

## Memorandum 2006-25

**Statutory Clarification and Simplification of CID Law:  
Association Governance and Dispute Resolution**

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In this study, the Commission is working to reorganize and simplify common interest development statutory law. The intention is to make CID law easier to understand and use by improving its presentation and resolving ambiguities and conflicts.

Most of the improvements in the proposed law will be technical. Some noncontroversial substantive improvements will also be included. However, if a proposed change is determined to be controversial, it will not be included in the proposed law. Instead, it will be identified for separate study by the Commission. This practice is not intended as a way of dismissing or prejudging the merits of controversial proposals. It merely separates “lightning rod” issues from the larger body of inoffensive improvements, so as to increase the likelihood that the larger body of noncontroversial improvements will be enacted by the Legislature.

This memorandum presents and supersedes material that was originally presented in Memorandum 2006-4 and its First and Second Supplements (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)).

A staff draft of the proposed law is attached. The draft is cumulative and includes previously reviewed material on the following topics:

- General Provisions and Definitions
- Member Rights
- Record Inspection
- Governing Documents

In addition, the draft presents new material on the following topics:

- Board Meetings
- Member Meetings
- Record Keeping
- Annual Reports
- Director Standard of Conduct

- Managing Agents
- Dispute Resolution

For ease of reference, material in the draft that is new or significantly different from the previous draft has been shaded with a grey background.

The attached draft includes about two thirds of the material that will need to be covered before we are ready to circulate a tentative recommendation. We still need to cover the following topics:

- Elections
- Financial Matters
- Property Ownership and Maintenance
- Construction Defect Litigation

The staff hopes to complete work on the staff draft in two or three more installments.

Letters commenting on issues discussed in this memorandum are attached in the Exhibit, as follows:

	<i>Exhibit p.</i>
• Janet Shaban, Sacramento (2/23/06).....	1
• Karen D. Conlon, California Association of Community Managers (4/21/06).....	4
• Howard Green (4/23/06) .....	12
• Norma Walker and Carole Hochstatter, Bakersfield (4/26/06).....	15
• Janet Shaban, Sacramento (4/26/06).....	16

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

#### DEFINITION OF “GOVERNING DOCUMENTS”

Proposed Section 4150 would continue the substance of the existing definition of “governing documents”:

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

Mr. Green suggests that the list of examples in the definition should be expanded to enumerate other types of documents, including the following (See Exhibit p. 12):

- A written policy, practice, or regulation
- Meeting minutes
- A contract with a property manager
- A roster of officers, officials, and managers

**The staff recommends against the proposed change.** The term “governing documents” is used in a number of contexts in which the proposed expansion would be problematic. For example:

- (1) The governing documents may specify the procedure by which certain actions are performed. See, e.g., Section 1355 (procedure for amendment of declaration). Should the board be able to modify the declaration amendment procedure by means of an entry in the minutes?
- (2) Amendment of the governing documents may trigger some event. For example, Section 1360.5 overrides an association’s pet restriction, but has no prospective application until an association amends its governing documents, at which point it does apply. Should a change in the roster of officers trigger application of the pet restriction override?
- (3) The law sometimes requires that governing documents be amended to include specific provisions. E.g., Section 1378 requires adoption of a fair and reasonable process for review of a proposed architectural change. Should the board be able to adopt the procedure in an informal statement of “practice” rather than a more formal type of document, which would be subject to a specific amendment procedure?
- (4) Section 1368 requires that all governing documents be provided by an owner to a prospective buyer. Should the prospective buyer receive all board meeting minutes?

Viewed from that perspective, the staff believes that there may be a different problem with the existing definition. It may be too broad. The catch-all clause that it contains could be read expansively to encompass all of the types of documents cited by Mr. Green, because they “govern” the operation of the association. If so, then the existing definition could result in the problems described above.

It might be appropriate to remove the catch-all clause, thereby limiting the definition to the four generally recognized types of governing documents: the declaration, bylaws, articles, and operating rules. Thus:

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

A note following the definition could highlight the change and ask for input on whether it would cause any substantive problems. **Should that change be made in the proposed law?**

That change would have a limiting effect in one area where an expansive definition of “governing documents” might be preferable. Proposed Section 4700 provides that a member has the right to inspect the association’s governing documents. Arguably, that right should extend to written policy documents that don’t rise to the level of formally adopted rules. For example, the list of documents that are subject to member inspection could be revised to restore the catch-all:

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

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

...

