the conduct of an election.

(b) Sections 6115 and 6120 do not apply to the following actions by the board:

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

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

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

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

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

Comment. Section 6110 continues former Section 1357.120 without substantive change, except that subdivision (a)(7) is new. That provision is added to conform to Section 4625.

See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4165 (“operating rule”), 4180 (“rule change”), 4185 (“separate interest”).

§ 6115. Approval of rule change by board

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

(b) A proposed rule change may be approved by the board (Section 4060).

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

(d) If the board determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association, the board may approve an emergency rule change (Section 4060) without providing general notice (Section 4045) of the proposed rule change. An emergency rule change is effective for 120 days, unless the board provides for a shorter effective period. A rule change made under this subdivision may not be readopted under this subdivision.

Comment. Section 6115 restates former Section 1357.130 without substantive change. See also Sections 4080 (“association”), 4085 (“board”), 4180 (“rule change”).

§ 6120. Reversal of rule change by members

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

(b) A special member meeting may be called by delivering a request to the board (Section 4035) that includes the requisite number of member signatures, after which the board shall provide general notice (Section 4045) of the meeting and hold the meeting in conformity with Article 2 (commencing with Section 4500) of Chapter 3. A written request may only be delivered within 30 days after general

notice (Section 4045) of the rule change or enforcement of the resulting rule, whichever occurs first.

(c) For the purposes of Article 5 (commencing with Section 4700) of Chapter 3, collection of signatures to call a special meeting under this section is a purpose reasonably related to the interests of the members of the association. A member request to copy or inspect the membership list solely for that purpose may not be denied on the grounds that the purpose is not reasonably related to the member's interests as a member.

(d) A decision to reverse a rule change may be approved by a majority of a quorum of the members (Section 4070), or if the declaration or bylaws require a greater proportion, by the affirmative vote of the proportion required. In lieu of calling the meeting described in this section, the board may distribute a written ballot to every member of the association pursuant to Section 4640.

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

(f) A meeting called under this section is governed by Article 3 (commencing with Section 4575) and Article 4 (commencing with Section 4625) of Chapter 3.

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

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

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

Comment. Section 6120 continues former Section 1357.140 without substantive change. See Sections 4035 (delivered to board) 4045 (general notice), 4070 (approved by majority of quorum of the members).

See also Sections 4080 ("association"), 4085 ("board"), 4135 ("declaration"), 4160 ("member"), 4180 ("rule change"), 4185 ("separate interest").

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

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

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

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

Comment. Section 6125 continues former Section 1357.150 without substantive change. This section limits the effect of this article on a "rule change." See Section 4180 ("rule change"). A rule that existed before January 1, 2004 without any change would still be governed by Section

6100 (with the exception of subdivision (d) of that section, which concerns the procedure for making a rule change).

See also Section 4085 (“board”).

Article 6. Unlawful Restrictions

§ 6150. Discriminatory restriction

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

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

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

(d) The Department of Fair Employment and Housing, a city or county in which a common interest development is located, or any other person may provide written notice to a board (Section 4035) requesting that it comply with this section. If the board fails to comply with this section within 30 days after delivery of the notice under this subdivision, the person who sent the notice may bring an action against the association for injunctive relief to enforce this section. The court may award attorney’s fees to the prevailing party.

Comment. Section 6150 restates former Section 1352.5 without substantive change, except that subdivision (c) is added. See Section 4035 (delivered to board).

See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest development”), 4135 (“declaration”), 4150 (“governing documents”), 4170 (“person”).

Article 7. Construction of Documents

§ 6175. Liberal construction of instruments

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

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

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

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

§ 6180. Boundaries of units

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

Comment. Section 6180 continues former Section 1371 without substantive change. See also Sections 4120 (“condominium plan”), 4125 (“condominium project”).

CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

§ 6200. Actions for damages

6200. (a) Before an association files a complaint for damages against a builder, developer, or general contractor (“respondent”) of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of this section shall be satisfied with respect to the builder, developer, or general contractor.

(b) The association shall serve upon the respondent a “Notice of Commencement of Legal Proceedings.” The notice shall be served by certified mail to the registered agent of the respondent, or if there is no registered agent, then to any officer of the respondent. If there are no current officers of the respondent, service shall be upon the person or entity otherwise authorized by law to receive service of process. Service upon the general contractor shall be sufficient to initiate the process set forth in this section with regard to any builder or developer, if the builder or developer is not amenable to service of process by the foregoing methods. This notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity applicable to the claim for the period set forth in subdivision

(c). The notice shall include all of the following:

- (1) The name and location of the project.
- (2) An initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue.
- (3) A description of the results of the defects, if known.
- (4) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed.
- (5) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted.

(c) Service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through the processes set forth in this section. This 180-day period may be extended for one additional period, not to exceed 180 days, only upon the mutual agreement of the association, the respondent, and any parties not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any extensions beyond the first extension shall require the agreement of all participating parties. Unless extended, the dispute resolution process prescribed by this section shall be deemed completed. All extensions shall continue the tolling period described in subdivision (b).

(d) Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to meet and confer with the board of directors of the association. Unless the respondent and the association otherwise agree, there shall be not more than one meeting, which shall take place no later than 10 days from the date of the respondent's written request, at a mutually agreeable time and place. The meeting shall be subject to Sections 4525 and 4540. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and the respondent consent in writing to their admission.

(e) Upon receipt of the notice, the respondent shall, within 60 days, comply with the following:

(1) The respondent shall provide the association with access to, for inspection and copying of, all plans and specifications, subcontracts, and other construction files for the project that are reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed. The association shall provide the respondent with access to, for inspection and copying of, all files reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed, including all reserve studies, maintenance records and any survey questionnaires, or results of testing to determine the nature and extent of defects. To the extent any of the above documents are withheld based on privilege, a privilege log shall be prepared and submitted to all other parties. All other potentially responsible parties shall have the same rights as the respondent regarding the production of documents upon receipt of written notice of the claim, and shall produce all relevant documents within 60 days of receipt of the notice of the claim.

(2) The respondent shall provide written notice by certified mail to all subcontractors, design professionals, their insurers, and the insurers of any additional insured whose identities are known to the respondent or readily ascertainable by review of the project files or other similar sources and whose potential responsibility appears on the face of the notice. This notice to subcontractors, design professionals, and insurers shall include a copy of the Notice of Commencement of Legal Proceedings, and shall specify the date and manner by which the parties shall meet and confer to select a dispute resolution

facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its obligation to participate in the meet and confer or serve a written acknowledgment of receipt regarding this notice, advise the recipient that it will waive any challenge to selection of the dispute resolution facilitator if it elects not to participate in the meet and confer, advise the recipient that it may be bound by any settlement reached pursuant to subdivision (d) of Section 6205, advise the recipient that it may be deemed to have waived rights to conduct inspection and testing pursuant to subdivision (c) of Section 6205, advise the recipient that it may seek the assistance of an attorney, and advise the recipient that it should contact its insurer, if any. Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who receives written notice from the respondent regarding the meet and confer shall, prior to the meet and confer, serve on the respondent a written acknowledgment of receipt. That subcontractor or design professional shall, within 10 days of service of the written acknowledgment of receipt, provide to the association and the respondent a Statement of Insurance that includes both of the following:

(A) The names, addresses, and contact persons, if known, of all insurance carriers, whether primary or excess and regardless of whether a deductible or self-insured retention applies, whose policies were in effect from the commencement of construction of the subject project to the present and which potentially cover the subject claims.

(B) The applicable policy numbers for each policy of insurance provided.

(3) Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who so chooses, may, at any time, make a written request to the dispute resolution facilitator for designation as a peripheral party. That request shall be served contemporaneously on the association and the respondent. If no objection to that designation is received within 15 days, or upon rejection of that objection, the dispute resolution facilitator shall designate that subcontractor or design professional as a peripheral party, and shall thereafter seek to limit the attendance of that subcontractor or design professional only to those dispute resolution sessions deemed peripheral party sessions or to those sessions during which the dispute resolution facilitator believes settlement as to peripheral parties may be finalized. Nothing in this subdivision shall preclude a party who has been designated a peripheral party from being reclassified as a nonperipheral party, nor shall this subdivision preclude a party designated as a nonperipheral party from being reclassified as a peripheral party after notice to all parties and an opportunity to object. For purposes of this subdivision, a peripheral party is a party having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

(f)(1) Within 20 days of sending the notice set forth in paragraph (2) of subdivision (e), the association, respondent, subcontractors, design professionals, and their insurers who have been sent a notice as described in paragraph (2) of subdivision (e) shall meet and confer in an effort to select a dispute resolution facilitator to preside over the mandatory dispute resolution process prescribed by

this section. Any subcontractor or design professional who has been given timely notice of this meeting but who does not participate, waives any challenge he or she may have as to the selection of the dispute resolution facilitator. The role of the dispute resolution facilitator is to attempt to resolve the conflict in a fair manner. The dispute resolution facilitator shall be sufficiently knowledgeable in the subject matter and be able to devote sufficient time to the case. The dispute resolution facilitator shall not be required to reside in or have an office in the county in which the project is located. The dispute resolution facilitator and the participating parties shall agree to a date, time, and location to hold a case management meeting of all parties and the dispute resolution facilitator, to discuss the claims being asserted and the scheduling of events under this section. The case management meeting with the dispute resolution facilitator shall be held within 100 days of service of the Notice of Commencement of Legal Proceedings at a location in the county where the project is located. Written notice of the case management meeting with the dispute resolution facilitator shall be sent by the respondent to the association, subcontractors and design professionals, and their insurers who are known to the respondent to be on notice of the claim, no later than 10 days prior to the case management meeting, and shall specify its date, time, and location. The dispute resolution facilitator in consultation with the respondent shall maintain a contact list of the participating parties.

(2) No later than 10 days prior to the case management meeting, the dispute resolution facilitator shall disclose to the parties all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed dispute resolution facilitator would be able to resolve the conflict in a fair manner. The facilitator's disclosure shall include the existence of any ground specified in Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any attorney-client relationship the facilitator has or had with any party or lawyer for a party to the dispute resolution process, and any professional or significant personal relationship the facilitator or his or her spouse or minor child living in the household has or had with any party to the dispute resolution process. The disclosure shall also be provided to any subsequently noticed subcontractor or design professional within 10 days of the notice.

(3) A dispute resolution facilitator shall be disqualified by the court if he or she fails to comply with this paragraph and any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting. If the dispute resolution facilitator complies with this paragraph, he or she shall be disqualified by the court on the basis of the disclosure if any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting.

(4) If the parties cannot mutually agree to a dispute resolution facilitator, then each party shall submit a list of three dispute resolution facilitators. Each party may then strike one nominee from the other parties' list, and petition the court, pursuant to the procedure described in subdivisions (n) and (o), for final selection

of the dispute resolution facilitator. The court may issue an order for final selection of the dispute resolution facilitator pursuant to this paragraph.

(5) Any subcontractor or design professional who receives notice of the association's claim without having previously received timely notice of the meet and confer to select the dispute resolution facilitator shall be notified by the respondent regarding the name, address, and telephone number of the dispute resolution facilitator. Any such subcontractor or design professional may serve upon the parties and the dispute resolution facilitator a written objection to the dispute resolution facilitator within 15 days of receiving notice of the claim. Within seven days after service of this objection, the subcontractor or design professional may petition the superior court to replace the dispute resolution facilitator. The court may replace the dispute resolution facilitator only upon a showing of good cause, liberally construed. Failure to satisfy the deadlines set forth in this subdivision shall constitute a waiver of the right to challenge the dispute resolution facilitator.

(6) The costs of the dispute resolution facilitator shall be apportioned in the following manner: one-third to be paid by the association; one-third to be paid by the respondent; and one-third to be paid by the subcontractors and design professionals, as allocated among them by the dispute resolution facilitator. The costs of the dispute resolution facilitator shall be recoverable by the prevailing party in any subsequent litigation pursuant to Section 1032 of the Code of Civil Procedure, provided however that any nonsettling party may, prior to the filing of the complaint, petition the facilitator to reallocate the costs of the dispute resolution facilitator as they apply to any nonsettling party. The determination of the dispute resolution facilitator with respect to the allocation of these costs shall be binding in any subsequent litigation. The dispute resolution facilitator shall take into account all relevant factors and equities between all parties in the dispute resolution process when reallocating costs.

(7) In the event the dispute resolution facilitator is replaced at any time, the case management statement created pursuant to subdivision (h) shall remain in full force and effect.

(8) The dispute resolution facilitator shall be empowered to enforce all provisions of this section.

(g)(1) No later than the case management meeting, the parties shall begin to generate a data compilation showing the following information regarding the alleged defects at issue:

(A) The scope of the work performed by each potentially responsible subcontractor.

(B) The tract or phase number in which each subcontractor provided goods or services, or both.

(C) The units, either by address, unit number, or lot number, at which each subcontractor provided goods or services, or both.

(2) This data compilation shall be updated as needed to reflect additional information. Each party attending the case management meeting, and any subsequent meeting pursuant to this section, shall provide all information available to that party relevant to this data compilation.

(h) At the case management meeting, the parties shall, with the assistance of the dispute resolution facilitator, reach agreement on a case management statement, which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive, except that the parties may dispense with one or more of these elements if they agree that it is appropriate to do so. The case management statement shall provide that the following elements shall take place in the following order:

(1) Establishment of a document depository, located in the county where the project is located, for deposit of documents, defect lists, demands, and other information provided for under this section. All documents exchanged by the parties and all documents created pursuant to this subdivision shall be deposited in the document depository, which shall be available to all parties throughout the pre-filing dispute resolution process and in any subsequent litigation. When any document is deposited in the document depository, the party depositing the document shall provide written notice identifying the document to all other parties. The costs of maintaining the document depository shall be apportioned among the parties in the same manner as the costs of the dispute resolution facilitator.

(2) Provision of a more detailed list of defects by the association to the respondent after the association completes a visual inspection of the project. This list of defects shall provide sufficient detail for the respondent to ensure that all potentially responsible subcontractors and design professionals are provided with notice of the dispute resolution process. If not already completed prior to the case management meeting, the Notice of Commencement of Legal Proceedings shall be served by the respondent on all additional subcontractors and design professionals whose potential responsibility appears on the face of the more detailed list of defects within seven days of receipt of the more detailed list. The respondent shall serve a copy of the case management statement, including the name, address, and telephone number of the dispute resolution facilitator, to all the potentially responsible subcontractors and design professionals at the same time.

(3) Nonintrusive visual inspection of the project by the respondent, subcontractors, and design professionals.

(4) Invasive testing conducted by the association, if the association deems appropriate. All parties may observe and photograph any testing conducted by the association pursuant to this paragraph, but may not take samples or direct testing unless, by mutual agreement, costs of testing are shared by the parties.

(5) Provision by the association of a comprehensive demand which provides sufficient detail for the parties to engage in meaningful dispute resolution as contemplated under this section.

(6) Invasive testing conducted by the respondent, subcontractors, and design professionals, if they deem appropriate.

(7) Allowance for modification of the demand by the association if new issues arise during the testing conducted by the respondent, subcontractor, or design professionals.

(8) Facilitated dispute resolution of the claim, with all parties, including peripheral parties, as appropriate, and insurers, if any, present and having settlement authority. The dispute resolution facilitators shall endeavor to set specific times for the attendance of specific parties at dispute resolution sessions. If the dispute resolution facilitator does not set specific times for the attendance of parties at dispute resolution sessions, the dispute resolution facilitator shall permit those parties to participate in dispute resolution sessions by telephone.

(i) In addition to the foregoing elements of the case management statement described in subdivision (h), upon mutual agreement of the parties, the dispute resolution facilitator may include any or all of the following elements in a case management statement: the exchange of consultant or expert photographs; expert presentations; expert meetings; or any other mechanism deemed appropriate by the parties in the interest of resolving the dispute.

(j) The dispute resolution facilitator, with the guidance of the parties, shall at the time the case management statement is established, set deadlines for the occurrence of each event set forth in the case management statement, taking into account such factors as the size and complexity of the case, and the requirement of this section that this dispute resolution process not exceed 180 days absent agreement of the parties to an extension of time.

(k)(1)(A) At a time to be determined by the dispute resolution facilitator, the respondent may submit to the association all of the following:

(i) A request to meet with the board to discuss a written settlement offer.

(ii) A written settlement offer, and a concise explanation of the reasons for the terms of the offer.

(iii) A statement that the respondent has access to sufficient funds to satisfy the conditions of the settlement offer.

(iv) A summary of the results of testing conducted for the purposes of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the respondent with actual test results.

(B) If the respondent does not timely submit the items required by this subdivision, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision only.

(C) No less than 10 days after the respondent submits the items required by this paragraph, the respondent and the board of directors of the association shall meet and confer about the respondent's settlement offer.

(D) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to this subdivision, the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the respondent.

(E) No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

(i) That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting.

(ii) The options that are available to address the problems, including the filing of a civil action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases.

(iii) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board at the meeting held pursuant to subdivision (d) that was received from the respondent.

(F) The respondent shall pay all expenses attributable to sending the settlement offer to all members of the association. The respondent shall also pay the expense of holding the meeting, not to exceed three dollars (\$3) per association member.

(G) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to paragraph (E) are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(H) No more than one request to meet and discuss a written settlement offer may be made by the respondent pursuant to this subdivision.

(I) Except for the purpose of in camera review as provided in subdivision (c) of Section 6205, all defect lists and demands, communications, negotiations, and settlement offers made in the course of the prelitigation dispute resolution process provided by this section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code and all applicable decisional law. This inadmissibility shall not be extended to any other documents or communications which would not otherwise be deemed inadmissible.

(m) Any subcontractor or design professional may, at any time, petition the dispute resolution facilitator to release that party from the dispute resolution process upon a showing that the subcontractor or design professional is not potentially responsible for the defect claims at issue. The petition shall be served contemporaneously on all other parties, who shall have 15 days from the date of service to object. If a subcontractor or design professional is released, and it later appears to the dispute resolution facilitator that it may be a responsible party in light of the current defect list or demand, the respondent shall renotify the party as provided by paragraph (2) of subdivision (e), provide a copy of the current defect list or demand, and direct the party to attend a dispute resolution session at a stated time and location. A party who subsequently appears after having been released by the dispute resolution facilitator shall not be prejudiced by its absence from the dispute resolution process as the result of having been previously released by the dispute resolution facilitator.

(n) Any party may, at any time, petition the superior court in the county where the project is located, upon a showing of good cause, and the court may issue an order, for any of the following, or for appointment of a referee to resolve a dispute regarding any of the following:

(1) To take a deposition of any party to the process, or subpoena a third party for deposition or production of documents, which is necessary to further prelitigation resolution of the dispute.

(2) To resolve any disputes concerning inspection, testing, production of documents, or exchange of information provided for under this section.

(3) To resolve any disagreements relative to the timing or contents of the case management statement.

(4) To authorize internal extensions of timeframes set forth in the case management statement.

(5) To seek a determination that a settlement is a good faith settlement pursuant to Section 877.6 of the Code of Civil Procedure and all related authorities. The page limitations and meet and confer requirements specified in this section shall not apply to these motions, which may be made on shortened notice. Instead, these motions shall be subject to other applicable state law, rules of court, and local rules. A determination made by the court pursuant to this motion shall have the same force and effect as the determination of a postfiling application or motion for good faith settlement.

(6) To ensure compliance, on shortened notice, with the obligation to provide a Statement of Insurance pursuant to paragraph (2) of subdivision (e).