**Comment.** Subdivision (a) of Section 4700 continue the substance of former Section 1365.2(a), except for the following changes:

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

**Should a change along those lines be made?**

## DOCUMENT DELIVERY

### Delivery Time

There are many provisions of the Davis-Stirling Act and the Nonprofit Mutual Benefit Corporation Law that provide fixed periods of notice or deadlines for action that are measured from the date that a document is delivered or received. For example, under Section 1365.2(j)(1), an association must provide member access to current fiscal year records “within 10 business days following the association’s receipt of the request.”

In general, the date of delivery of a document is more certain than the date of receipt. Delivery can be shown by a postmark, or the date stamp on an email or facsimile. A document may be received without any record being made of the

date of receipt. Mail can be misdirected or delayed, affecting the receipt date in unexpected and unverifiable ways.

For the sake of consistency and certainty, **the proposed law uses the date of delivery as the starting point for all time periods that are measured relative to the date that a document is sent.**

Such a change can have a practical effect on the amount of time provided for a response. The amount of time that is actually taken to deliver a document subtracts from the time available to act. For example, under Section 1365.2(j)(1), an association has 10 days from the date that they actually receive a record inspection request to make the record available for inspection. If that provision is changed to require access within 10 days from the date that the request is sent, and the request takes five days to arrive, then the association only has five days to prepare the records for inspection (instead of the 10 provided under existing law).

The Commission directed the staff to consider adding a general provision along the lines of Code of Civil Procedure Section 1013, which extends any deadline triggered by delivery of a document by mail, in order to account for the time required for delivery.

**The staff recommends that the following provision be added to the proposed law:**

**§ 4050. Time 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, but if this part specifies a time period after delivery for notice or for any other action or response, the time period is extended as follows:

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

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

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

(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, that is executed by the secretary, assistant secretary, or managing agent of the association, is prima facie evidence of delivery.

**Comment.** The first clause of subdivision (b) of Section 4050 continues part of the substance of former Section 1350.7(b)(2).

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

Subdivision (c) continues part of the substance of former Section 1350.7(b)(3).

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

One concept that is expressed in Code of Civil Procedure Section 1013, but was not carried forward into proposed Section 4050, has to do with the extension of a “date certain.” Section 1013(a) provides, with emphasis added, that:

any period of notice and any right or duty to do any act or make any response within any period **or on a date certain** after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended...

The staff is not aware of any provision of CID law that requires action on a date certain following delivery of a document. Nor is it clear that such a requirement would ever make sense. A range of days in which a person must act is much more flexible than a requirement that action be taken on a specific day. Because the staff does not anticipate that the proposed law will employ any deadlines based on a “date certain,” there is no need to complicate proposed Section 4050 with language providing for the extension of such a date. If it turns out that a date certain deadline is advisable at any point in the proposed law, the timing provision can be revisited.

### **Posted Notice**

The proposed law would differentiate between two types of notice delivery:

- (1) Where “individual notice” is required, notice would be sent to an individual by a method calculated to achieve actual notice (e.g., by personal delivery, U.S. mail, or electronic mail). See proposed Section 4040.
- (2) Where “general notice” is required, notice would be communicated to the entire membership by more general methods (e.g., publication in an association newsletter or broadcast on association-run television). See proposed Section 4045.

**Proposed Section 4045 has been revised slightly to allow for posting of a general notice in an accessible location that is designated for that purpose.** That would provide another cost-effective alternative way of providing information of general interest (e.g., the agenda for an upcoming board meeting).

Before posting a general notice, an association would need to designate the location for posting of such notices in its “member handbook.” See “Member Handbook” below.

### **Proof of Notice and Delivery Failure**

Corporations Code Section 7511 governs notice of a member meeting. Subdivision (b) of that section provides rules for proving delivery of notice (by affidavit) and for handling failed delivery (e.g., a mailed notice returned as undeliverable). Despite the fact that those provisions are included in a section that governs a specific type of notice, they are drafted in general terms and would appear to apply to any notice that is governed by the Nonprofit Mutual Benefit Corporation Law.

**The proposed law incorporates the substance of those provisions, with one significant change, as general provisions that would be applicable to all CIDs.** See proposed Sections 4050(d) (proof of delivery by affidavit), 4055(a) (delivery failure).

The exception relates to undeliverable mail: under Corporations Code Section 7511(b), 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 required notice 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. Notice can be delivered to the member at that unit’s address. **Proposed Section 4055(a) adopts that approach.**

### LIMITATION OF ASSOCIATION AUTHORITY TO RESTRICT PROPERTY USE

The proposed law includes an article (commencing with Section 4300) that collects provisions that limit an association’s authority to regulate the use of a member’s separate interest property. For example, proposed Section 4305 guarantees a qualified right to display signs or flags on separate interest property.

The staff has identified two other provisions that should be added to the article:

- (1) *Marketing restrictions.* Existing Section 1368.1 protects a member's right to market the member's interest in the CID. The association may not arbitrarily or unreasonably restrict that right. **The substance of that provision is restated in proposed Section 4325.**
- (2) *Restriction of access.* Existing Section 1361.5 provides that, unless authorized by law, "an association may not deny an owner or occupant physical access to his or her separate interest...." That provision was added to address an issue brought to the Commission's attention early in the study of CID law: a full time occupant of a snow country CID was prohibited from plowing snow leading up to the occupant's home. The reported purpose of the prohibition was to preserve conditions for snowmobiles, but it had the effect of interfering with the occupant's ability to reach her home. **The substance of Section 1361.5 would be continued in proposed Section 4330.**

#### ASSOCIATION EXISTENCE AND POWERS

Proposed Chapter 3 would include provisions relating to the governance of a homeowner association. The first article of that chapter continues general provisions relating to the existence and powers of the association. See proposed Section 4400-4420.

#### BOARD MEETINGS

Existing Section 1363.05 is the "Common Interest Development Open Meeting Act." Though much simpler than the state and local government open meeting laws (Gov't Code §§ 11120-11132 (Bagley-Keene Open Meeting Act); 54950-54963 (Ralph M. Brown Act)), it borrows some language from those laws and has a similar thrust.

The main substantive effect of Section 1363.05 is as follows:

- (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 in closed executive session.
- (4) Require the preparation and availability of board meeting minutes.

Section 1363.05 is continued in proposed "Article 2. Board Meeting" (commencing at proposed Section 4500), with the exception of the definition of "meeting", which has been placed with the other general definition sections.



The proposed restatement of Section 1363.05 makes a number of minor improvements and includes a number of staff notes asking for public comment on substantive issues. The more noteworthy changes and issues are described below.

Note that Section 1363.05 covers some of the same ground as Corporations Code Section 7211. **In order to avoid overlapping authority, the proposed law provides that Section 7211 does not apply to a CID.** See proposed Section 4025. Instead, provisions of Section 7211 that are not addressed in Section 1363.05 have been added to the Davis-Stirling Act. See proposed Sections 4505-4515, 4520(d)-(e). That approach preserves the substance of existing law, without requiring a reader to consult and reconcile two different sources of law.

### **Definition of “Meeting”**

Existing Section 1363.05(f) defines “meeting” as follows:

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

**The substance of that provision is continued in proposed Section 4090, which is located with the other general definition sections.** That has the effect of generalizing the definition beyond the scope of the open meeting provisions. This should be a beneficial change, as it will simplify drafting in other provisions that make reference to board meetings. The staff has searched the proposed law and has not found any situation in which the new definition would be problematic. As new material is added to the proposed law, the staff will continue to check the appropriateness of the generalized definition.

Substantive issues relating to the definition are discussed below.

### *Matters “Scheduled” To Be Heard*

**Proposed Section 4090 does not continue language that limits the definition of “meeting” to a gathering for the consideration of business “scheduled” to be heard by the board.** Strictly read, that language could create an inappropriate loophole. A board could argue that the open meeting requirements do not apply to a gathering of the board to consider association business so long as the matters to be considered are not scheduled in advance. That would be inconsistent with the transparency sought by open meeting laws.