(7) For any other relief appropriate to the enforcement of the provisions of this section, including the ordering of parties, and insurers, if any, to the dispute resolution process with settlement authority.

(o)(1) A petition filed pursuant to subdivision (n) shall be filed in the superior court in the county in which the project is located. The court shall hear and decide the petition within 10 days after filing. The petitioning party shall serve the petition on all parties, including the date, time, and location of the hearing no later than five business days prior to the hearing. Any responsive papers shall be filed and served no later than three business days prior to the hearing. Any petition or response filed under this section shall be no more than three pages in length.

(2) All parties shall meet with the dispute resolution facilitator, if one has been appointed and confer in person or by the telephone prior to the filing of that petition to attempt to resolve the matter without requiring court intervention.

(p) As used in this section:

(1) “Association” shall have the same meaning as defined in Section 4080.

(2) “Builder” means the declarant, as defined in subdivision Section 4130.

(3) “Common interest development” shall have the same meaning as in Section 4100, except that it shall not include developments or projects with less than 20 units.

(q) The alternative dispute resolution process and procedures described in this section shall have no application or legal effect other than as described in this section.

(r) This section shall become operative on July 1, 2002, however it shall not apply to any pending suit or claim for which notice has previously been given.

(s) This section shall become inoperative on July 1, 2010, and as of January 1, 2011, is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

Comment. Section 6200 continues former Section 1375 without change other than to correct obsolete cross-references.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4140 (“director”), 4160 (“member”), 4170 (“person”).

§ 6205. Action following pre-filing dispute resolution

6205. (a) Upon the completion of the mandatory pre-filing dispute resolution process described in Section 6200, if the parties have not settled the matter, the association or its assignee may file a complaint in the superior court in the county in which the project is located. Those matters shall be given trial priority.

(b) In assigning trial priority, the court shall assign the earliest possible trial date, taking into consideration the pretrial preparation completed pursuant to Section 6200, and shall deem the complaint to have been filed on the date of service of the Notice of Commencement of Legal Proceedings described under Section 6200.

(c) Any respondent, subcontractor, or design professional who received timely prior notice of the inspections and testing conducted under Section 6200 shall be prohibited from engaging in additional inspection or testing, except if all of the following specific conditions are met, upon motion to the court:

(1) There is an insurer for a subcontractor or design professional, that did not have timely notice that legal proceedings were commenced under Section 6200 at least 30 days prior to the commencement of inspections or testing pursuant to paragraph (6) of subdivision (h) of Section 6200.

(2) The insurer’s insured did not participate in any inspections or testing conducted under the provisions of paragraph (6) of subdivision (h) of Section 6200.

(3) The insurer has, after receiving notice of a complaint filed in superior court under subdivision (a), retained separate counsel, who did not participate in the Section 6200 dispute resolution process, to defend its insured as to the allegations in the complaint.

(4) It is reasonably likely that the insured would suffer prejudice if additional inspections or testing are not permitted.

(5) The information obtainable through the proposed additional inspections or testing is not available through any reasonable alternative sources.

If the court permits additional inspections or testing upon finding that these requirements are met, any additional inspections or testing shall be limited to the extent reasonably necessary to avoid the likelihood of prejudice and shall be coordinated among all similarly situated parties to ensure that they occur without unnecessary duplication. For purposes of providing notice to an insurer prior to inspections or testing under paragraph (6) of subdivision (h) of Section 6200, if notice of the proceedings was not provided by the insurer's insured, notice may be made via certified mail either by the subcontractor, design professional, association, or respondent to the address specified in the Statement of Insurance provided under paragraph (2) of subdivision (e) of Section 6200. Nothing herein shall affect the rights of an intervenor who files a complaint in intervention. If the association alleges defects that were not specified in the prefiling dispute resolution process under Section 6200, the respondent, subcontractor, and design professionals shall be permitted to engage in testing or inspection necessary to respond to the additional claims. A party who seeks additional inspections or testing based upon the amendment of claims shall apply to the court for leave to conduct those inspections or that testing. If the court determines that it must review the defect claims alleged by the association in the prefiling dispute resolution process in order to determine whether the association alleges new or additional defects, this review shall be conducted in camera. Upon objection of any party, the court shall refer the matter to a judge other than the assigned trial judge to determine if the claim has been amended in a way that requires additional testing or inspection.

(d) Any subcontractor or design professional who had notice of the facilitated dispute resolution conducted under Section 6200 but failed to attend, or attended without settlement authority, shall be bound by the amount of any settlement reached in the facilitated dispute resolution in any subsequent trial, although the affected party may introduce evidence as to the allocation of the settlement. Any party who failed to participate in the facilitated dispute resolution because the party did not receive timely notice of the mediation shall be relieved of any obligation to participate in the settlement. Notwithstanding any privilege applicable to the prefiling dispute resolution process provided by Section 6200, evidence may be introduced by any party to show whether a subcontractor or design professional failed to attend or attended without settlement authority. The binding effect of this subdivision shall in no way diminish or reduce a nonsettling subcontractor or design professional's right to defend itself or assert all available defenses relevant to its liability in any subsequent trial. For purposes of this subdivision, a subcontractor or design professional shall not be deemed to have attended without settlement authority because it asserted defenses to its potential liability.

(e) Notice of the facilitated dispute resolution conducted under Section 6200 must be mailed by the respondent no later than 20 days prior to the date of the first facilitated dispute resolution session to all parties. Notice shall also be mailed to

each of these parties' known insurance carriers. Mailing of this notice shall be by certified mail. Any subsequent facilitated dispute resolution notices shall be served by any means reasonably calculated to provide those parties actual notice.

(f) As to the complaint, the order of discovery shall, at the request of any defendant, except upon a showing of good cause, permit the association's expert witnesses to be deposed prior to any percipient party depositions. The depositions shall, at the request of the association, be followed immediately by the defendant's experts and then by the subcontractors' and design professionals' experts, except on a showing of good cause. For purposes of this section, in determining what constitutes "good cause," the court shall consider, among other things, the goal of early disclosure of defects and whether the expert is prepared to render a final opinion, except that the court may modify the scope of any expert's deposition to address those concerns.

(g)(1) The only method of seeking judicial relief for the failure of the association or the respondent to complete the dispute resolution process under Section 6200 shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the respondent after that action has been filed. A verified application asserting a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the respondent alleging substantial noncompliance with Section 6200, the court shall schedule a hearing within 21 days of the application to determine whether the association or respondent has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3)(A) If the court finds that the association or the respondent did not substantially comply with this paragraph, the court shall stay the action for up to 90 days to allow the noncomplying party to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance. At any time, the court may, for good cause shown, extend the period of the stay upon application of the noncomplying party.

(B) If, within the time set by the court pursuant to this paragraph, the association or the respondent has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the respondent has complied with this section.

(h) This section is operative on July 1, 2002, but does not apply to any action or proceeding pending on that date.

(i) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

Comment. Section 6205 continues former Section 1375.05 without change other than to correct obsolete cross-references.

See also Section 4080 (“association”).

§ 6210. Notice of resolution

6210. (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged defects in the common areas, alleged defects in the separate interests that the association is obligated to maintain or repair, or alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair, where the defects giving rise to the dispute have not been corrected, the association shall, in writing, inform only the members of the association whose names appear on the records of the association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(1) A general description of the defects that the association reasonably believes, as of the date of the disclosure, will be corrected or replaced.

(2) A good faith estimate, as of the date of the disclosure, of when the association believes that the defects identified in paragraph (1) will be corrected or replaced. The association may state that the estimate may be modified.

(3) The status of the claims for defects in the design or construction of the common interest development that were not identified in paragraph (1) whether expressed in a preliminary list of defects sent to each member of the association or otherwise claimed and disclosed to the members of the association.

(b) Nothing in this section shall preclude an association from amending the disclosures required pursuant to subdivision (a), and any amendments shall supersede any prior conflicting information disclosed to the members of the association and shall retain any privilege attached to the original disclosures.

(c) Disclosure of the information required pursuant to subdivision (a) or authorized by subdivision (b) shall not waive any privilege attached to the information.

(d) For the purposes of the disclosures required pursuant to this section, the term “defects” shall be defined to include any damage resulting from defects.

Comment. Section 6210 continues former Section 1375.1 without change other than to correct obsolete cross-references.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4160 (“member”), 4185 (“separate interest”).

§ 6215. Notice of civil action

6215. (a) Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board shall deliver individual notice (Section 4040) to each member of the association who appears on the records of the association when the notice is provided. The notice shall specify all of the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of this meeting.

(b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.

Comment. Section 6215 continues former Section 1368.5 without substantive change.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4130 (“declarant”), 4160 (“member”), 4185 (“separate interest”).

Uncodified (added). Operative date

This act becomes operative on January 1, 2010.

CONFORMING REVISIONS

Bus. & Prof. Code § 10131.01 (amended). Real estate broker exception

SEC. _____. Section 10131.01 of the Business and Professions Code is amended to read:

10131.01. (a) Subdivision (b) of Section 10131 does not apply to (1) the manager of a hotel, motel, auto and trailer park, to the resident manager of an apartment building, apartment complex, or court, or to the employees of that manager, or (2) any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in paragraphs (1) and (2) of subdivision (b) of Section 1940 of the Civil Code, in a dwelling unit in a common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code, in a dwelling unit in an apartment building or complex, or in a single-family home, or (3) any person other than the resident manager or employees of that manager, performing the following functions who is the employee of the property management firm retained to manage a residential apartment building or complex or court and who is performing under the supervision and control of a broker of record who is an employee of that property management firm or a salesperson licensed to the broker who meets certain minimum requirements as specified in a regulation issued by the commissioner:

(A) Showing rental units and common areas to prospective tenants.

(B) Providing or accepting preprinted rental applications, or responding to inquiries from a prospective tenant concerning the completion of the application.

(C) Accepting deposits or fees for credit checks or administrative costs and accepting security deposits and rents.

(D) Providing information about rental rates and other terms and provisions of a lease or rental agreement, as set out in a schedule provided by an employer.

(E) Accepting signed leases and rental agreements from prospective tenants.

(b) A broker or salesperson shall exercise reasonable supervision and control over the activities of nonlicensed persons acting under paragraph (3) of subdivision (a).

(c) A broker employing nonlicensed persons to act under paragraph (3) of subdivision (a) shall comply with Section 10163 for each apartment building or complex or court where the nonlicensed persons are employed.

Comment. Subdivision (b) of Section 10131.01 is amended to correct an obsolete reference to former Civil Code Section 1351.

Bus. & Prof. Code § 10153.2 (amended). Educational requirements for real estate broker license

SEC. _____. Section 10153.2 of the Business and Professions Code is amended to read:

10153.2. (a) An applicant to take the examination for an original real estate broker license shall also submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of:

(1) A three-semester unit course, or the quarter equivalent thereof, in each of the following:

- (A) Real estate practice.
- (B) Legal aspects of real estate.
- (C) Real estate appraisal.
- (D) Real estate financing.
- (E) Real estate economics or accounting.

(2) A three-semester unit course, or the quarter equivalent thereof, in three of the following:

- (A) Advanced legal aspects of real estate.
- (B) Advanced real estate finance.
- (C) Advanced real estate appraisal.
- (D) Business law.
- (E) Escrows.
- (F) Real estate principles.
- (G) Property management.
- (H) Real estate office administration.
- (I) Mortgage loan brokering and lending.
- (J) Computer applications in real estate.

(K) On and after July 1, 2004, California law that relates to common interest developments, including, but not limited to, topics addressed in the Davis-Stirling Common Interest Development Act (~~Title 6 Part 5~~ (commencing with Section ~~1350~~ 4000) of ~~Part 4 of Division 2~~ Division 4 of the Civil Code).

(b) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California and shall waive the requirements for which an applicant has successfully completed an equivalent course of study as determined under Section 10153.5.

(c) The commissioner shall extend credit under this section for any course completed to satisfy requirements of Section 10153.3 or 10153.4.

Comment. Subdivision (a) of Section 10153.2 is amended to correct an obsolete reference to former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code.

Bus. & Prof. Code § 10177 (amended). Grounds for revoking real estate license

SEC. _____. Section 10177 of the Business and Professions Code is amended to read:

10177. The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning

or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning his or her designation or certification of special education, credential, trade organization membership, or business, or concerning a business opportunity or a land or subdivision, as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term "realtor" or a trade name or insignia of membership in a real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Has used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.

(l) (1) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons having a characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those characteristics are defined in Sections 12926, 12926.1, subdivision (m), and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Corporations pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237). If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance of a real estate license to, or suspend or revoke the real estate license of,

the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation.

Comment. Subdivision (l) of Section 10177 is amended to correct an obsolete reference to former Civil Code Section 1360.

Bus. & Prof. Code § 11003 (amended). “Planned development”

SEC. _____. Section 11003 of the Business and Professions Code is amended to read:

11003. “Planned development” has the same meaning as specified in ~~subdivision (k) of Section 1351~~ *Section 4175* of the Civil Code.

Comment. Section 11003 is amended to correct an obsolete reference to former Civil Code Section 1351(k).

Bus. & Prof. Code § 11003.2 (amended). “Stock cooperative”

SEC. _____. Section 11003.2 of the Business and Professions Code is amended to read:

11003.2. “Stock cooperative” has the same meaning as specified in ~~subdivision (m) of Section 1351~~ *Section 4190* of the Civil Code, except that, as used in this chapter, a “stock cooperative” does not include a limited-equity housing cooperative.

Comment. Section 11003.2 is amended to correct an obsolete reference to former Civil Code Section 1351(m).

Bus. & Prof. Code § 11004 (amended). “Community apartment project”

SEC. _____. Section 11004 of the Business and Professions Code is amended to read:

11004. “Community apartment project” has the same meaning as specified in ~~subdivision (d) of Section 1351~~ *Section 4105* of the Civil Code.

Comment. Section 11004 is amended to correct an obsolete reference to former Civil Code Section 1351(d).

Bus. & Prof. Code § 11004.5 (amended). “Subdivided lands” and “subdivisions”

SEC. _____. Section 11004.5 of the Business and Professions Code is amended to read:

11004.5. In addition to any provisions of Section 11000, the reference in this code to “subdivided lands” and “subdivision” shall include all of the following:

(a) Any planned development, as defined in Section 11003, containing five or more lots.

(b) Any community apartment project, as defined by Section 11004, containing five or more apartments.

(c) Any condominium project containing five or more condominiums, as defined in Section 783 of the Civil Code.

(d) Any stock cooperative as defined in Section 11003.2, including any legal or beneficial interests therein, having or intended to have five or more shareholders.

(e) Any limited-equity housing cooperative, as defined in Section 11003.4.

(f) In addition, the following interests shall be subject to this chapter and the regulations of the commissioner adopted pursuant thereto:

(1) Any accompanying memberships or other rights or privileges created in, or in connection with, any of the forms of development referred to in subdivision (a), (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments, declarations of restrictions, articles of incorporation, bylaws, or contracts applicable thereto.

(2) Any interests or memberships in any owners' association as defined in Section ~~1351~~ 4080 of the Civil Code, created in connection with any of the forms of the development referred to in subdivision (a), (b), (c), (d), or (e).

(g) Notwithstanding this section, time-share plans, exchange programs, incidental benefits, and short-term product subject to Chapter 2 (commencing with Section 11210) are not "subdivisions" or "subdivided lands" subject to this chapter.

Comment. Subdivision (f) of Section 11004.5 is amended to correct an obsolete reference to former Civil Code Section 1351.

Bus. & Prof. Code § 11010.10 (amended). Application for review of declaration

SEC. _____. Section 11010.10 of the Business and Professions Code is amended to read:

11010.10. A person who plans to offer for sale or lease lots or other interests in a subdivision which sale or lease (a) is not subject to the provisions of this chapter, (b) does not require the submission of a notice of intention as provided in Section 11010, or (c) is subject to this chapter and for which the local jurisdiction requires review and approval of the declaration, as defined in ~~subdivision (h) of Section 1351~~ Section 4135 of the Civil Code, prior to or concurrently with the recordation of the subdivision map and prior to the approval of the declaration pursuant to a notice of intention for a public report, may submit an application requesting review of the declaration, along with any required supporting documentation, to the commissioner, without the filing of a notice of intention for the subdivision for which the declaration is being prepared. Upon approval, the commissioner shall give notice to the applicant that the declaration shall be approved for a subsequent notice of intent filing for any public report for the subdivision identified in the application, provided that the subdivision setup is substantially the same as that originally described in the application for review of the declaration.

Comment. Section 11010.10 is amended to correct an obsolete reference to former Civil Code Section 1351(h).

Bus. & Prof. Code § 11018.1 (amended). Disclosure to prospective purchaser

SEC. _____. Section 11018.1 of the Business and Professions Code is amended to read:

11018.1. (a) A copy of the public report of the commissioner, when issued, shall be given to the prospective purchaser by the owner, subdivider or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision. The requirement of this section extends to lots or parcels offered by the subdivider after repossession. A receipt shall be taken from the prospective purchaser in a form and manner as set forth in regulations of the Real Estate Commissioner.

(b) A copy of the public report shall be given by the owner, subdivider or agent at any time, upon oral or written request, to any member of the public. A copy of the public report and a statement advising that a copy of the public report may be obtained from the owner, subdivider or agent at any time, upon oral or written request, shall be posted in a conspicuous place at any office where sales or leases or offers to sell or lease lots within the subdivision are regularly made.

(c) At the same time that a public report is required to be given by the owner, subdivider, or agent pursuant to subdivision (a) with respect to a common interest development, as defined, in ~~subdivision (c) of Section 1351~~ *Section 4100* of the Civil Code, the owner, subdivider, or agent shall give the prospective purchaser a copy of the following statement:

“Common Interest Development General Information

The project described in the attached Subdivision Public Report is known as a common-interest development. Read the public report carefully for more information about the type of development. The development includes common areas and facilities ~~which~~ *that* will be owned or operated by an owners’ association. Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities. Since membership in the association is mandatory, you should be aware of the following information before you purchase:

Your ownership in this development and your rights and remedies as a member of its association will be controlled by governing instruments ~~which~~ *that* generally include a Declaration of Restrictions (also known as CC&R’s), Articles of Incorporation (or association) and bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Study these documents carefully before entering into a contract to purchase a subdivision interest.

In order to provide funds for operation and maintenance of the common facilities, the association will levy assessments against your lot or unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot or unit may be liened and sold through the exercise of a power of sale. The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments,

are outlined in the proposed budget. Ask to see a copy of the budget if the subdivider has not already made it available for your examination.

A homeowner association provides a vehicle for the ownership and use of recreational and other common facilities which were designed to attract you to buy in this development. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. The purchaser of an interest in a common-interest development should contemplate active participation in the affairs of the association. He or she should be willing to serve on the board of directors or on committees created by the board. In short, “they” in a common interest development is “you.” Unless you serve as a member of the governing board or on a committee appointed by the board, your control of the operation of the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association which can have a significant impact upon the quality of life for association members.

Until there is a sufficient number of purchasers of lots or units in a common interest development to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. It is vitally important to the owners of individual subdivision interests that the transition from subdivider to resident-owner control be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common interest development, you should consider factors beyond the attractiveness of the dwelling units themselves. Study the governing instruments and give careful thought to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. Remember that managing a common interest development is very much like governing a small community ... the management can serve you well, but you will have to work for its success.”

Failure to provide the statement in accordance with this subdivision shall not be deemed a violation subject to Section 10185.

Comment. Subdivision (c) of Section 11018.1 is amended to correct an obsolete reference to former Civil Code Section 1351(c) and to make stylistic revisions.

Bus. & Prof. Code § 11018.12 (amended). Conditional public report

SEC. _____. Section 11018.12 of the Business and Professions Code is amended to read:

11018.12. (a) The commissioner may issue a conditional public report for a subdivision specified in Section 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of

the offering to be made under the authority of the conditional public report have been established, and all requirements for the issuance of a public report set forth in the regulations of the commissioner have been satisfied, except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A condominium plan pursuant to ~~subdivision (e) of Section 1354~~ *Section 4120* of the Civil Code has not been recorded.

(3) A declaration of covenants, conditions, and restrictions pursuant to ~~Section 1353~~ *Sections 6025, 6030, and 6035* of the Civil Code has not been recorded.

(4) A declaration of annexation has not been recorded.

(5) A recorded subordination of existing liens to the declaration of covenants, conditions, and restrictions or declaration of annexation, or escrow instructions to effect recordation prior to the first sale, are lacking.

(6) Filed articles of incorporation are lacking.

(7) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(8) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(b) The commissioner may issue a conditional public report for a subdivision not referred to or specified in Section 11000.1 or 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for issuance of a public report set forth in the regulations of the commissioner have been satisfied, except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A declaration of covenants, conditions, and restrictions has not been recorded.

(3) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(4) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(c) A decision by the commissioner to not issue a conditional public report shall be noticed in writing to the applicant within five business days and that notice shall specifically state the reasons why the report is not being issued.

(d) Notwithstanding the provisions of Section 11018.2, a person may sell or lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a

conditional public report if, as a condition of the sale or lease or offer for sale or lease, delivery of legal title or other interest contracted for will not take place until issuance of a public report and provided that the requirements of subdivision (e) are met.

(e)(1) Evidence shall be supplied that all purchase money will be deposited in compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section 11013.4, and in the case of a subdivision referred to in subdivision (a) of this section, evidence shall be given of compliance with paragraphs (1) and (2) of subdivision (a) of Section 11018.5.

(2) A description of the nature of the transaction shall be supplied.

(3) Provision shall be made for the return of the entire sum of money paid or advanced by the purchaser if a subdivision public report has not been issued during the term of the conditional public report, or as extended, or the purchaser is dissatisfied with the public report because of a change pursuant to Section 11012.

(f) A subdivider, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following:

(1) Specification of the information required for issuance of a public report.

(2) Specification of the information required in the public report that is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell or lease, or offer for sale or lease, lots or parcels in a subdivision for which a conditional public report has been issued except as provided in this article.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report shall not exceed six months, and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

(i) The term of a conditional public report for attached residential condominium units, as defined pursuant to Section 783 of the Civil Code, consisting of 25 units or more as specified on the approved tentative tract map, shall not exceed 30 months and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

Comment. Subdivision (a) of Section 11018.12 is amended to correct obsolete references to former Civil Code Sections 1351(c) and 1353.

Bus. & Prof. Code § 11018.6 (amended). Disclosure to prospective purchaser

SEC. _____. Section 11018.6 of the Business and Professions Code is amended to read:

11018.6. Any person offering to sell or lease any interest subject to the requirements of subdivision (a) of Section 11018.1 in a subdivision described in Section 11004.5 shall make a copy of each of the following documents available for examination by a prospective purchaser or lessee before the execution of an offer to purchase or lease and shall give a copy thereof to each purchaser or lessee as soon as practicable before transfer of the interest being acquired by the purchaser or lessee:

(a) The declaration of covenants, conditions, and restrictions for the subdivision.

(b) Articles of incorporation or association for the subdivision owners association.

(c) Bylaws for the subdivision owners association.

(d) Any other instrument ~~which~~ *that* establishes or defines the common, mutual, and reciprocal rights, and responsibilities of the owners or lessees of interests in the subdivision as shareholders or members of the subdivision owners association or otherwise.

(e) To the extent available, the current financial information and related statements as specified in ~~subdivision (a) of Section 1365~~ *Sections 4800 and 5560* of the Civil Code, for subdivisions subject to those provisions.

(f) A statement prepared by the governing body of the association setting forth the outstanding delinquent assessments and related charges levied by the association against the subdivision interests in question under authority of the governing instruments for the subdivision and association.

Comment. Subdivision (e) of Section 11018.6 is amended to correct an obsolete reference to former Civil Code Section 1365(a) and to make a stylistic revision.

Bus. & Prof. Code § 11211.7 (amended). Application of Davis Stirling Common Interest Development Act to time-share plan

SEC. _____. Section 11211.7 of the Business and Professions Code is amended to read:

11211.7. (a) Any time-share plan registered pursuant to this chapter to which the Davis-Stirling Common Interest Development Act (~~Chapter 1 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code~~) (*Part 5 (commencing with Section 4000) of Division 4 of the Civil Code*) might otherwise apply is exempt from that act, except for ~~Sections 1354, 1355, 1355.5, 1356, 1357, 1358, 1361, 1361.5, 1362, 1363.05, 1364, 1365.5, 1370, and 1371 of the Civil Code.~~ *the following provisions of the Civil Code:*

(1) *Sections 4520, 4525, 4540, and 4550.*

(2) *Section 4620.*

(3) *Section 5125.*

(4) *Subdivision (d) of Section 5500.*

(5) *Subdivision (b) of Section 5510.*

(6) *Sections 5515-5520, inclusive.*

(7) *Section 5550.*

(8) *Subdivision (a) of, and paragraphs (1), (3), and (4) of subdivision (b) of, Section 5555.*

(9) *Article 1 (commencing with Section 5700) of Chapter 6 of Part 5 of Division 4.*

(10) *Article 1 (commencing with Section 5800) of Chapter 7 of Part 5 of Division 4.*

(11) *Article 5 (commencing with Section 5925) of Chapter 7 of Part 5 of Division 4.*

(12) *Article 7 (commencing with Section 6175) of Chapter 8 of Part 5 of Division 4.*

(13) *Sections 6040-6050, inclusive.*

(b)(1) To the extent that a single site time-share plan or component site of a multisite time-share plan located in the state is structured as a condominium or other common interest development, and there is any inconsistency between the applicable provisions of this chapter and the Davis-Stirling Common Interest Development Act, the applicable provisions of this chapter shall control.

(2) To the extent that a time-share plan is part of a mixed use project where the time-share plan comprises a portion of a condominium or other common interest development, the applicable provisions of this chapter shall apply to that portion of the project uniquely comprising the time-share plan, and the Davis-Stirling Common Interest Development Act shall apply to the project as a whole.

(c)(1) The offering of any time-share plan, exchange program, incidental benefit, or short term product in this state that is subject to the provisions of this chapter shall be exempt from Sections 1689.5 to 1689.14, inclusive, of the Civil Code (Home Solicitation Sales), Sections 1689.20 to 1689.24, inclusive, of the Civil Code (Seminar Sales), and Sections 1812.100 to 1812.129, inclusive, of the Civil Code (Contracts for Discount Buying Services).

(2) A developer or exchange company that, in connection with a time-share sales presentation or offer to arrange an exchange, offers a purchaser the opportunity to utilize the services of an affiliate, subsidiary, or third-party entity in connection with wholesale or retail air or sea transportation, shall not, in and of itself, cause the developer or exchange company to be considered a seller of travel subject to Sections 17550 to 17550.34, inclusive, of the Business and Professions Code, so long as the entity that actually provides or arranges the air or sea transportation is registered as a seller of travel with the California Attorney General's office or is otherwise exempt under those sections.

(d) To the extent certain sections in this chapter require information and disclosure that by their terms only apply to real property time-share plans, those requirements shall not apply to personal property time-share plans.

Comment. Subdivision (a) of Section 11211.7 is amended to correct obsolete references to provisions of former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code.

Bus. & Prof. Code §11500 (amended). Definitions

SEC. _____. Section 11500 of the Business and Professions Code is amended to read:

11500. For purposes of this chapter, the following definitions apply:

(a) “Common interest development” means a residential development identified in ~~subdivision (e) of Section 1351~~ *Section 4100* of the Civil Code.

(b) “Association” has the same meaning as defined in ~~subdivision (a) of Section 1351~~ *Section 4080* of the Civil Code.

(c) “Financial services” means acts performed or offered to be performed, for compensation, for an association, including, but not limited to, the preparation of internal unaudited financial statements, internal accounting and bookkeeping functions, billing of assessments, and related services.

(d) “Management services” means acts performed or offered to be performed in an advisory capacity for an association including, but not limited to, the following:

(1) Administering or supervising the collection, reporting, and archiving of the financial or common area assets of an association or common interest development, at the direction of the association’s board of directors.

(2) Implementing resolutions and directives of the board of directors of the association elected to oversee the operation of a common interest development.

(3) Implementing provisions of governing documents, as defined in ~~Section 1351~~ *4150* of the Civil Code, that govern the operation of the common interest development.

(4) Administering association contracts, including insurance contracts, within the scope of the association’s duties or with other common interest development managers, vendors, contractors, and other third-party providers of goods and services to an association or common interest development.

(e) “Professional association for common interest development managers” means an organization that meets all of the following:

(1) Has at least 200 members or certificants who are common interest development managers in California.

(2) Has been in existence for at least five years.

(3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

(4) Certifies that a common interest development manager has met the criteria set forth in Section 11502 without requiring membership in the association.

(5) Requires adherence to a code of professional ethics and standards of practice for certified common interest development managers.

Comment. Subdivisions (a), (b), and (d) of Section 11500 are amended to correct obsolete references to former Civil Code Section 1351.

Bus. & Prof. Code § 11502 (amended). “Certified common interest development manager”

SEC. _____. Section 11502 of the Business and Professions Code is amended to read:

11502. In order to be called a “certified common interest development manager,” a person shall meet one of the following requirements:

(a) Prior to July 1, 2003, has passed a knowledge, skills, and aptitude examination as specified in Section 11502.5 or has been granted a certification or a designation by a professional association for common interest development managers, and who has, within five years prior to July 1, 2004, received instruction in California law pursuant to paragraph (1) of subdivision (b).

(b) On or after July 1, 2003, has successfully completed an educational curriculum that shall be no less than a combined 30 hours in coursework described in this subdivision and passed an examination or examinations that test competence in common interest development management in the following areas:

(1) The law that relates to the management of common interest developments, including, but not limited to, the following courses of study:

(A) Topics covered by the Davis-Stirling Common Interest Development Act, contained in ~~Title 6 (commencing with Section 1350) of Part 4 of Division 2~~ *Part 5 (commencing with Section 4000) of Division 4* of the Civil Code, including, but not limited to, the types of California common interest developments, disclosure requirements pertaining to common interest developments, meeting requirements, financial reporting requirements, and member access to association records.

(B) Personnel issues, including, but not limited to, general matters related to independent contractor or employee status, the laws on harassment, the Unruh Civil Rights Act, the California Fair Employment and Housing Act, and the Americans with Disabilities Act.

(C) Risk management, including, but not limited to, insurance coverage, maintenance, operations, and emergency preparedness.

(D) Property protection for associations, including, but not limited to, pertinent matters relating to environmental hazards such as asbestos, radon gas, and lead-based paint, the Vehicle Code, local and municipal regulations, family day care facilities, energy conservation, Federal Communications Commission rules and regulations, and solar energy systems.

(E) Business affairs of associations, including, but not limited to, necessary compliance with federal, state, and local law.

(F) Basic understanding of governing documents, codes, and regulations relating to the activities and affairs of associations and common interest developments.

(2) Instruction in general management that is related to the managerial and business skills needed for management of a common interest development, including, but not limited to, the following:

(A) Finance issues, including, but not limited to, budget preparation; management; administration or supervision of the collection, reporting, and

archiving of the financial or common area assets of an association or common interest development; bankruptcy laws; and assessment collection.

(B) Contract negotiation and administration.

(C) Supervision of employees and staff.

(D) Management of maintenance programs.

(E) Management and administration of rules, regulations, and parliamentary procedures.

(F) Management and administration of architectural standards.

(G) Management and administration of the association's recreational programs and facilities.

(H) Management and administration of owner and resident communications.

(I) Training and strategic planning for the association's board of directors and its committees.

(J) Implementation of association policies and procedures.

(K) Ethics, professional conduct, and standards of practice for common interest development managers.

(L) Current issues relating to common interest developments.

(M) Conflict avoidance and resolution mechanisms.

Comment. Subdivision (b) of Section 11502 is amended to correct an obsolete reference to former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code.

Bus. & Prof. Code § 11504 (amended). Annual report to board of directors

SEC. _____. Section 11504 of the Business and Professions Code is amended to read:

11504. On or before September 1, 2003, and annually thereafter, a person who either provides or contemplates providing the services of a common interest development manager to an association shall disclose to the board of directors of the association the following information:

(a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a certified common interest development manager.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.

(c) The location of his or her primary office.

(d) Prior to entering into or renewing a contract with an association, the common interest development manager shall disclose to the board of directors of the association or common interest development whether the fidelity insurance of the common interest development manager or his or her employer covers the current year's operating and reserve funds of the association. This requirement shall not be construed to compel an association to require a common interest development manager to obtain or maintain fidelity insurance.

(e) Whether the common interest development manager possesses an active real estate license. This section may not preclude a common interest development manager from disclosing information as required in Section ~~1363.1~~ 4900 of the Civil Code.

Comment. Subdivision (e) of Section 11504 is amended to correct an obsolete reference to former Civil Code Section 1363.1.

Bus. & Prof. Code § 11505 (amended). Common interest development manager

SEC. _____. Section 11505 of the Business and Professions Code is amended to read:

11505. It is an unfair business practice for a common interest development manager, a company that employs the common interest development manager, or a company that is controlled by a company that also has a financial interest in a company employing that manager, to do any of the following:

(a) On or after July 1, 2003, to hold oneself out or use the title of “certified common interest development manager” or any other term that implies or suggests that the person is certified as a common interest development manager without meeting the requirements of Section 11502.

(b) To state or advertise that he or she is certified, registered, or licensed by a governmental agency to perform the functions of a certified common interest development manager.

(c) To state or advertise a registration or license number, unless the license or registration is specified by a statute, regulation, or ordinance.

(d) To fail to comply with any item to be disclosed in Section 11504 of this code, or Section ~~1363.1~~ 4900 of the Civil Code.

Comment. Subdivision (d) of Section 11505 is amended to correct an obsolete reference to former Civil Code Section 1363.1.

Bus. & Prof. Code § 23426.5 (amended). Tennis club

SEC. _____. Section 23426.5 of the Business and Professions Code is amended to read:

23426.5. (a) For purposes of this article, “club” also means any tennis club that maintains not less than four regulation tennis courts, together with the necessary facilities and clubhouse, has members paying regular monthly dues, has been in existence for not less than 45 years, and is not associated with a common interest development as defined in Section ~~1351~~ 4100 of the Civil Code, a community apartment project as defined in Section 11004 of this code, a project consisting of condominiums as defined in Section 783 of the Civil Code, or a mobilehome park as defined in Section 18214 of the Health and Safety Code.

(b) It shall be unlawful for any club licensed pursuant to this section to make any discrimination, distinction, or restriction against any person on account of age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

Comment. Subdivision (a) of Section 23426.5 is amended to correct an obsolete reference to former Civil Code Section 1351.

Bus. & Prof. Code § 23428.20 (amended). “Club”

SEC. _____. Section 23428.20 of the Business and Professions Code is amended to read:

23428.20. (a) For the purposes of this article, “club” also means any bona fide nonprofit corporation that has been in existence for not less than nine years, has more than 8,500 memberships issued and outstanding to owners of condominiums and owners of memberships in stock cooperatives, and owns, leases, operates, or maintains recreational facilities for its members.

(b) For the purposes of this article, “club” also means any bona fide nonprofit corporation that was formed as a condominium homeowners’ association, has at least 250 members, has served daily meals to its members and guests for a period of not less than 12 years, owns or leases, operates, and maintains a clubroom or rooms for its membership, has an annual fee of not less than nine hundred dollars (\$900) per year per member, and has as a condition of membership that one member of each household be at least 54 years old.

(c) Section 23399 and the numerical limitation of Section 23430 shall not apply to a club defined in this section.

(d) No license shall be issued pursuant to this section to any club that withholds membership or denies facilities or services to any person on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(e) Notwithstanding subdivision (d), with respect to familial status, subdivision (d) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (d).

Comment. Subdivision (e) of Section 23428.20 is amended to correct an obsolete reference to former Civil Code Section 1360.

Civ. Code § 51.11 (amended). Senior housing in Riverside County

SEC. _____. Section 51.11 of the Civil Code is amended to read:

51.11. (a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) “Qualifying resident” or “senior citizen” means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) “Qualified permanent resident” means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) “Qualified permanent resident” also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, “disabled” means a person who has a disability as defined in subdivision (b) of Section 54. A “disabling injury or illness” means an illness or injury ~~which~~ *that* results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under paragraph (3) whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months’ written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year, after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under paragraph (3) if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in that hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) “Senior citizen housing development” means a residential development developed with more than 20 units as a senior community by its developer and zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section ~~1351~~ 4150, or qualified as a senior community under the federal Fair Housing Amendments Act of 1988, as amended. Any senior citizen housing development ~~which~~ *that* is required to obtain a public report under Section 11010 of the Business and Professions Code and ~~which~~ *that* submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(5) “Dwelling unit” or “housing” means any residential accommodation other than a mobilehome.

(6) “Cohabitant” refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) “Permitted health care resident” means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen’s absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. ~~Any such~~ A limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (g) of this section or subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Chapter 1147 of the Statutes of 1996.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying residents, qualified

permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation, conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(j) This section shall only apply to the County of Riverside.

Comment. Subdivision (b) of Section 51.11 is amended to correct an obsolete reference to former Section 1351.

The section is also amended to make stylistic revisions.

Civ. Code § 714.1 (amended). Solar energy system in common interest development

SEC. _____. Section 714.1 of the Civil Code is amended to read:

714.1. Notwithstanding Section 714, any association, as defined in Section ~~1351~~ 4080, may impose reasonable provisions ~~which~~ that:

(a) Restrict the installation of solar energy systems installed in common areas, as defined in Section ~~1351~~ 4095, to those systems approved by the association.

(b) Require the owner of a separate interest, as defined in Section ~~1351~~ 4185, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.

(c) Provide for the maintenance, repair, or replacement of roofs or other building components.

(d) Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system.

Comment. Section 714.1 is amended to correct obsolete references to former Section 1351 and to make a stylistic revision.

Civ. Code § 782 (amended). Discriminatory restriction

SEC. ____ . Section 782 of the Civil Code is amended to read:

782. (a) Any provision in any deed of real property in California, whether executed before or after the effective date of this section, that purports to restrict the right of any persons to sell, lease, rent, use or occupy the property to persons having any characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, by providing for payment of a penalty, forfeiture, reverter, or otherwise, is void.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (b) of Section 782 is amended to correct an obsolete reference to former Section 1360.

Civ. Code § 782.5 (amended). Discriminatory restriction

SEC. ____ . Section 782.5 of the Civil Code is amended to read:

782.5. (a) Any deed or other written instrument that relates to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, ~~any such~~ *the* deed or instrument, that contains any provision that purports to forbid, restrict, or condition the right of any person or persons to sell, buy, lease, rent, use, or occupy the property on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, with respect to any person or persons, shall be deemed to be revised to omit that provision.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section

51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

(c) This section shall not be construed to limit or expand the powers of a court to reform a deed or other written instrument.

Comment. Section 782.5 is amended to correct an obsolete reference to former Section 1360 and to make a stylistic revision.

Civ. Code § 783 (amended). “Condominium”

SEC. _____. Section 783 of the Civil Code is amended to read:

783. A condominium is an estate in real property described in ~~subdivision (f) of Section 1351~~ *Section 4115*. A condominium may, with respect to the duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, (3) an estate for years, such as a leasehold or a subleasehold, or (4) any combination of the foregoing.

Comment. Section 783 is amended to correct an obsolete reference to former Section 1351(f).

Civ. Code § 783.1 (amended). Real property in stock cooperative

SEC. _____. Section 783.1 of the Civil Code is amended to read:

783.1. In a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~ *Section 4190*, both the separate interest, as defined in ~~paragraph (4) of subdivision (l) of Section 1351~~ *Section 4185*, and the correlative interest in the stock cooperative corporation, however designated, are interests in real property.

Comment. Section 783.1 is amended to correct obsolete references to former Sections 1351(m) and 1351(l).

Civ. Code § 798.20 (amended). Discrimination in private club membership

SEC. _____. Section 798.20 of the Civil Code is amended to read:

798.20. (a) Membership in any private club or organization that is a condition for tenancy in a park shall not be denied on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (b) of Section 798.20 is amended to correct an obsolete reference to former Section 1360.

Civ. Code § 799.10 (amended). Right to display political campaign sign

SEC. _____. Section 799.10 of the Civil Code is amended to read:

799.10. A resident may not be prohibited from displaying a political campaign sign relating to a candidate for election to public office or to the initiative, referendum, or recall process in the window or on the side of a manufactured home or mobilehome, or within the site on which the home is located or installed. The size of the face of a political sign may not exceed six square feet, and the sign may not be displayed in excess of a period of time from 90 days prior to an election to 15 days following the election, unless a local ordinance within the jurisdiction where the manufactured home or mobilehome subject to this article is located imposes a more restrictive period of time for the display of ~~such a~~ *the* sign. In the event of a conflict between the provisions of this section and the provisions of ~~Title 6 Part 5~~ (commencing with Section ~~1350~~ 4000) of ~~Part 4 of Division 2~~ *Division 4*, relating to the size and display of political campaign signs, the provisions of this section shall prevail.

Comment. Section 799.10 is amended to correct an obsolete reference to former Title 6 (commencing with Section 1350) of Part 4 of Division 4 and to make a stylistic revision.

Civ. Code § 800.25 (amended). Membership discrimination in private marina club

SEC. _____. Section 800.25 of the Civil Code is amended to read:

800.25. (a) Membership in any private club or organization that is a condition for tenancy in a floating home marina shall not be denied on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (b) of Section 800.25 is amended to correct an obsolete reference to former Section 1360.

Civ. Code § 895 (amended). Definitions

SEC. _____. Section 895 of the Civil Code is amended to read:

895. (a) “Structure” means any residential dwelling, other building, or improvement located upon a lot or within a common area.

(b) “Designed moisture barrier” means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer’s recommendations.

(c) “Actual moisture barrier” means any component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as such.

(d) “Unintended water” means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.

(e) “Close of escrow” means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in ~~subdivision (a) of Section 1351~~ *Section 4080*, “close of escrow” means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association’s ability to decide whether to initiate a claim under this title, whichever is later.

(f) “Claimant” or “homeowner” includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in ~~subdivision (a) of Section 1351~~ *Section 4080*.

Comment. Subdivisions (e) and (f) of Section 895 are amended to correct obsolete references to former Section 1351(a).

Civ. Code § 935 (amended). Construction of chapter

SEC. _____. Section 935 of the Civil Code is amended to read:

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section ~~1375~~ *6200* of the Civil Code, but an action is subsequently commenced under Section ~~1375~~ *6200* of the Civil Code, the parties are excused from performing the substantially similar requirements under Section ~~1375~~ *6200* of the Civil Code.

Comment. Section 935 is amended to correct obsolete references to former Section 1375.

Civ. Code § 945 (amended). Binding effect upon original purchaser and successor-in-interest

SEC. _____. Section 945 of the Civil Code is amended to read:

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Sections ~~1368.3 and 1368.4~~ *4410 and 4415* shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

Comment. Section 945 is amended to correct an obsolete reference to former Sections 1368.3 and 1368.4.

Civ. Code § 1098 (amended). Transfer fee

SEC. _____. Section 1098 of the Civil Code is amended to read:

1098. A “transfer fee” is any fee payment requirement imposed within a covenant, restriction, or condition contained in any deed, contract, security

instrument, or other document affecting the transfer or sale of, or any interest in, real property that requires a fee be paid upon transfer of the real property. A transfer fee does not include any of the following:

- (a) Fees or taxes imposed by a governmental entity.
- (b) Fees pursuant to mechanics' liens.
- (c) Fees pursuant to court-ordered transfers, payments, or judgments.
- (d) Fees pursuant to property agreements in connection with a legal separation or dissolution of marriage.
- (e) Fees, charges, or payments in connection with the administration of estates or trusts pursuant to Division 7 (commencing with Section 7000), Division 8 (commencing with Section 13000), or Division 9 (commencing with Section 15000) of the Probate Code.
- (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as these entities are described in subdivision (c) of Section 10232 of the Business and Professions Code.
- (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling Common Interest Development Act (~~Title 6 (commencing with Section 1350) of Part 4~~) (Part 5 (commencing with Section 4000) of Division 4).
- (h) Fees, charges, or payments for failing to comply with, or for transferring the real property prior to satisfying, an obligation to construct residential improvements on the real property.
- (i) Any fee reflected in a document recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that substantially complies with subdivision (a) of Section 1098.5 by providing a prospective transferee notice of the following:
 - (1) Payment of a transfer fee is required.
 - (2) The amount or method of calculation of the fee.
 - (3) The date or circumstances under which the transfer fee payment requirement expires, if any.
 - (4) The entity to which the fee will be paid.
 - (5) The general purposes for which the fee will be used.

Comment. Subdivision (g) of Section 1098 is amended to correct an obsolete reference to former Title 6 (commencing with Section 1350).

Civ. Code § 1102.6d (amended). Manufactured home and mobilehome transfer disclosure statement

SEC. ____. Section 1102.6d of the Civil Code is amended to read:

1102.6d. Except for manufactured homes and mobilehomes located in a common interest development governed by ~~Title 6 Part 5~~ (commencing with Section ~~1351~~ 4000) of Division 4, the disclosures applicable to the resale of a manufactured home or mobilehome pursuant to subdivision (b) of Section 1102 are set forth in, and shall be made on a copy of, the following disclosure form:

[~~§~~ **Note.** In the interest of conserving resources, the lengthy disclosure form is not reproduced here.]

Comment. Section 1102.6d is amended to correct an obsolete reference to former Title 6 (commencing with Section 1351).

Civ. Code § 1133 (amended). Notice to prospective purchaser

SEC. ____ . Section 1133 of the Civil Code is amended to read:

1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket encumbrance, as defined in Section 11013 of the Business and Professions Code, but is exempt from a requirement of compliance with Section 11013.2 of the Business and Professions Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor cause it to be sold, or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a true copy of the following notice:

BUYER/LESSEE IS AWARE OF THE FACT THAT THE LOT, PARCEL, OR UNIT WHICH HE OR SHE IS PROPOSING TO PURCHASE OR LEASE IS SUBJECT TO A DEED OF TRUST, MORTGAGE, OR OTHER LIEN KNOWN AS A “BLANKET ENCUMBRANCE”.

IF BUYER/LESSEE PURCHASES OR LEASES THIS LOT, PARCEL, OR UNIT, HE OR SHE COULD LOSE THAT INTEREST THROUGH FORECLOSURE OF THE BLANKET ENCUMBRANCE OR OTHER LEGAL PROCESS EVEN THOUGH BUYER/LESSEE IS NOT DELINQUENT IN HIS OR HER PAYMENTS OR OTHER OBLIGATIONS UNDER THE MORTGAGE, DEED OF TRUST, OR LEASE.

Date

Signature of Buyer or Lessee

(b) “Subdivision,” as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined in ~~subdivision (f) of Section 1351~~ *Section 4125*, a community apartment project, as defined in ~~subdivision (d) of Section 1351~~ *Section 4105*, a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~ *Section 4190*, and a limited equity housing cooperative, as defined in ~~subdivision (m) of Section 1351~~ *Section 4190*.

(c) The failure of the buyer or lessee to sign the notice shall not invalidate any grant, conveyance, lease, or encumbrance.

(d) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot or unit ~~which~~ *that* is subject to the

provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars (\$500). In an action to enforce ~~such~~ *this* liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

Comment. Subdivision (b) of Section 1133 is amended to correct obsolete references to former Sections 1351(f), 1351(d), and 1351(m) and to make stylistic revisions.

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

SEC. _____. Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code is repealed.

Comment. Sections 1350-1378 are repealed. Most of the substance of the repealed provisions is continued in new Part 5(commencing with Section 4000) of Division 4.

Civ. Code § 1633.3 (amended). Application of title

SEC. _____. Section 1633.3 of the Civil Code is amended to read:

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1107 and 1206.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, ~~or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1134,~~ 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or Section 3071.5 of, or Part 5 (commencing with Section 4000) of Division 4 of the~~ Civil Code, subdivision (b) of Section 18608 or Section 22328 of the Financial

Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 658, 662, 663, 664, 666, 667.5, 673, 677, 678, 678.1, 786, 10083, 10086, 10087, 10102, 10113.7, 10127.7, 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by electronic means if the transaction may be conducted by electronic means under any other applicable law.

Comment. Subdivision (c) of Section 1633.3 is amended to correct an obsolete reference to former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code.

Civ. Code § 1864 (amended). Transient occupancy

SEC. _____. Section 1864 of the Civil Code is amended to read:

1864. Any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in paragraphs (1) and (2) of subdivision (b) of Section 1940, in a dwelling unit in a common interest development, as defined in Section ~~1351~~ 4100, in a dwelling unit in an apartment building or complex, or in a single-family home, shall do each of the following:

(a) Prepare and maintain, in accordance with a written agreement with the owner, complete and accurate records and books of account, kept in accordance with generally accepted accounting principles, of all reservations made and money received and spent with respect to each dwelling unit. All money received shall be kept in a trust account maintained for the benefit of owners of the dwelling units.

(b) Render, monthly, to each owner of the dwelling unit, or to that owner's designee, an accounting for each month in which there are any deposits or disbursements on behalf of that owner, however, in no event shall this accounting be rendered any less frequently than quarterly.

(c) Make all records and books of account with respect to a dwelling unit available, upon reasonable advance notice, for inspection and copying by the

dwelling unit's owner. The records shall be maintained for a period of at least three years.

(d) Comply fully with all collection, payment, and recordkeeping requirements of a transient occupancy tax ordinance, if any, applicable to the occupancy.

(e) In no event shall any activities described in this section subject the person or entity performing those activities in any manner to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code. However, a real estate licensee subject to this section may satisfy the requirements of this section by compliance with the Real Estate Law.

Comment. Section 1864 is amended to correct an obsolete reference to former Section 1351.

Civ. Code § 2079.3 (amended). Scope of inspection

SEC. _____. Section 2079.3 of the Civil Code is amended to read:

2079.3. The inspection to be performed pursuant to this article does not include or involve an inspection of areas that are reasonably and normally inaccessible to ~~such~~ *this type of* an inspection, nor an affirmative inspection of areas off the site of the subject property or public records or permits concerning the title or use of the property, and, if the property comprises a unit in a planned development as defined in Section 11003 of the Business and Professions Code, a condominium as defined in Section 783, or a stock cooperative as defined in Section 11003.2 of the Business and Professions Code, does not include an inspection of more than the unit offered for sale, if the seller or the broker complies with the provisions of Section ~~1368~~ 5825.

Comment. Section 2079.3 is amended to correct an obsolete reference to former Section 1368(a) and to make a stylistic revision.

Civ. Code § 2929.5 (amended). Inspection for hazardous substance

SEC. _____. Section 2929.5 of the Civil Code is amended to read:

2929.5. (a) A secured lender may enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security on either of the following:

(1) Upon reasonable belief of the existence of a past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security not previously disclosed in writing to the secured lender in conjunction with the making, renewal, or modification of a loan, extension of credit, guaranty, or other obligation involving the borrower.

(2) After the commencement of nonjudicial or judicial foreclosure proceedings against the real property security.

(b) The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the

property reasonable notice of the secured lender's intent to enter, and enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(c) The secured lender shall reimburse the borrower for the cost of repair of any physical injury to the real property security caused by the entry and inspection.

(d) If a secured lender is refused the right of entry and inspection by the borrower or tenant of the property, or is otherwise unable to enter and inspect the property without a breach of the peace, the secured lender may, upon petition, obtain an order from a court of competent jurisdiction to exercise the secured lender's rights under subdivision (a), and that action shall not constitute an action within the meaning of subdivision (a) of Section 726 of the Code of Civil Procedure.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" includes all of the following:

(A) Any "hazardous substance" as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in ~~Section 1354~~ *Sections 4185, 4095, and 4100, respectively*, or real property consisting of one acre or less ~~which~~ *that* contains 1 to 15 dwelling units.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) "Secured lender" means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

Comment. Section 2929.5 is amended to correct an obsolete reference to former Section 1351 and to make stylistic revisions.

Civ. Code § 2955.1 (amended). Disclosure of earthquake insurance requirement

SEC. ____ . Section 2955.1 of the Civil Code is amended to read:

2955.1. (a) Any lender originating a loan secured by the borrower's separate interest in a condominium project, as defined in ~~subdivision (f) of Section 1351~~ *Section 4125*, which requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third-party purchaser shall, disclose all of the following to the potential borrower:

(1) That the lender or the institutional third party in question requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third party purchaser.

(2) That not all lenders or institutional third parties require earthquake insurance or impose a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third party purchaser.

(3) Earthquake insurance may be required on the entire condominium project.

(4) That lenders or institutional third parties may also require that a condominium project maintain, or demonstrate an ability to maintain, financial reserves in the amount of the earthquake insurance deductible.

(b) For the purposes of this section, "institutional third party" means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, and other substantially similar institutions, whether public or private.

(c) The disclosure required by this section shall be made in writing by the lender as soon as reasonably practicable.

Comment. Subdivision (a) of Section 2955.1 is amended to correct an obsolete reference to former Section 1351(f) and to make a stylistic revision.

Code Civ. Proc. § 86 (amended). Jurisdiction

SEC. ____ . Section 86 of the Code of Civil Procedure is amended to read:

86. (a) The following civil cases and proceedings are limited civil cases:

(1) Cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars (\$25,000) or less. This paragraph does not apply to cases that involve the legality of any tax, impost, assessment, toll, or municipal fine, except actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) Actions for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars (\$25,000); actions of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars (\$25,000).

(3) Actions to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract; actions to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) Proceedings in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

(5) Actions to enforce and foreclose liens on personal property where the amount of the liens is twenty-five thousand dollars (\$25,000) or less.

(6) Actions to enforce and foreclose, or petitions to release, liens of mechanics, ~~materialmen~~ *material providers*, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section ~~1351~~ *4100* of the Civil Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or less. However, where an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or where the total amount of the liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil case.

(7) Actions for declaratory relief when brought pursuant to either of the following:

(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars (\$25,000) or less.

(8) Actions to issue temporary restraining orders and preliminary injunctions, and to take accounts, where necessary to preserve the property or rights of any party to a limited civil case; to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil case; to determine title to personal property seized in a limited civil case.

(9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding twenty-five thousand dollars (\$25,000) or the debt denied does not exceed twenty-five thousand dollars (\$25,000).

(10) Arbitration-related petitions filed pursuant to either of the following:

(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award is twenty-five thousand dollars (\$25,000) or less.

(b) The following cases in equity are limited civil cases:

(1) Cases to try title to personal property when the amount involved is not more than twenty-five thousand dollars (\$25,000).

(2) Cases when equity is pleaded as a defensive matter in any case that is otherwise a limited civil case.

(3) Cases to vacate a judgment or order of the court obtained in a limited civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

Comment. Subdivision (a) of Section 86 is amended to correct an obsolete reference to former Civil Code Section 1351 and to make a stylistic revision.

Code Civ. Proc. § 116.540 (amended). Appearance by person other than plaintiff or defendant in small claims action

SEC. ____ . Section 116.540 of the Code of Civil Procedure is amended to read:

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) Except as additionally provided in subdivision (i), a corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his or her behalf, if (1) the plaintiff is serving on active duty in the United States Armed Forces outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections and Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) A party that is an association created to manage a common interest development, as defined in Section ~~1354~~ 4100 of the Civil Code, may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of that association.

(j) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (i), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. If the representative is

appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state that the individual is not employed solely to represent the party in small claims court. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(k) A husband or wife who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.

(l) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(m) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

Comment. Subdivision (i) of Section 116.540 is amended to correct an obsolete reference to former Civil Code Section 1351.

Code Civ. Proc. § 564 (amended). Appointment of receiver

SEC. ____ . Section 564 of the Code of Civil Procedure is amended to read:

564. (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to

collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) Where a corporation has been dissolved, as provided in Section 565.

(6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(7) In an action of unlawful detainer.

(8) At the request of the Public Utilities Commission pursuant to Section 855 or 5259.5 of the Public Utilities Code.

(9) In all other cases where necessary to preserve the property or rights of any party.

(10) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 129173 of the Health and Safety Code.

(11) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. The appointment may be continued after entry of a judgment for specific performance if appropriate to protect, operate, or maintain real property encumbered by a deed of trust or mortgage or to collect rents therefrom while a pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage is being completed.

(12) In a case brought by an assignee under an assignment of leases, rents, issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of

credit, guaranty, or other obligation. The term includes any successor in interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) “Hazardous substance” means any of the following:

(A) Any “hazardous substance” as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) “Real property security” means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms “separate interest,” “common area,” and “common interest development” are defined in ~~Section 1351~~ Sections 4185, 4095, and 4100 of the Civil Code, or real property consisting of one acre or less that contains 1 to 15 dwelling units.

(4) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor in interest of the beneficiary or mortgagee to the deed of trust or mortgage.

Comment. Subdivision (e) of Section 564 is amended to correct an obsolete reference to former Civil Code Section 1351.

Code Civ. Proc. § 726.5 (amended). Remedies for lender

SEC. ____ . Section 726.5 of the Code of Civil Procedure is amended to read:

726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision of law, except subdivision (d) of this section, a secured lender may elect between the following where the real property security is environmentally impaired and the borrower’s obligations to the secured lender are in default:

(1)(A) Waiver of its lien against (i) any parcel of real property security that is environmentally impaired or is an affected parcel, and (ii) all or any portion of the fixtures and personal property attached to the parcels; and

(B) Exercise of (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law.

(2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached

to the real property security, and (ii) any other rights and remedies permitted by law.

(b) Before the secured lender may waive its lien against any parcel of real property security pursuant to paragraph (1) of subdivision (a) on the basis of the environmental impairment contemplated by paragraph (3) of subdivision (e), (i) the secured lender shall provide written notice of the default to the borrower, and (ii) the value of the subject real property security shall be established and its environmentally impaired status shall be confirmed by an order of a court of competent jurisdiction in an action brought by the secured lender against the borrower. The complaint for a valuation and confirmation action may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under paragraph (1) of subdivision (a) shall result only if and when a final money judgment is obtained against the borrower.

(c) If a secured lender elects the rights and remedies permitted by paragraph (1) of subdivision (a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law in which case the amount of the judgment of the secured lender pursuant to paragraph (1) of subdivision (a) shall be limited to the extent Section 580a or 580d, or subdivision (b) of Section 726 apply to the foreclosures of additional real property security. The borrower may waive or modify the foreclosure requirements of this subdivision provided that the waiver or modification is in writing and signed by the borrower after default.

(d) Subdivision (a) shall be inapplicable if all of the following are true:

(1) The release or threatened release was not knowingly or negligently caused or contributed to, or knowingly or willfully permitted or acquiesced to, by any of the following:

(A) The borrower or any related party.

(B) Any affiliate or agent of the borrower or any related party.

(2) In conjunction with the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, neither the borrower, any related party, nor any affiliate or agent of either the borrower or any related party had actual knowledge or notice of the release or threatened release, or if a person had knowledge or notice of the release or threatened release, the borrower made written disclosure thereof to the secured lender after the secured lender's written request for information concerning the environmental condition of the real property security, or the secured lender otherwise obtained actual knowledge thereof, prior to the making, renewal, or modification of the obligation.

(e) For purposes of this section:

(1) "Affected parcel" means any portion of a parcel of real property security that is (A) contiguous to the environmentally impaired parcel, even if separated by

roads, streets, utility easements, or railroad rights-of-way, (B) part of an approved or proposed subdivision within the meaning of Section 66424 of the Government Code, of which the environmentally impaired parcel is also a part, or (C) within 2,000 feet of the environmentally impaired parcel.

(2) “Borrower” means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(3) “Environmentally impaired” means that the estimated costs to clean up and remediate a past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security, not disclosed in writing to, or otherwise actually known by, the secured lender prior to the making of the loan or extension of credit secured by the real property security, exceeds 25 percent of the higher of the aggregate fair market value of all security for the loan or extension of credit (A) at the time of the making of the loan or extension of credit, or (B) at the time of the discovery of the release or threatened release by the secured lender. For the purposes of this definition, the estimated cost to clean up and remediate the contamination caused by the release or threatened release shall include only those costs that would be incurred reasonably and in good faith, and fair market value shall be determined without giving consideration to the release or threatened release, and shall be exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender. Notwithstanding the foregoing, the real property security for any loan or extension of credit secured by a single parcel of real property ~~which~~ *that* is included in the National Priorities List pursuant to Section 9605 of Title 42 of the United States Code, or in any list published by the Department of Toxic Substances Control pursuant to subdivision (b) of Section 25356 of the Health and Safety Code, shall be deemed to be environmentally impaired.

(4) “Hazardous substance” means any of the following:

(A) Any “hazardous substance” as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(5) “Real property security” means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms “separate interest,” “common area,” and “common interest development” are defined in ~~Section 1351~~ *Sections 4185, 4095, and 4100* of the Civil Code, or real property ~~which~~ *that* contains only 1 to

15 dwelling units, which in either case (A) is solely used (i) for residential purposes, or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage, for residential purposes as well as limited agricultural or commercial purposes incidental thereto, and (B) is the subject of an issued certificate of occupancy unless the dwelling is to be owned and occupied by the borrower.

(6) “Related party” means any person who shares an ownership interest with the borrower in the real property security, or is a partner or joint venturer with the borrower in a partnership or joint venture, the business of which includes the acquisition, development, use, lease, or sale of the real property security.

(7) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater. The term does not include actions directly relating to the incorporation in a lawful manner of building materials into a permanent improvement to the real property security.

(8) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

(f) This section shall not be construed to invalidate or otherwise affect in any manner any rights or obligations arising under contract in connection with a loan or extension of credit, including, without limitation, provisions limiting recourse.

(g) This section shall only apply to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after January 1, 1992.

Comment. Subdivision (e) of Section 726.5 is amended to correct an obsolete reference to former Civil Code Section 1351.

Code Civ. Proc. § 729.035 (amended). Right of redemption

SEC. _____. Section 729.035 of the Code of Civil Procedure is amended to read:

729.035. Notwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the association of a common interest development pursuant to ~~subdivision (g) of Section 1367.4~~ *Section 5645* of the Civil Code, subject to the conditions of ~~Section 1367.4~~ *Sections 5625, 5650, 5655, and 5660* of the Civil Code.

Comment. Section 729.035 is amended to correct obsolete references to former Civil Code Sections 1367.1(g) and 1367.4.

Code Civ. Proc. § 736 (amended). Remedy of secured lender for breach of environmental provision

SEC. _____. Section 736 of the Code of Civil Procedure is amended to read:

736. (a) Notwithstanding any other provision of law, a secured lender may bring an action for breach of contract against a borrower for breach of any environmental provision made by the borrower relating to the real property security, for the recovery of damages, and for the enforcement of the environmental provision, and that action or failure to foreclose first against collateral shall not constitute an action within the meaning of subdivision (a) of Section 726, or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of Section 726. No injunction for the enforcement of an environmental provision may be issued after (1) the obligation secured by the real property security has been fully satisfied, or (2) all of the borrower's rights, title, and interest in and to the real property security has been transferred in a bona fide transaction to an unaffiliated third party for fair value.

(b) The damages a secured lender may recover pursuant to subdivision (a) shall be limited to reimbursement or indemnification of the following:

(1) If not pursuant to an order of any federal, state, or local governmental agency relating to the cleanup, remediation, or other response action required by applicable law, those costs relating to a reasonable and good faith cleanup, remediation, or other response action concerning a release or threatened release of hazardous substances ~~which~~ *that* is anticipated by the environmental provision.

(2) If pursuant to an order of any federal, state, or local governmental agency relating to the cleanup, remediation, or other response action required by applicable law ~~which~~ *that* is anticipated by the environmental provision, all amounts reasonably advanced in good faith by the secured lender in connection therewith, provided that the secured lender negotiated, or attempted to negotiate, in good faith to minimize the amounts it was required to advance under the order.

(3) Indemnification against all liabilities of the secured lender to any third party relating to the breach and not arising from acts, omissions, or other conduct ~~which~~ *that* occur after the borrower is no longer an owner or operator of the real property security, and provided the secured lender is not responsible for the environmentally impaired condition of the real property security in accordance with the standards set forth in subdivision (d) of Section 726.5. For purposes of this paragraph, the term "owner or operator" means those persons described in Section 101(20)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

(4) Attorneys' fees and costs incurred by the secured lender relating to the breach.

The damages a secured lender may recover pursuant to subdivision (a) shall not include (i) any part of the principal amount or accrued interest of the secured obligation, except for any amounts advanced by the secured lender to cure or mitigate the breach of the environmental provision that are added to the principal amount, and contractual interest thereon, or (ii) amounts ~~which~~ *that* relate to a

release which was knowingly permitted, caused, or contributed to by the secured lender or any affiliate or agent of the secured lender.

(c) A secured lender may not recover damages against a borrower pursuant to subdivision (a) for amounts advanced or obligations incurred for the cleanup or other remediation of real property security, and related attorneys' fees and costs, if all of the following are true:

(1) The original principal amount of, or commitment for, the loan or other obligation secured by the real property security did not exceed two hundred thousand dollars (\$200,000).

(2) In conjunction with the secured lender's acceptance of the environmental provision, the secured lender agreed in writing to accept the real property security on the basis of a completed environmental site assessment and other relevant information from the borrower.

(3) The borrower did not permit, cause, or contribute to the release or threatened release.

(4) The deed of trust or mortgage covering the real property security has not been discharged, reconveyed, or foreclosed upon.

(d) This section is not intended to establish, abrogate, modify, limit, or otherwise affect any cause of action other than that provided by subdivision (a) that a secured lender may have against a borrower under an environmental provision.

(e) This section shall apply only to environmental provisions contracted in conjunction with loans, extensions of credit, guaranties, or other obligations made, renewed, or modified on or after January 1, 1992. Notwithstanding the foregoing, this section shall not be construed to validate, invalidate, or otherwise affect in any manner the rights and obligations of the parties to, or the enforcement of, environmental provisions contracted before January 1, 1992.

(f) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Environmental provision" means any written representation, warranty, indemnity, promise, or covenant relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, or future release or threatened release, of any hazardous substance into, onto, beneath, or from the real property security, or to past, present, or future compliance with any law relating thereto, made by a borrower in conjunction with the making, renewal, or modification of a loan, extension of credit, guaranty, or other obligation involving the borrower, whether or not the representation, warranty, indemnity, promise, or covenant is or was contained in or secured by the deed of trust or

mortgage, and whether or not the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(3) “Hazardous substance” means any of the following:

(A) Any “hazardous substance” as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(4) “Real property security” means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms “separate interest,” “common area,” and “common interest development” are defined in ~~Section 1351~~ Sections 4185, 4095, and 4100 of the Civil Code, or real property which that contains only 1 to 15 dwelling units, which in either case (A) is solely used (i) for residential purposes, or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage, for residential purposes as well as limited agricultural or commercial purposes incidental thereto, and (B) is the subject of an issued certificate of occupancy unless the dwelling is to be owned and occupied by the borrower.

(5) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater. The term does not include actions directly relating to the incorporation in a lawful manner of building materials into a permanent improvement to the real property security.

(6) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

Comment. Section 736 is amended to correct an obsolete reference to former Civil Code Section 1351 and to make stylistic revisions.

Gov’t Code § 12191 (amended). Miscellaneous business entity filing fee

SEC. ____ . Section 12191 of the Government Code is amended to read:

12191. The miscellaneous business entity filing fees are the following:

(a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations Code:

(1) Filing the statement and designation upon the qualification of a foreign association pursuant to Section 2105 of the Corporations Code: One hundred dollars (\$100).

(2) Filing an amended statement and designation by a foreign association pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

(3) Filing a certificate showing the surrender of the right of a foreign association to transact intrastate business pursuant to Section 2112 of the Corporations Code: No fee.

(b) Unincorporated Associations:

(1) Filing a statement in accordance with Section 24003 of the Corporations Code as to principal place of office or place for sending notices or designating agent for service: Twenty-five dollars (\$25).

(2) Insignia Registrations: Ten dollars (\$10).

(c) Community Associations and Common Interest Developments:

(1) Filing a statement by a community association in accordance with Section ~~1363.6~~ 4960 of the Civil Code to register the common interest development that it manages: An amount not to exceed thirty dollars (\$30).

(2) Filing an amended statement by a community association in accordance with Section ~~1363.6~~ 4960 of the Civil Code: No fee.

Comment. Subdivision (c) of Section 12191 is amended to correct obsolete references to former Civil Code Section 1363.6.

Gov't Code § 12956.1 (amended). Discriminatory restriction

SEC. _____. Section 12956.1 of the Government Code is amended to read:

12956.1. (a) As used in this section, “association,” “governing documents,” and “declaration” have the same meanings as set forth in ~~Section 1351~~ Sections 4080, 4150, and 4135 of the Civil Code.

(b)(1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:

“If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”

(2) The requirements set forth in paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

(c) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document.

Comment. Subdivision (a) of Section 12956.1 is amended to correct obsolete references to former Civil Code Section 1351.

Gov't Code § 12956.2 (amended). Modification of discriminatory restriction

SEC. _____. Section 12956.2 of the Government Code is amended to read:

12956.2. (a) A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may record a document titled Restrictive Covenant Modification. The county recorder may choose to waive the fee prescribed for recording and indexing instruments pursuant to Section 27361 in the case of the modification document provided for in this section. The modification document shall include a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive language stricken.

(b) Before recording the modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether the original document contains an unlawful restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents and inform the county recorder of its determination. The county recorder shall refuse to record the modification document if the county counsel finds that the original document does not contain an unlawful restriction as specified in this paragraph.

(c) The modification document shall be indexed in the same manner as the original document being modified. It shall contain a recording reference to the original document in the form of a book and page or instrument number, and date of the recording.

(d) Subject to covenants, conditions, and restrictions that were recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the Restrictive Covenant Modification, the restrictions in the Restrictive Covenant Modification, once recorded, are the only restrictions having effect on the property. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(e) The county recorder shall make available to the public Restrictive Covenant Modification forms.

(f) If the holder of an ownership interest of record in property causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the holder of the ownership interest of record who caused the modified recordation.

(g) This section does not apply to persons holding an ownership interest in property that is part of a common interest development as defined in ~~subdivision~~

~~(c) of Section 1351~~ *Section 4100* of the Civil Code if the board of directors of that common interest development is subject to the requirements of ~~subdivision (b) of Section 1352.5~~ *Section 6150* of the Civil Code.

Comment. Subdivision (g) of Section 12956.2 is amended to correct obsolete references to former Civil Code Sections 1351(c) and 1352.5(b).

Gov't Code § 53341.5 (amended). Notice of special tax in sale or lease of lot, parcel or unit of subdivision

SEC. ____ . Section 53341.5 of the Government Code is amended to read:

53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied pursuant to this chapter, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, or permit a prospective purchaser or lessor to sign a contract of purchase or a deposit receipt or any substantially equivalent document in the event of a lease with respect to the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately describe the tax structure and other characteristics of districts created before January 1, 1993, or to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit:

NOTICE OF SPECIAL TAX

COMMUNITY FACILITIES DISTRICT NO. _____
COUNTY OF _____, CALIFORNIA

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY
KNOWN AS:

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR ENTERING INTO A CONTRACT TO PURCHASE THIS PROPERTY. THE SELLER IS REQUIRED TO GIVE YOU THIS NOTICE AND TO OBTAIN A COPY SIGNED BY YOU TO INDICATE THAT YOU HAVE RECEIVED AND READ A COPY OF THIS NOTICE.

(1) This property is subject to a special tax, that is in addition to the regular property taxes and any other charges, fees, special taxes, and benefit assessments on the parcel. It is imposed on this property because it is a new development, and

is not necessarily imposed generally upon property outside of this new development. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities or services that are likely to particularly benefit the property. **YOU SHOULD TAKE THIS TAX AND THE BENEFITS FROM THE FACILITIES AND SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.**

(2) The maximum special tax that may be levied against this parcel to pay for public facilities is \$_____ during the ____-__ tax year. This amount will increase by __ percent per year after that (if applicable). The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid, but in any case not after the ____-__ tax year. An additional special tax will be used to pay for ongoing service costs, if applicable. The maximum amount of this tax is _____ dollars (\$_____) during the ____-__ tax year. This amount may increase by _____, if applicable, and that part may be levied until the ____-__ tax year (or forever, as applicable).

(3) The authorized facilities that are being paid for by the special taxes, and by the money received from the sale of bonds that are being repaid by the special taxes, are:

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

In addition, the special taxes may be used to pay for costs of the following services:

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION THAT AUTHORIZED CREATION OF THE COMMUNITY FACILITIES DISTRICT, AND THAT SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE _____ (name of jurisdiction) BY CALLING _____ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE READ THIS NOTICE AND RECEIVED A COPY OF THIS NOTICE PRIOR TO ENTERING INTO A CONTRACT TO PURCHASE OR SIGNING A DEPOSIT RECEIPT WITH RESPECT TO THE ABOVE-REFERENCED PROPERTY. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITHIN THREE DAYS AFTER RECEIVING THIS NOTICE IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT

TERMINATION TO THE OWNER, SUBDIVIDER, OR AGENT SELLING THE

DATE: _____

(b) “Subdivision,” as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined by Section ~~1350~~ 4125 of the Civil Code, a community apartment project, a stock cooperative, and a limited-equity housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and Professions Code.

(c) The buyer shall have three days after delivery in person or five days after delivery by deposit in the mail of any notice required by this section, to terminate his or her agreement by delivery of written notice of that termination to the owner, subdivider, or agent.

(d) The failure to furnish the notice to the buyer or lessee, and failure of the buyer or lessee to sign the notice of a special tax, shall not invalidate any grant, conveyance, lease, or encumbrance.

(e) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot or unit that is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars (\$500). In an action to enforce a liability or fine, the prevailing party shall be awarded reasonable attorney’s fees.

Comment. Section 53341.5 is amended to correct an obsolete reference to former Civil Code Section 1350.

Gov’t Code § 65008 (amended). Prohibition of discrimination in land use

SEC. _____. Section 65008 of the Government Code is amended to read:

65008. (a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1)(A) The lawful occupation, age, or any characteristic of the individual or group of individuals listed in subdivision (a) or (d) of Section 12955, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2.

(B) Notwithstanding subparagraph (A), with respect to familial status, subparagraph (A) shall not be construed to apply to housing for older persons, as defined in Section 12955.9. With respect to familial status, nothing in subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,

51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to subparagraph (A).

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of very low, low, moderate, or middle income.

(b)(1) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to any law, including this title, prohibit or discriminate against any residential development or emergency shelter for any of the following reasons:

(A) Because of the method of financing.

(B)(i) Because of the lawful occupation, age, or any characteristic listed in subdivision (a) or (d) of Section 12955, as those characteristics are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the owners or intended occupants of the residential development or emergency shelter.

(ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not be construed to apply to housing for older persons, as defined in Section 12955.9. With respect to familial status, nothing in clause (i) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to clause (i).

(C) Because the development or shelter is intended for occupancy by persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income.

(D) Because the development consists of a multifamily residential project that is consistent with both the jurisdiction's zoning ordinance and general plan as they existed on the date the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(2) The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or shelter because of, in whole or in part, either of the following:

(A) The method of financing.

(B) The occupancy of the development by persons protected by this subdivision, including, but not limited to, persons and families of very low, low, or moderate income.

(3) A city, county, city and county, or other local government agency may not, pursuant to subdivision (d) of Section 65589.5, disapprove a housing development project or condition approval of a housing development project in a manner that renders the project infeasible if the basis for the disapproval or conditional approval includes any of the reasons prohibited in paragraph (1) or (2).

(c) For the purposes of this section, “persons and families of middle income” means persons and families whose income does not exceed 150 percent of the median income for the county in which the persons or families reside.

(d)(1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e). The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or emergency shelter based in whole or in part on the fact that the development is subsidized, financed, insured, or otherwise assisted as described in this paragraph.

(2)(A) No city, county, city and county, or other local governmental agency may, because of the lawful occupation age, or any characteristic of the intended occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 or because the development is intended for occupancy by persons and families of very low, low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(B) Notwithstanding subparagraph (A), with respect to familial status, subparagraph (A) shall not be construed to apply to housing for older persons, as defined in Section 12955.9. With respect to familial status, nothing in subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~4360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to subparagraph (A).

(e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title do not prohibit either of the following:

(1) The County of Riverside from enacting and enforcing zoning to provide housing for older persons, in accordance with state or federal law, if that zoning was enacted prior to January 1, 1995.

(2) Any city, county, or city and county from extending preferential treatment to residential developments or emergency shelters assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, or other residential developments or emergency shelters intended

for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, or agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and their families. This preferential treatment may include, but need not be limited to, reduction or waiver of fees or changes in architectural requirements, site development and property line requirements, building setback requirements, or vehicle parking requirements that reduce development costs of these developments.

(f) “Residential development,” as used in this section, means a single-family residence or a multifamily residence, including manufactured homes, as defined in Section 18007 of the Health and Safety Code.

(g) This section shall apply to chartered cities.

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of very low, low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

Comment. Subdivisions (a), (b) and (d) of Section 65008 are amended to correct obsolete references to former Civil Code Section 1360.

Gov’t Code § 65915 (amended). Density bonus in housing development

SEC. ____ . Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b)(1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (g), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section ~~4354~~ 4100 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(c)(1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section ~~4354~~ 4100 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

(d)(1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for

carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5

17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24

30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), “total units” or “total dwelling units” does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.

(h)(1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29

25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(D) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(E) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(F) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i)(1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) “Child care facility,” as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) “Housing development,” as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section ~~1354~~ 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p)(1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

- (A) Zero to one bedrooms: one onsite parking space.
- (B) Two to three bedrooms: two onsite parking spaces.
- (C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide “onsite parking” through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

Comment. Subdivisions (b), (c) and (j) of Section 65915 are amended to correct obsolete references to former Civil Code Section 1351.

Gov’t Code § 65995.5 (amended). Alternative calculation of residential construction amount

SEC. _____. Section 65995.5 of the Government Code is amended to read:

65995.5. (a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district’s eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district’s eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule.

“Substantial enrollment” for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district’s pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district’s local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district’s general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district’s local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district’s general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of

subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) “Residential units” and “residences” as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section ~~1351~~ 4190 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the “School Site Analysis and Development Handbook,” as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

Comment. Subdivision (g) of Section 65995.5 is amended to correct an obsolete reference to former Civil Code Section 1351.

Gov’t Code § 66411 (amended). Local control of common interest development and subdivision

SEC. ____ . Section 66411 of the Government Code is amended to read:

66411. Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. Each local agency shall, by ordinance, regulate and control the initial design and improvement of common interest developments as defined in Section ~~1351~~ 4100 of the Civil Code and subdivisions for which this division requires a tentative and final or parcel map. In the development, adoption, revision, and application of ~~such~~ *the* ordinance, the local agency shall comply with the provisions of Section 65913.2. The ordinance shall specifically provide for proper grading and erosion control, including the prevention of sedimentation or damage to offsite property. Each local agency may by ordinance regulate and control other subdivisions, provided that the regulations are not more restrictive than the regulations for those subdivisions for which a tentative and final or parcel map are required by this division, and provided further that the regulations shall not be applied to short-term leases (terminable by either party on not more than 30 days’ notice in writing) of a portion of the operating right-of-way of a railroad corporation as defined by Section 230 of the Public Utilities Code unless a showing is made in individual cases, under substantial evidence, that public policy necessitates the application of the regulations to those short-term leases in individual cases.

Comment. Section 66411 is amended to correct an obsolete reference to former Civil Code Section 1351 and to make a stylistic revision.

Gov't Code § 66412 (amended). Exceptions to application of division

SEC. ____ . Section 66412 of the Government Code is amended to read:

66412. This division shall be inapplicable to any of the following:

(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section ~~1351~~ 4105 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(4) Subject to compliance with ~~subdivision (e) of Section 1351~~ *Section 6075* of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the project shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the project.

(h) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a stock cooperative, as defined in ~~Section 1351~~ *4190* of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1981, or individually owned by stockholders of the cooperative on January 1, 1981. As used in this paragraph, a cooperative unit is “individually owned” if and only if the stockholder of that unit owns or partially owns an interest in no more than one unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1981.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(5) Subject to compliance with ~~subdivision (e) of Section 1351~~ *Section 6075* of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the cooperative shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, “agricultural purposes” means the cultivation of food or fiber, or the grazing or pasturing of livestock.

Comment. Subdivisions (g) and (h) of Section 66412 are amended to correct obsolete references to former Civil Code Section 1351.

Gov’t Code § 66424 (amended). Subdivision

SEC. ____ . Section 66424 of the Government Code is amended to read:

66424. “Subdivision” means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. “Subdivision” includes a condominium project, as defined in ~~subdivision (f) of Section 1351~~ *Section 4125* of the Civil Code, a community apartment project, as defined in ~~subdivision (d) of Section 1351~~ *Section 4105* of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~ *Section 4190* of the Civil Code.

Comment. Section 66424 is amended to correct obsolete references to former Civil Code Sections 1351(f), 1351(d), and 1351(m).

Gov’t Code § 66427 (amended). Project map

SEC. ____ . Section 66427 of the Government Code is amended to read:

66427. (a) A map of a condominium project, a community apartment project, or of the conversion of five or more existing dwelling units to a stock cooperative project need not show the buildings or the manner in which the buildings or the airspace above the property shown on the map are to be divided, nor shall the governing body have the right to refuse approval of a parcel, tentative, or final map of the project on account of the design or the location of buildings on the property shown on the map that are not violative of local ordinances or on account of the manner in which airspace is to be divided in conveying the condominium.

(b) A map need not include a condominium plan or plans, as defined in ~~subdivision (e) of Section 1351~~ *Section 4120* of the Civil Code, and the governing

body may not refuse approval of a parcel, tentative, or final map of the project on account of the absence of a condominium plan.

(c) Fees and lot design requirements shall be computed and imposed with respect to those maps on the basis of parcels or lots of the surface of the land shown thereon as included in the project.

(d) Nothing herein shall be deemed to limit the power of the legislative body to regulate the design or location of buildings in a project by or pursuant to local ordinances.

(e) If the governing body has approved a parcel map or final map for the establishment of condominiums on property pursuant to the requirements of this division, the separation of a three-dimensional portion or portions of the property from the remainder of the property or the division of that three-dimensional portion or portions into condominiums shall not constitute a further subdivision as defined in Section 66424, provided each of the following conditions has been satisfied:

(1) The total number of condominiums established is not increased above the number authorized by the local agency in approving the parcel map or final map.

(2) A perpetual estate or an estate for years in the remainder of the property is held by the condominium owners in undivided interests in common, or by an association as defined in ~~subdivision (a) of Section 1351~~ *Section 4080* of the Civil Code, and the duration of the estate in the remainder of the property is the same as the duration of the estate in the condominiums.

(3) The three-dimensional portion or portions of property are described on a condominium plan or plans, as defined in ~~subdivision (e) of Section 1351~~ *Section 4120* of the Civil Code.

Comment. Subdivision (b) of Section 66427 is amended to correct an obsolete reference to former Civil Code Section 1351(e).

Subdivision (e) of Section 66427 is amended to correct obsolete references to former Civil Code Section 1351.

Gov't Code § 66452.10 (amended). Conversion of stock cooperative or community apartment project into condominium

SEC. ____ . Section 66452.10 of the Government Code is amended to read:

66452.10. A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a community apartment project, as defined in Section 11004 of the Business and Professions Code, shall not be converted to a condominium, as defined in Section 783 of the Civil Code, unless the required number of (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and mortgagees of each recorded mortgage in the cooperative or project, as specified in the bylaws, or other organizational documents, have voted in favor of the conversion. If the bylaws or other organizational documents do not expressly specify the number of votes required to approve the conversion, a majority vote of the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and

mortgagees of each recorded mortgage in the cooperative or project shall be required. Upon approval of the conversion as set forth above and in compliance with ~~subdivision (e) of Section 1351~~ *Section 6075* of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative or project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances or other documents, a majority of owners in the cooperative or project shall be required to execute the conveyances and other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative or project. The provisions of Section 66499.31 shall not apply to a violation of this section.

Comment. Section 66452.10 is amended to correct an obsolete reference to former Civil Code Section 1351(e).

Gov't Code § 66475.2 (amended). Local transit facility

SEC. _____. Section 66475.2 of the Government Code is amended to read:

66475.2. (a) There may be imposed by local ordinance a requirement of a dedication or an irrevocable offer of dedication of land within the subdivision for local transit facilities such as bus turnouts, benches, shelters, landing pads and similar items that directly benefit the residents of a subdivision. The irrevocable offers may be terminated as provided in subdivisions (c) and (d) of Section 66477.2.

(b) Only the payment of fees in lieu of the dedication of land may be required in subdivisions that consist of the subdivision of airspace in existing buildings into condominium projects, stock cooperatives, or community apartment projects, as those terms are defined in ~~Section 1351~~ *Sections 4125, 4190, and 4105* of the Civil Code.

Comment. Subdivision (b) of Section 66475.2 is amended to correct an obsolete reference to former Civil Code Section 1351.

Gov't Code § 66477 (amended). Park and recreational fee under Quimby Act

SEC. _____. Section 66477 of the Government Code is amended to read:

66477. (a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof.

The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(A) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(B) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the records, maps, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.

(3) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision.

(4) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreation facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(5) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(6) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(7) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in ~~Section 1351~~ Sections 4125, 4190, and 4105 of the Civil Code, exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(8) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However, in that event, a condition may be placed on the approval of a parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the fee may be required to be paid by the owner of each parcel as a condition of the issuance of the permit.

(9) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

(b) Land or fees required under this section shall be conveyed or paid directly to the local public agency ~~which~~ that provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

(c) If park and recreational services and facilities are provided by a public agency other than a city or a county, the amount and location of land to be dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be jointly determined by the city or county having jurisdiction and that other public agency.

(d) This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.

(e) Common interest developments, as defined in Section ~~1351~~ 4100 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body,

against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development ~~which~~ *that* is usable for active recreational uses.

(f) Park and recreation purposes shall include land and facilities for the activity of “recreational community gardening,” which activity consists of the cultivation by persons other than, or in addition to, the owner of the land, of plant material not for sale.

(g) This section shall be known and may be cited as the Quimby Act.

Comment. Subdivisions (a) and (e) of Section 66477 are amended to correct obsolete references to former Civil Code Section 1351. Section 66477 is also amended to make stylistic revisions.

Health & Safety Code § 1597.531 (amended). Liability insurance or bond for family day care home

SEC. ____ . Section 1597.531 of the Health and Safety Code is amended to read:

1597.531. (a) All family day care homes for children shall maintain in force either liability insurance covering injury to clients and guests in the amount of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) in the total annual aggregate, sustained on account of the negligence of the licensee or its employees, or a bond in the aggregate amount of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or the bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home ~~which~~ *that* meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to standards established by the state. If the provider does not own the premises used as the family day care home, the affidavit shall also state that the parent has been informed that the liability insurance, if any, of the owner of the property or the homeowners’ association, as appropriate, may not provide coverage for losses arising out of, or in connection with, the operation of the family day care home, except to the extent that the losses are caused by, or result from, an action or omission by the owner of the property or the homeowners’ association, for which the owner of the property or the homeowners’ association would otherwise be liable under the law. These affidavits shall be on a form provided by the department and shall be reviewed at each licensing inspection.

(b) A family day care home that maintains liability insurance or a bond pursuant to this section, and that provides care in premises that are rented or leased or uses premises ~~which~~ *that* share common space governed by a homeowners’ association, shall name the owner of the property or the homeowners’ association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:

(1) The owner of the property or governing body of the homeowners’ association makes a written request to be added as an additional insured party.

(2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.

(3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.

(c) As used in this section, "homeowners' association" means an association of a common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code.

Comment. Section 1597.531 is amended to correct an obsolete reference to former Civil Code Section 1351 and to make stylistic revisions.

Health & Safety Code § 13132.7 (amended). Fire retardant roof covering

SEC. ____ . Section 13132.7 of the Health and Safety Code is amended to read:

13132.7. (a) Within a very high fire hazard severity zone designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code and within a very high hazard severity zone designated by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(b) In all other areas, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class C as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(c) Notwithstanding subdivision (b), within state responsibility areas classified by the State Board of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except for those state responsibility areas designated as moderate fire hazard responsibility zones, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard severity zones designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8

(commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class A as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(2) Paragraph (1) does not apply to any jurisdiction containing a very high fire hazard severity zone if the jurisdiction fulfills both of the following requirements:

(A) Adopts the model ordinance approved by the State Fire Marshal pursuant to Section 51189 of the Government Code or an ordinance that substantially conforms to the model ordinance of the State Fire Marshal.

(B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

(e) The State Building Standards Commission shall incorporate the requirements set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to the California Building Standards Code in accordance with Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13.

(f) Nothing in this section shall limit the authority of a city, county, city and county, or fire protection district in establishing more restrictive requirements, in accordance with current law, than those specified in this section.

(g) This section shall not affect the validity of an ordinance, adopted prior to the effective date for the relevant roofing standard specified in subdivisions (a) and (b), by a city, county, city and county, or fire protection district, unless the ordinance mandates a standard that is less stringent than the standards set forth in subdivision (a), in which case the ordinance shall not be valid on or after the effective date for the relevant roofing standard specified in subdivisions (a) and (b).

(h) Any qualified historical building or structure as defined in Section 18955 may, on a case-by-case basis, utilize alternative roof constructions as provided by the State Historical Building Code.

(i) The installer of the roof covering shall provide certification of the roof covering classification, as provided by the manufacturer or supplier, to the building owner and, when requested, to the agency responsible for enforcement of this part. The installer shall also install the roof covering in accordance with the manufacturer's listing.

(j) No wood roof covering materials shall be sold or applied in this state unless both of the following conditions are met:

(1) The materials have been approved and listed by the State Fire Marshal as complying with the requirements of this section.

(2) The materials have passed at least five years of the 10-year natural weathering test. The 10-year natural weathering test required by this subdivision shall be conducted in accordance with standard 15-2 of the 1994 edition of the Uniform Building Code at a testing facility recognized by the State Fire Marshal.

(k) The Insurance Commissioner shall accept the use of fire retardant wood roof covering material that complies with the requirements of this section, used in the partial repair or replacement of nonfire retardant wood roof covering material, as complying with the requirement in Section 2695.9 of Title 10 of the California Code of Regulations relative to matching replacement items in quality, color, and size.

(l) No common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code, may require a homeowner to install or repair a roof in a manner that is in violation of this section. The governing documents, as defined in Section ~~1351~~ 4150 of the Civil Code, of a common interest development within a very high fire severity zone shall allow for at least one type of fire retardant roof covering material that meets the requirements of this section.

Comment. Subdivision (l) of Section 13132.7 is amended to correct obsolete references to former Civil Code Section 1351.

Health & Safety Code § 19850 (amended). Filing of building plan

SEC. _____. Section 19850 of the Health and Safety Code is amended to read:

19850. The building department of every city or county shall maintain an official copy, which may be on microfilm or other type of photographic copy, of the plans of every building, during the life of the building, for which the department issued a building permit.

“Building department” means the department, bureau, or officer charged with the enforcement of laws or ordinances regulating the erection, construction, or alteration of buildings.

Except for plans of a common interest development as defined in Section ~~1351~~ 4100 of the Civil Code, plans need not be filed for:

(a) Single or multiple dwellings not more than two stories and basement in height.

(b) Garages and other structures appurtenant to buildings described under subdivision (a).

(c) Farm or ranch buildings.

(d) Any one-story building where the span between bearing walls does not exceed 25 feet. The exemption in this subdivision does not, however, apply to a steel frame or concrete building.

Comment. Section 19850 is amended to correct an obsolete reference to former Civil Code Section 1351.

Health & Safety Code § 25400.22 (amended). Lien on contaminated property

SEC. _____. Section 25400.22 of the Health and Safety Code is amended to read:

25400.22. (a) No later than 10 working days after the date when a local health officer determines that property is contaminated pursuant to subdivision (b) of Section 25400.20, the local health officer shall do all of the following:

(1) Except as provided in paragraph (2), if the property is real property, record with the county recorder a lien on the property. The lien shall specify all of the following:

- (A) The name of the agency on whose behalf the lien is imposed.
- (B) The date on which the property is determined to be contaminated.
- (C) The legal description of the real property and the assessor's parcel number.
- (D) The record owner of the property.
- (E) The amount of the lien, which shall be the greater of two hundred dollars (\$200) or the costs incurred by the local health officer in compliance with this chapter, including, but not limited to, the cost of inspection performed pursuant to Section 25400.19 and the county recorder's fee.

(2)(A) If the property is a mobilehome or manufactured home specified in paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record with a restraint on the mobilehome, or manufactured home with the Department of Housing and Community Development, in the form prescribed by that department, providing notice of the determination that the property is contaminated.

(B) If the property is a recreational vehicle specified in paragraph (2) of subdivision (t) of Section 25400.11, perfect by filing with the Department of Motor Vehicles a vehicle license stop on the recreational vehicle in the form prescribed by that department, providing notice of the determination that the property is contaminated.

(C) If the property is a mobilehome or manufactured home, not subject to paragraph (2) of subdivision (t) of Section 25400.11, is located on real property, and is not attached to that real property, the local health officer shall record a lien for the real property with the county recorder, and the Department of Housing and Community Development shall amend the permanent record with a restraint for the mobilehome or manufactured home, in the form and with the contents prescribed by that department.

(3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall specify all of the following:

(A) The name of the agency on whose behalf the lien, restraint, or vehicle license stop is imposed.

(B) The date on which the property is determined to be contaminated.

(C) The legal description of the real property and the assessor's parcel number, and the mailing and street address or space number of the manufactured home, mobilehome, or recreational vehicle or the vehicle identification number of the recreational vehicle, if applicable.

(D) The registered owner of the mobilehome, manufactured home, or recreational vehicle, if applicable, or the name of the owner of the real property as indicated in the official county records.

(E) The amount of the lien, if applicable, which shall be the greater of two hundred dollars (\$200) or the costs incurred by the local health officer in compliance with this chapter, including, but not limited to, the cost of inspection

performed pursuant to Section 25400.19 and the fee charged by the Department of Housing and Community Development and the Department of Motor Vehicles pursuant to paragraph (2) of subdivision (b).

(F) Other information required by the county recorder for the lien, the Department of Housing and Community Development for the restraint, or the Department of Motor Vehicles for the vehicle license stop.

(4) Issue to persons specified in subdivisions (d), (e), and (f) an order prohibiting the use or occupancy of the contaminated portions of the property.

(b)(1) The county recorder's fees for recording and indexing documents provided for in this section shall be in the amount specified in Article 5 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the Government Code.

(2) The Department of Housing and Community Development and the Department of Motor Vehicles may charge a fee to cover its administrative costs for recording and indexing documents provided for in paragraph (2) of subdivision (a).

(c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect, and priority of a judgment lien. The restraint amending the permanent record pursuant to subdivision (a) shall be displayed on any manufactured home or mobilehome title search until the restraint is released. The vehicle license stop shall remain in effect until it is released.

(2) The local health officer shall not authorize the release of a lien, restraint, or vehicle license stop made pursuant to subdivision (a), until one of the following occurs:

(A) The property owner satisfies the real property lien, or the contamination in the mobilehome, manufactured home, or recreational vehicle is abated to the satisfaction of the local health officer consistent with the notice in the restraint, or vehicle license stop and the local health officer issues a release pursuant to Section 25400.27.

(B) For a manufactured home or mobilehome, the local health officer determines that the unit will be destroyed or permanently salvaged. For the purposes of this paragraph, the unit shall not be reregistered after this determination is made unless the local health officer issues a release pursuant to Section 25400.27.

(C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in a foreclosure sale.

(d) Except as otherwise specified in this section, an order issued pursuant to this section shall be served, either personally or by certified mail, return receipt requested in the following manner:

(1) For real property, to all known occupants of the property and to all persons who have an interest in the property, as contained in the records of the recorder's office of the county in which the property is located.

(2) In the case of a mobilehome or manufactured home, the order shall be served to the legal owner, as defined in Section 18005.8, each junior lienholder, as

defined in Section 18005.3, and the registered owner, as defined in Section 18009.5.

(3) In the case of a recreational vehicle, the order shall be served on the legal owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as defined in Section 505 of the Vehicle Code.

(e) If the whereabouts of the person described in subdivision (d) are unknown and cannot be ascertained by the local health officer, in the exercise of reasonable diligence, and the local health officer makes an affidavit to that effect, the local health officer shall serve the order by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, as follows:

(1) The order related to real property shall be served to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located, and to all occupants of the affected unit.

(2) In the case of a mobilehome or manufactured home, the order shall be served to the legal owner, as defined in Section 18005.8, each junior lienholder, as defined in Section 18005.3, and the registered owner, as defined in Section 18009.5, at the address appearing on the permanent record and all occupants of the affected unit at the mobilehome park space.

(3) In the case of a recreational vehicle, the order shall be served on the legal owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as defined in Section 505 of the Vehicle Code, at the address appearing on the permanent record and all occupants of the affected vehicle at the mobilehome park or special occupancy park space.

(f)(1) The local health officer shall also mail a copy of the order required by this section to the address of each person or party having a recorded right, title, estate, lien, or interest in the property and to the association of a common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code.

(2) In addition to the requirements of paragraph (1), if the affected property is a mobilehome, manufactured home, or recreational vehicle, specified in paragraph (2) of subdivision (t) of Section 25400.11, the order issued by the local health officer shall also be served, either personally or by certified mail, return receipt requested, to the owner of the mobilehome park or special occupancy park.

(g) The order issued pursuant to this section shall include all of the following information:

(1) A description of the property.

(2) The parcel identification number, address, or space number, if applicable.

(3) The vehicle identification number, if applicable.

(4) A description of the local health officer's intended course of action.

(5) A specification of the penalties for noncompliance with the order.

(6) A prohibition on the use of all or portions of the property that are contaminated.

(7) A description of the measures the property owner is required to take to decontaminate the property.

(8) An indication of the potential health hazards involved.

(9) A statement that a property owner who fails to provide a notice or disclosure that is required by this chapter is subject to a civil penalty of up to five thousand dollars (\$5,000).

(h) The local health officer shall provide a copy of the order to the local building or code enforcement agency or other appropriate agency responsible for the enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13).

(i) The local health officer shall post the order in a conspicuous place on the property within one working day of the date that the order is issued.

Comment. Subdivision (f) of Section 25400.22 is amended to correct an obsolete reference to former Civil Code Section 1351.

Health & Safety Code § 25915.2 (amended). Written notice of asbestos in construction material

SEC. ____ . Section 25915.2 of the Health and Safety Code is amended to read:

25915.2. (a) Notice provided pursuant to this chapter shall be provided in writing to each individual employee, and shall be mailed to other owners designated to receive the notice pursuant to subdivision (a) of Section 25915.5, within 15 days of the first receipt by the owner of information identifying the presence or location of asbestos-containing construction materials in the building. This notice shall be provided annually thereafter. In addition, if new information regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915 has been obtained within 90 days after the notice required by this subdivision is provided or any subsequent 90-day period, then a supplemental notice shall be provided within 15 days of the close of that 90-day period.

(b) Notice provided pursuant to this chapter shall be provided to new employees within 15 days of commencement of work in the building.

(c) Notice provided pursuant to this chapter shall be mailed to any new owner designated to receive the notice pursuant to subdivision (a) of Section 25915.5 within 15 days of the effective date of the agreement under which a person becomes a new owner.

(d) Subdivisions (a) and (c) shall not be construed to require owners of a building or part of a building within a residential common interest development to mail written notification to other owners of a building or part of a building within the residential common interest development, if all the following conditions are met:

(1) The association conspicuously posts, in each building or part of a building known to contain asbestos-containing materials, a large sign in a prominent location that fully informs persons entering each building or part of a building within the common interest development that the association knows the building contains asbestos-containing materials.

The sign shall also inform persons of the location where further information, as required by this chapter, is available about the asbestos-containing materials known to be located in the building.

(2) The owners or association disclose, as soon as practicable before the transfer of title of a separate interest in the common interest development, to a transferee the existence of asbestos-containing material in a building or part of a building within the common interest development.

Failure to comply with this section shall not invalidate the transfer of title of real property. This paragraph shall only apply to transfers of title of separate interests in the common interest development of which the owners have knowledge. As used in this section, “association” and “common interest development” are defined in ~~Section 1354~~ *Sections 4080 and 4100* of the Civil Code.

(e) If a person contracting with an owner receives notice pursuant to this chapter, that contractor shall provide a copy of the notice to his or her employees or contractors working within the building.

(f) If the asbestos-containing construction material in the building is limited to an area or areas within the building that meet all the following criteria:

(1) Are unique and physically defined.

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials ~~which~~ *that* are not replicated throughout the building.

(3) Are not connected to other areas through a common ventilation system; then, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or 25915.1 may provide that notice only to the employees working within or entering that area or those areas of the building meeting the conditions above.

(g) If the asbestos-containing construction material in the building is limited to an area or areas within the building that meet all the following criteria:

(1) Are accessed only by building maintenance employees or contractors and are not accessed by tenants or employees in the building, other than on an incidental basis.

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials ~~which~~ *that* are not replicated in areas of the building ~~which~~ *that* are accessed by tenants and employees.

(3) The owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from the material; then, as to that asbestos-containing construction material, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may provide that notice only to its building maintenance employees and contractors who have access to that area or those areas of the building meeting the conditions above.

(h) In those areas of a building where the asbestos-containing construction material is composed only of asbestos fibers ~~which~~ *that* are completely encapsulated, if the owner knows that no asbestos fibers are being released or have

the reasonable possibility to be released from that material in its present condition and has no knowledge that other asbestos-containing material is present, then an owner required to give notice pursuant to subdivision (a) of Section 25915 shall provide the information required in paragraph (2) of subdivision (a) of Section 25915 and may substitute the following notice for the requirements of paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 25915:

(1) The existence of, conclusions from, and a description or list of the contents of, that portion of any survey conducted to determine the existence and location of asbestos-containing construction materials within the building that refers to the asbestos materials described in this subdivision, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an unqualified employee. The notice shall identify the appropriate person the employee is required to contact if the condition of the asbestos-containing construction material deteriorates.

Comment. Subdivision (d) of Section 25915.2 is amended to correct an obsolete reference to former Civil Code Section 1351.

Subdivisions (g) and (h) are amended to make stylistic revisions.

Health & Safety Code § 25915.5 (amended). Notice to persons in privity with owner

SEC. _____. Section 25915.5 of the Health and Safety Code is amended to read:

25915.5. (a) An owner required to give notice to employees pursuant to this chapter, in addition to notifying his or her employees, shall mail, in accordance with this subdivision, a copy of that notice to all other persons who are owners of the building or part of the building, with whom the owner has privity of contract. Receipt of a notice pursuant to this section by an owner, lessee or operator shall constitute knowledge that the building contains asbestos-containing construction materials for purposes of this chapter. Notice to an owner shall be delivered by first-class mail addressed to the person and at the address designated for the receipt of notices under the lease, rental agreement, or contract with the owner.

(b) The delivery of notice under this section or negligent failure to provide that notice shall not constitute a breach of any covenant under the lease or rental agreement, and nothing in this chapter enlarges or diminishes any rights or duties respecting constructive eviction.

(c) No owner who, in good faith, complies with the provisions of this section shall be liable to any other owner for any damages alleged to have resulted from his or her compliance with the provisions of this section.

(d) This section shall not be construed to apply to owners of a building or part of a building within a residential common interest development or association, if the owners comply with the provisions of subdivision (d) of Section 25915.2. For purposes of this section, “association” and “common interest development” are defined in ~~Section 1351~~ *Sections 4080 and 4100* of the Civil Code.

Comment. Subdivision (d) of Section 25915.5 is amended to correct an obsolete reference to former Civil Code Section 1351.

Health & Safety Code § 33050 (amended). Prohibition of discrimination in community redevelopment project

SEC. _____. Section 33050 of the Health and Safety Code is amended to read:

33050. (a) It is hereby declared to be the policy of the state that in undertaking community redevelopment projects under this part there shall be no discrimination because of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (b) of Section 33050 is amended to correct an obsolete reference to former Civil Code Section 1360.

Health & Safety Code § 33435 (amended). Obligation of lessee and purchaser to refrain from discrimination

SEC. _____. Section 33435 of the Health and Safety Code is amended to read:

33435. (a) Agencies shall obligate lessees and purchasers of real property acquired in redevelopment projects and owners of property improved as a part of a redevelopment project to refrain from restricting the rental, sale, or lease of the property on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of any land in a redevelopment project shall contain or be subject to the nondiscrimination or nonsegregation clauses hereafter prescribed.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (b) of Section 33435 is amended to correct an obsolete reference to former Civil Code Section 1360.

Health & Safety Code § 33436 (amended). Form of nondiscrimination and nonsegregation clause

SEC. ____ . Section 33436 of the Health and Safety Code is amended to read:

33436. Express provisions shall be included in all deeds, leases, and contracts that the agency proposes to enter into with respect to the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment project in substantially the following form:

(a)(1) In deeds the following language shall appear -- “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~4360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b)(1) In leases the following language shall appear -- “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any ~~such~~ *of this type of* practice or practices of

discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In contracts entered into by the agency relating to the sale, transfer, or leasing of land or any interest therein acquired by the agency within any survey area or redevelopment project the foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

Comment. Section 33436 is amended to correct obsolete references to former Civil Code Section 1360 and to make a stylistic revision.

Health & Safety Code § 33769 (amended). Nondiscrimination in construction and disposition of residence

SEC. ____ . Section 33769 of the Health and Safety Code is amended to read:

33769. (a) An agency shall require that any residence that is constructed with financing obtained under this chapter shall be open, upon sale or rental of any portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. The agency shall also require that contractors and subcontractors engaged in residential construction financed under this chapter shall provide equal opportunity for employment, without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code. All contracts and subcontracts for residential construction financed under this chapter shall be let without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code and except as otherwise provided in Section 12940 of the Government Code. It shall be the policy of an agency financing residential construction under this chapter to encourage participation by minority contractors, and the agency shall adopt rules and regulations to implement this section.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in

Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (b) of Section 33769 is amended to correct an obsolete reference to former Civil Code Section 1360.

Health & Safety Code § 35811 (amended). Prohibition of discrimination by financial institution

SEC. ____ . Section 35811 of the Health and Safety Code is amended to read:

35811. (a) No financial institution shall discriminate in the availability of, or in the provision of, financial assistance for the purpose of purchasing, constructing, rehabilitating, improving, or refinancing housing accommodations due, in whole or in part, to the consideration of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (b) of Section 35811 is amended to correct an obsolete reference to former Civil Code Section 1360.

Health & Safety Code § 37630 (amended). Prohibition of discrimination in financing, contract, and subcontract of rehabilitated property

SEC. ____ . Section 37630 of the Health and Safety Code is amended to read:

37630. (a) The local agency shall require that any property that is rehabilitated with financing obtained under this part shall be open, upon sale or rental of any portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. The local agency shall also require that contractors and subcontractors engaged in historical rehabilitation financed under this part provide equal opportunity for employment, without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of

the Government Code, and except as otherwise provided in Section 12940 of the Government Code. All contracts and subcontracts for historical rehabilitation financed under this part shall be let without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (b) of Section 37630 is amended to correct an obsolete reference to former Civil Code Section 1360.

Health & Safety Code § 37923 (amended). Open housing and equal opportunity in employment and contract of rehabilitated property

SEC. _____. Section 37923 of the Health and Safety Code is amended to read:

37923. (a) The local agency shall require that any residence that is rehabilitated, constructed, or acquired with financing obtained under this part shall be open, upon sale or rental of any portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. The local agency shall also require that contractors and subcontractors engaged in residential rehabilitation financed under this part provide equal opportunity for employment, without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code. All contracts and subcontracts for residential rehabilitation financed under this part shall be let without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code. It shall be the policy of the local agency financing residential rehabilitation under this part to encourage participation by minority contractors, and the local agency shall adopt rules and regulations to implement this section.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,

51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (b) of Section 37923 is amended to correct an obsolete reference to former Civil Code Section 1360.

Health & Safety Code § 50955 (amended). Equal opportunity without discrimination in management, construction, and rehabilitation of housing development

SEC. _____. Section 50955 of the Health and Safety Code is amended to read:

50955. (a) The agency and every housing sponsor shall require that occupancy of housing developments assisted under this part shall be open to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, that contractors and subcontractors engaged in the construction of housing developments shall provide an equal opportunity for employment, without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code, and that contractors and subcontractors shall submit and receive approval of an affirmative action program prior to the commencement of construction or rehabilitation. Affirmative action requirements respecting apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

All contracts for the management, construction, or rehabilitation of housing developments, and contracts let by housing sponsors, contractors, and subcontractors in the performance of management, construction or rehabilitation, shall be let without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code, and pursuant to an affirmative action program, which shall be at not less than the Federal Housing Administration affirmative action standards unless the board makes a specific finding that the particular requirement would be unworkable. The agency shall periodically review implementation of affirmative action programs required by this section.

It shall be the policy of the agency and housing sponsors to encourage participation with respect to all projects by minority developers, builders, and entrepreneurs in all levels of construction, planning, financing, and management of housing developments. In areas of minority concentration the agency shall require significant participation of minorities in the sponsorship, construction, planning, financing, and management of housing developments. The agency shall (1) require that, to the greatest extent feasible, opportunities for training and

employment arising in connection with the planning, construction, rehabilitation, and operation of housing developments financed pursuant to this part be given to persons of low income residing in the area of that housing, and (2) determine and implement means to secure the participation of small businesses in the performance of contracts for work on housing developments and to develop the capabilities of these small businesses to more efficiently and competently participate in the economic mainstream. In order to achieve this participation by small businesses, the agency may, among other things, waive retention requirements otherwise imposed on contractors or subcontractors by regulation of the agency and may authorize or make advance payments for work to be performed. The agency shall develop relevant selection criteria for the participation of small businesses to ensure that, to the greatest extent feasible, the participants possess the necessary nonfinancial capabilities. The agency may, with respect to these small businesses, waive bond requirements otherwise imposed upon contractors or subcontractors by regulation of the agency, but the agency shall in that case substantially reduce the risk through (1) a pooled-risk bonding program, (2) a bond program in cooperation with other federal or state agencies, or (3) development of a self-insured bonding program with adequate reserves.

The agency shall adopt rules and regulations to implement this section.

Prior to commitment of a mortgage loan, the agency shall require each housing sponsor, except with respect to mutual self-help housing, to submit an affirmative marketing program that meets standards set forth in regulations of the agency. The agency shall require ~~such a~~ *the* housing sponsor to conduct the affirmative marketing program so approved. Additionally, the agency shall supplement the efforts of individual housing sponsors by conducting affirmative marketing programs with respect to housing at the state level.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Section 50955 is amended to correct an obsolete reference to former Civil Code Section 1360 and to make a stylistic revision.

Health & Safety Code § 51602 (amended). Requirement of open housing and equal opportunity for loan insurance

SEC. _____. Section 51602 of the Health and Safety Code is amended to read:

51602. (a) The agency shall require that occupancy of housing for which a loan is insured pursuant to this part shall be open to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases

are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, and that contractors and subcontractors engaged in the construction or rehabilitation of housing funded by a loan insured pursuant to this part shall provide an equal opportunity for employment without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

(c) A qualified developer shall certify compliance with this section and Section 50955 according to requirements specified by the pertinent criteria of the agency.

Comment. Subdivision (b) of Section 51602 is amended to correct an obsolete reference to former Civil Code Section 1360.

Health & Safety Code § 116048 (amended). Swimming pool records

SEC. _____. Section 116048 of the Health and Safety Code is amended to read:

116048. (a) On or after January 1, 1987, for public swimming pools in any common interest development, as defined in Section ~~1354~~ 4100 of the Civil Code, that consists of fewer than 25 separate interests, as defined in ~~subdivision (l) of Section 1354~~ Section 4185 of the Civil Code, the person operating ~~each such~~ a pool open for use shall be required to keep a record of the information required by subdivision (a) of Section 65523 of Title 22 of the California Administrative Code, except that the information shall be recorded at least two times per week and at intervals no greater than four days apart.

(b) On or after January 1, 1987, any rule or regulation of the department that is in conflict with subdivision (a) is invalid.

Comment. Section 116048 is amended to correct obsolete references to former Civil Code Sections 1351 and 1351(l) and to make a stylistic revision.

Ins. Code § 790.031 (amended). Application of certain requirements

SEC. _____. Section 790.031 of the Insurance Code is amended to read:

790.031. The requirements of subdivision (b) of Section 790.034, and Sections 2071.1 and 10082.3 shall apply only to policies of residential property insurance as defined in Section 10087, policies and endorsements containing those coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2, policies issued by the California Earthquake Authority pursuant to

Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies and endorsements that insure against property damage and are issued to common interest developments or to associations managing common interest developments, as those terms are defined in ~~Section 1351~~ *Sections 4100 and 4080* of the Civil Code, and to policies issued pursuant to Section 120 that insure against property damage to residential units or contents thereof owned by one or more persons located in this state.

Comment. Section 790.031 is amended to correct an obsolete reference to former Civil Code Section 1351.

Rev. & Tax Code § 2188.6 (amended). Assessment of separate condominium unit

SEC. _____. Section 2188.6 of the Revenue and Taxation Code is amended to read:

2188.6. (a) Unless a request for exemption has been recorded pursuant to subdivision (d), prior to the creation of a condominium as defined in Section 783 of the Civil Code, the county assessor may separately assess each individual unit ~~which~~ *that* is shown on the condominium plan of a proposed condominium project when all of the following documents have been recorded as required by law:

(1) A subdivision final map or parcel map, as described in Sections 66434 and 66445, respectively, of the Government Code.

(2) A condominium plan, as defined in ~~subdivision (e) of Section 1351~~ *Section 4120* of the Civil Code.

(3) A declaration, as defined in ~~subdivision (h) of Section 1351~~ *Section 4135* of the Civil Code.

(b) The tax due on each individual unit shall constitute a lien solely on that unit.

(c) The lien created pursuant to this section shall be a lien on an undivided interest in a portion of real property coupled with a separate interest in space called a unit as described in ~~subdivision (f) of Section 1351~~ *Section 4125* of the Civil Code.

(d) The record owner of the real property may record with the condominium plan a request that the real property be exempt from separate assessment pursuant to this section. If a request for exemption is recorded, separate assessment of a condominium unit shall be made only in accordance with Section 2188.3.

(e) This section shall become operative on January 1, 1990, and shall apply to condominium projects for which a condominium plan is recorded after that date.

Comment. Subdivision (a) of Section 2188.6 is amended to correct an obsolete reference to former Civil Code Sections 1351(c) and 1351(h) and to make a stylistic revision.

Subdivision (c) of Section 2188.6 is amended to correct an obsolete reference to former Civil Code Section 1351(f).

Veh. Code § 21107.7 (amended). Private road not open to public use

SEC. _____. Section 21107.7 of the Vehicle Code is amended to read:

21107.7. (a) Any city or county may, by ordinance or resolution, find and declare that there are privately owned and maintained roads as described in the

ordinance or resolution within the city or county that are not generally held open for use of the public for purposes of vehicular travel but, by reason of their proximity to or connection with highways, the interests of any residents residing along the roads and the motoring public will best be served by application of the provisions of this code to those roads. No ordinance or resolution shall be enacted unless there is first filed with the city or county a petition requesting it by a majority of the owners of any privately owned and maintained road, or by at least a majority of the board of directors of a common interest development, as defined by Section ~~1351~~ 4100 of the Civil Code, that is responsible for maintaining the road, and without a public hearing thereon and 10 days' prior written notice to all owners of the road or all of the owners in the development. Upon enactment of the ordinance or resolution, the provisions of this code shall apply to the privately owned and maintained road if appropriate signs are erected at the entrance to the road of the size, shape, and color as to be readily legible during daylight hours from a distance of 100 feet, to the effect that the road is subject to the provisions of this code. The city or county may impose reasonable conditions and may authorize the owners, or board of directors of the common interest development, to erect traffic signs, signals, markings, and devices ~~which~~ that conform to the uniform standards and specifications adopted by the Department of Transportation.

(b) The department shall not be required to provide patrol or enforce any provisions of this code on any privately owned and maintained road subjected to the provisions of this code under this section, except those provisions applicable to private property other than by action under this section.

(c) As used in this section, "privately owned and maintained roads" includes roads owned and maintained by a city, county or district that are not dedicated to use by the public or are not generally held open for use of the public for purposes of vehicular travel.

Comment. Subdivision (a) of Section 21107.7 is amended to correct an obsolete reference to former Civil Code Section 1351 and to make a stylistic revision.

Veh. Code § 22651 (amended). Circumstances permitting removal

SEC. _____. Section 22651 of the Vehicle Code is amended to read:

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

(a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is issued charging that the vehicle is embezzled.

(d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When a vehicle, except a highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.

(i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(l) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) Wherever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility under the following circumstances:

(A) With a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility.

(B) Displaying in, or upon, the vehicle, a registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit that was not issued for that vehicle, or is not otherwise lawfully used on that vehicle under this code.

(C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or falsified registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit.

(2) When a vehicle described in paragraph (1) is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle.

(3) For the purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(4) As used in this subdivision, "offstreet parking facility" means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and privately owned facilities for offstreet parking where a fee is not charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in ~~subdivision (c) of Section 1351~~ *Section 4100* of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When a vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When a vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle that is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

Comment. Subdivision (q) of Section 22651 is amended to correct an obsolete reference to former Civil Code Section 1351(c).

Veh. Code § 22651.05 (amended). Circumstances permitting trained volunteers to remove vehicle

SEC. _____. Section 22651.05 of the Vehicle Code is amended to read:

22651.05. (a) A trained volunteer of a state or local law enforcement agency, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove or authorize the removal of a vehicle located within the territorial limits in which an officer or employee of that agency may act, under any of the following circumstances:

(1) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing the removal.

(2) When a vehicle is illegally parked or left standing on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(3) Wherever the use of the highway, or a portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(4) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle may not be removed unless signs are posted giving notice of the removal.

(5) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in ~~subdivision (c) of Section 1351~~ *Section 4100* of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(b) The provisions of this chapter that apply to a vehicle removed pursuant to Section 22651 apply to a vehicle removed pursuant to subdivision (a).

(c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his or her own free will, provides services, without any financial gain, to a local or state law enforcement agency, and who is duly trained and certified to remove a vehicle by a local or state law enforcement agency.

Comment. Subdivision (a) of Section 22651.05 is amended to correct an obsolete reference to former Civil Code Section 1351(c).

Veh. Code § 22658 (amended). Towing charge

SEC. ____ . Section 22658 of the Vehicle Code is amended to read:

22658. (a) The owner or person in lawful possession of private property, including an association of a common interest development as defined in ~~Section 1351~~ *Sections 4080 and 4100* of the Civil Code, may cause the removal of a vehicle parked on the property to a storage facility that meets the requirements of subdivision (n) under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law

enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the owner or person in lawful possession of the property. The sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

(b) The tow truck operator removing the vehicle, if the operator knows or is able to ascertain from the property owner, person in lawful possession of the property, or the registration records of the Department of Motor Vehicles the name and address of the registered and legal owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal, the grounds for the removal, and indicate the place to which the vehicle has been removed. If the vehicle is stored in a storage facility, a copy of the notice shall be given to the proprietor of the storage facility. The notice provided for in this section shall include the amount of mileage on the vehicle at the time of removal and the time of the removal from the property. If the tow truck operator does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as provided in this section, the tow truck operator shall comply with the requirements of subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer removing a vehicle from private property.

(c) This section does not limit or affect any right or remedy that the owner or person in lawful possession of private property may have by virtue of other provisions of law authorizing the removal of a vehicle parked upon private property.

(d) The owner of a vehicle removed from private property pursuant to subdivision (a) may recover for any damage to the vehicle resulting from any intentional or negligent act of a person causing the removal of, or removing, the vehicle.

(e)(1) An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f).

(2) A property owner or owner's agent or lessee who causes the removal of a vehicle parked on that property pursuant to the exemption set forth in subparagraph (A) of paragraph (1) of subdivision (I) and fails to comply with that subdivision is guilty of an infraction, punishable by a fine of one thousand dollars (\$1,000).

(f) An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property shall notify by telephone or, if impractical, by the most expeditious means available, the local traffic law enforcement agency within one hour after authorizing the tow. An owner or person in lawful possession of private property, an association of a common interest development, causing the removal of a vehicle parked on that property, or the tow truck operator who removes the vehicle, shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle. A towing company that removes a vehicle from private property in compliance with subdivision (I) is not responsible in a situation relating to the validity of the removal. A towing company that removes the vehicle under this section shall be responsible for the following:

(1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

(2) The removal of a vehicle other than the vehicle specified by the owner or other person in lawful possession of the private property.

(g)(1)(A) Possession of a vehicle under this section shall be deemed to arise when a vehicle is removed from private property and is in transit.

(B) Upon the request of the owner of the vehicle or that owner's agent, the towing company or its driver shall immediately and unconditionally release a vehicle that is not yet removed from the private property and in transit.

(C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.

(2) If a vehicle is released to a person in compliance with subparagraph (B) of paragraph (1), the vehicle owner or authorized agent shall immediately move that vehicle to a lawful location.

(h) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner, the owner's agent, or the person in lawful possession of the private property pursuant to this section if the owner of the vehicle or the vehicle owner's agent returns to the vehicle after the vehicle is coupled to the tow truck by means of a regular hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by means of a conventional trailer, and before it is removed from the private property. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

(i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section is excessive if the charge exceeds the greater of the following:

(i) That which would have been charged for that towing or storage, or both, made at the request of a law enforcement agency under an agreement between a

towing company and the law enforcement agency that exercises primary jurisdiction in the city in which is located the private property from which the vehicle was, or was attempted to be, removed, or if the private property is not located within a city, then the law enforcement agency that exercises primary jurisdiction in the county in which the private property is located.

(ii) That which would have been charged for that towing or storage, or both, under the rate approved for that towing operator by the California Highway Patrol for the jurisdiction in which the private property is located and from which the vehicle was, or was attempted to be, removed.

(B) A towing operator shall make available for inspection and copying his or her rate approved by the California Highway Patrol, if any, ~~with in~~ *within* 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

(2) If a vehicle is released within 24 hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not more than one day's storage charge may be required for a vehicle released the same day that it is stored.

(3) If a request to release a vehicle is made and the appropriate fees are tendered and documentation establishing that the person requesting release is entitled to possession of the vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of storage, and the storage facility fails to comply with the request to release the vehicle or is not open for business during normal business hours, then only one day's storage charge may be required to be paid until after the first business day. A business day is any day in which the lienholder is open for business to the public for at least eight hours. If a request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar day basis for each day, or part thereof, that the vehicle is in storage.

(j)(1) A person who charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the vehicle owner for four times the amount charged.

(2) A person who knowingly charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision (h) or (i), or who fails to make available his or her rate as required in subparagraph (B) of paragraph (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

(k)(1) A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid credit card or cash for payment of towing and storage by a registered owner or the owner's agent claiming the vehicle. "Credit card" means "credit card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except for the purposes of this section, credit card does not include a credit card issued by a retail seller.

(2) A person described in paragraph (1) shall conspicuously display, in that portion of the storage facility office where business is conducted with the public, a notice advising that all valid credit cards and cash are acceptable means of payment.

(3) A person operating or in charge of a storage facility who refuses to accept a valid credit card or who fails to post the required notice under paragraph (2) is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

(4) A person described in paragraph (1) who violates paragraph (1) or (2) is civilly liable to the registered owner of the vehicle or the person who tendered the fees for four times the amount of the towing and storage charges.

(5) A person operating or in charge of the storage facility shall have sufficient moneys on the premises of the primary storage facility during normal business hours to accommodate, and make change in, a reasonable monetary transaction.

(6) Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies as described in subdivision (i).

(l)(1)(A) A towing company shall not remove or commence the removal of a vehicle from private property without first obtaining the written authorization from the property owner or lessee, including an association of a common interest development, or an employee or agent thereof, who shall be present at the time of removal and verify the alleged violation, except that presence and verification is not required if the person authorizing the tow is the property owner, or the owner's agent who is not a tow operator, of a residential rental property of 15 or fewer units that does not have an onsite owner, owner's agent or employee, and the tenant has verified the violation, requested the tow from that tenant's assigned parking space, and provided a signed request or electronic mail, or has called and provides a signed request or electronic mail within 24 hours, to the property owner or owner's agent, which the owner or agent shall provide to the towing company within 48 hours of authorizing the tow. The signed request or electronic mail shall contain the name and address of the tenant, and the date and time the tenant requested the tow. A towing company shall obtain within 48 hours of receiving the written authorization to tow a copy of a tenant request required pursuant to this subparagraph. For the purpose of this subparagraph, a person providing the written authorization who is required to be present on the private property at the time of the tow does not have to be physically present at the specified location of where the vehicle to be removed is located on the private property.

(B) The written authorization under subparagraph (A) shall include all of the following:

(i) The make, model, vehicle identification number, and license plate number of the removed vehicle.

(ii) The name, signature, job title, residential or business address and working telephone number of the person, described in subparagraph (A), authorizing the removal of the vehicle.

(iii) The grounds for the removal of the vehicle.

(iv) The time when the vehicle was first observed parked at the private property.

(v) The time that authorization to tow the vehicle was given.

(C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing company prior to payment of a towing or storage charge shall provide a photocopy of the written authorization to the vehicle owner or the agent.

(ii) If the vehicle was towed from a residential property, the towing company shall redact the information specified in clause (ii) of subparagraph (B) in the photocopy of the written authorization provided to the vehicle owner or the agent pursuant to clause (i).

(iii) The towing company shall also provide to the vehicle owner or the agent a separate notice that provides the telephone number of the appropriate local law enforcement or prosecuting agency by stating “If you believe that you have been wrongfully towed, please contact the local law enforcement or prosecuting agency at [insert appropriate telephone number].” The notice shall be in English and in the most populous language, other than English, that is spoken in the jurisdiction.

(D) A towing company shall not remove or commence the removal of a vehicle from private property described in subdivision (a) of Section 22953 unless the towing company has made a good faith inquiry to determine that the owner or the property owner’s agent complied with Section 22953.

(E)(i) General authorization to remove or commence removal of a vehicle at the towing company’s discretion shall not be delegated to a towing company or its affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with an entrance to, or exit from, the private property.

(ii) In those cases in which general authorization is granted to a towing company or its affiliate to undertake the removal or commence the removal of a vehicle that is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that interferes with an entrance to, or exit from, private property, the towing company and the property owner, or owner’s agent, or person in lawful possession of the private property shall have a written agreement granting that general authorization.

(2) If a towing company removes a vehicle under a general authorization described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that interferes with an entrance to, or exit from, the private property, the towing company shall take, prior to the removal of that vehicle, a photograph of the vehicle that clearly indicates that parking violation. Prior to accepting payment, the towing company shall keep one copy of the photograph taken pursuant to this paragraph, and shall present that photograph and provide, without charge, a

photocopy to the owner or an agent of the owner, when that person claims the vehicle.

(3) A towing company shall maintain the original written authorization, or the general authorization described in subparagraph (E) of paragraph (1) and the photograph of the violation, required pursuant to this section, and any written requests from a tenant to the property owner or owner's agent required by subparagraph (A) of paragraph (1), for a period of three years and shall make them available for inspection and copying within 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

(4) A person who violates this subdivision is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

(5) A person who violates this subdivision is civilly liable to the owner of the vehicle or his or her agent for four times the amount of the towing and storage charges.

(m)(1) A towing company that removes a vehicle from private property under this section shall notify the local law enforcement agency of that tow after the vehicle is removed from the private property and is in transit.

(2) A towing company is guilty of a misdemeanor if the towing company fails to provide the notification required under paragraph (1) within 60 minutes after the vehicle is removed from the private property and is in transit or 15 minutes after arriving at the storage facility, whichever time is less.

(3) A towing company that does not provide the notification under paragraph (1) within 30 minutes after the vehicle is removed from the private property and is in transit is civilly liable to the registered owner of the vehicle, or the person who tenders the fees, for three times the amount of the towing and storage charges.

(4) If notification is impracticable, the times for notification, as required pursuant to paragraphs (2) and (3), shall be tolled for the time period that notification is impracticable. This paragraph is an affirmative defense.

(n) A vehicle removed from private property pursuant to this section shall be stored in a facility that meets all of the following requirements:

(1)(A) Is located within a 10-mile radius of the property from where the vehicle was removed.

(B) The 10-mile radius requirement of subparagraph (A) does not apply if a towing company has prior general written approval from the law enforcement agency that exercises primary jurisdiction in the city in which is located the private property from which the vehicle was removed, or if the private property is not located within a city, then the law enforcement agency that exercises primary jurisdiction in the county in which is located the private property.

(2)(A) Remains open during normal business hours and releases vehicles after normal business hours.

(B) A gate fee may be charged for releasing a vehicle after normal business hours, weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after normal business hours shall be one-half of the hourly tow rate charged for initially towing the vehicle, or less.

(C) Notwithstanding any other provision of law and for purposes of this paragraph, “normal business hours” are Monday to Friday, inclusive, from 8 a.m. to 5 p.m., inclusive, except state holidays.

(3) Has a public pay telephone in the office area that is open and accessible to the public.

(o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to assist vehicle owners or their agents by, among other things, allowing payment by credit cards for towing and storage services, thereby expediting the recovery of towed vehicles and concurrently promoting the safety and welfare of the public.

(2) It is the intent of the Legislature in the adoption of subdivision (l) to further the safety of the general public by ensuring that a private property owner or lessee has provided his or her authorization for the removal of a vehicle from his or her property, thereby promoting the safety of those persons involved in ordering the removal of the vehicle as well as those persons removing, towing, and storing the vehicle.

(3) It is the intent of the Legislature in the adoption of subdivision (g) to promote the safety of the general public by requiring towing companies to unconditionally release a vehicle that is not lawfully in their possession, thereby avoiding the likelihood of dangerous and violent confrontation and physical injury to vehicle owners and towing operators, the stranding of vehicle owners and their passengers at a dangerous time and location, and impeding expedited vehicle recovery, without wasting law enforcement’s limited resources.

(p) The remedies, sanctions, restrictions, and procedures provided in this section are not exclusive and are in addition to other remedies, sanctions, restrictions, or procedures that may be provided in other provisions of law, including, but not limited to, those that are provided in Sections 12110 and 34660.

Comment. Subdivision (a) of Section 22658 is amended to correct an obsolete reference to former Civil Code Section 1351. Subdivision (i) is amended to make a technical correction.

DISPOSITION OF FORMER LAW

The table below shows the relationship between the provisions of the existing Davis-Stirling Common Interest Development Act and the corresponding provisions of the proposed law.

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
1350	4000	1361.5	5810
1350.5	4005	1362	5800
1350.7	4040, 4045	1363(a)	4400
1351(a)	4080	1363(b)	omitted, see 4080
1351(b)	4095	1363(c)	4405
1351(c)	4100	1363(d)	4575(d)
1351(d)	4105	1363(e)	4595(c)
1351(e)	4120, 6075, 6080	1363(f)	omitted, see 4700-4750
1351(f)	4125	1363(g)	5000, 5015
1351(g)	4130	1363(h)	5005
1351(h)	4135	1363(i)	4560(b)
1351(i)	4145	1363(j)	omitted, see 5000
1351(j)	4150	1363.001	4950
1351(k)	4175	1363.03(a)	4630, 4665(a)-(b), 4670
1351(l)	4185	1363.03(b), (e), (f), (g), (k)	4635(f), 4640, 4650
1351(m)	4190	1363.03(c)	4635
1352	4015, 6000	1363.03(d)	4660
1352.5	6150	1363.03(h), (i)	4655
1353	6025, 6030, 6035	1363.03(j)	4665(b)-(d)
1353.5	5730	1363.03(l)	omitted, see 4080
1353.6	5730	1363.03(m)	4625
1353.7	5740	1363.03(n)	omitted, see 4025
1353.8	5755	1363.03(o)	omitted
1354	5125	1363.04	4670
1355	6040, 6045	1363.05(a)	4500
1355.5	6050	1363.05(b)	4525, 4540
1356	4620	1363.05(c)-(e)	4550
1357	6040	1363.05(f)	4520(a)-(b)
1357.100(a)	4165	1363.05(g)	4520(c)
1357.100(b)	4180	1363.05(h)	4525
1357.110	6100	1363.05(i)	4528
1357.120	6110	1363.05(j)	4090
1357.130	6115	1363.07	5900
1357.140	6120	1363.09	4555(a)-(b), 4685
1357.150	6125	1363.1	4900
1358(a)	5925	1363.2	4905
1358(b)	5930	1363.5	6060
1358(c)	5935	1363.6	4960
1358(d)	5940	1363.810	5050(a)-(b)
1358, next to last ¶	5945	1363.820	5055
1358, last ¶	5950	1363.830	5060
1359	5905	1363.840	5065
1360	5760	1363.850	5070
1360.5	5735	1364(a)	5700
1361	5805		

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
1364(b)-(e)	5705	1367.4(d)	5650(b)
1364(f)	5710	1367.5	5635(c)
1365(a)	4800, 5500(c), 5555(b)-(c), (e), 5560	1368(a).....	5825
1365(b)	4820	1368(b)	5830
1365(c)	4805(b), 5510(a)	1368(c)(1)	5875
1365(d)	4820	1368(c)(2)	5880
1365(e)	4810(a)(5)	1368(c)(3)	4110
1365.1	4040, 5670	1368(d)	5840
1365.2	4700-4725, 4735, 4745-4750, 4800	1368(e).....	5845
1365.2.5	4800, 5555	1368(f)	5835
1365.3	4815	1368(g)	omitted
1365.5	5500(d), 5510(b), 5515, 5520, 5550, 5555(a), 5555(b)(1), 5555(b)(3)-(4), 5560	1368.1(a).....	5750(a)
1365.6	4855	1368.1(b)	5750(b)-(c)
1365.7	5680	1368.1(c).....	5750(d)
1365.9	5685	1368.1(d)	5750(e)
1366(a)-(b)	5575(a), 5580(a)-(c), (e)	1368.3	4410
1366(c)	5585	1368.4	4415
1366(d)	5580(d)	1368.5	6215
1366(e)-(f)	5606(a)-(c)	1369	5910
1366.1	5575(b)	1369.510	5075
1366.2	5665	1369.520	5080
1367(a)	5605(d)	1369.530	5085
1367(b)-(g)	omitted, see 5675	1369.540	5090
1367.1(a)	5605(d), 5615	1369.550	5095
1367.1(b)	5600	1369.560	5100
1367.1(c)	5620, 5625, 5630(g), 5655(a)	1369.570	5105
1367.1(d)	5630(a)-(e), 5635(a), 5640(a)	1369.580	5110
1367.1(e)	5640(b)	1369.590	5115
1367.1(f)	5630(f)	1370	6175
1367.1(g)	5610, 5645(a), 5655(b)	1371	6180
1367.1(h)	5630(h)	1372	4030
1367.1(i)	5635(b)	1373	4020
1367.1(j)	5655(c)	1374	4015(b)
1367.1(k)	4040(b)	1375	6200
1367.1(l)	5630(i)	1375.05	6205
1367.4(a)	omitted	1375.1	6210
1367.4(b)	5625, 5645(b), 5650(a)	1376	5745
1367.4(c)	5655(a), 5660	1378	5775