### *Serial Meetings*

The requirement that a meeting be a gathering of directors “at the same time and place” excludes business that is conducted by a series of separate conversations, electronic mail messages, and the like. This is a significant loophole that has been closed in government open meeting law. See, for example, Government Code Section 11122.5(b):

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

**The proposed law includes a staff note asking for input on whether the loophole should be closed.**

### *Committees*

A board of directors may form a committee to exercise powers delegated to it by the board. See Corp. Code §§ 7151(c)(4), 7212. It is not clear that the open meeting requirements would apply to such a committee.

The staff believes that the open meeting requirements should be extended to a meeting of a board-created committee. If openness is called for when a board meets to exercise one of its powers, then openness is also called for when the same power is exercised by a committee.

**Proposed Section 4555 provides that the meeting provisions apply to a meeting of the board or of a committee that exercises any power of the board.** It is drawn from Corporations Code Section 7211(c).

### **Meeting Notice**

Proposed Section 4520 continues the existing meeting notice requirement, with a few minor changes. Noteworthy changes and issues are discussed below.

### *Inclusion of Meeting Agenda*

Existing law only requires that the time and place of the meeting be included in the notice. That is consistent with the Corporations Code, which does not require that a meeting notice state the purpose of the meeting (Corp. Code § 7211(a)(2)), but it is odds with state and local open meeting laws, which do require distribution of a meeting agenda (Gov’t Code §§ 11125(b), 54954.1-54954.2).

If the point of advance notice is to inform the members of a meeting that they may want to attend, then it would make sense to include information about what matters will be discussed at the meeting.

**Proposed Section 4520(a) would require that the notice include an agenda.** A staff note following the section invites input on the merits of the proposed requirement.

Mr. Green supports that change but suggests that the notice should be specific as to the items of business to be considered and should include any related drafts or background material. See Exhibit p. 13. The state agency open meeting law provides one model for this approach, in Government Code Section 11125(b):

The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

**Should the proposed law include language along those lines?** More detail could help to avoid disputes about what the statute requires, but it would also make the law less flexible. We know that CIDs come in many types and sizes and have tried to keep requirements flexible where we can.

#### *Meeting Time and Place Fixed in Governing Documents*

Existing Section 1363.05(g) provides that notice of a board meeting is not required if the time and place of the meeting is fixed by the governing documents. That makes sense if the purpose of the notice is simply to inform as to the time and place of the meeting. But if the notice is expanded to include an agenda for the meeting, then there would be good reason to require notice even if the time and place of the meeting can be determined by reference to the governing documents.

If the notice content is expanded to include the agenda for a meeting, then **the Commission should consider whether to require notice even if the time and place are fixed by the governing documents.**

### *Waiver of Director Notice*

Corporations Code Section 7211(a)(3) provides that notice of a board meeting need not be given to a director who provides a waiver of notice, consents to the meeting being held, or approves the minutes of the meeting, either before or after the meeting takes place. Presumably, this is a device to avoid a challenge to the validity of an action taken at a meeting when a director is not properly notified in advance.

**Proposed Section 4520(e) would continue the waiver provision.**

### *Adjournment to Another Time and Place*

Corporations Code Section 7211(a)(4) provides for adjournment of a meeting to another time and place. **That provision would be continued in proposed Section 4505(b).**

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. Corp. Code § 7211(a)(4).

It isn't clear that Section 1363.05 would require notice to **members** in the case of an adjournment for more than 24 hours. At least one CID practice treatise suggests that notice to members is not required, but probably should be:

Because the objective of the Common Interest Development Open Meeting Act ... is to afford members a reasonable opportunity to attend board meetings, there is no compelling reason why an association should not post a notice of the adjourned meeting (stating the date, time, and location of the meeting to be reconvened) in a prominent location in the common area whenever the adjournment is for more than 24 hours. If absent directors are entitled to notice under the Corporations Code when a meeting is adjourned for more than 24 hours, community association members (who have a statutory right to attend most board meetings) should be accorded similar notification.

C. Sproul and K. Rosenberry, *Advising California Common Interest Communities* § 2.27, at 55 (Cal. Cont. Ed. Bar, 2005).

**The staff agrees.** Proposed Section 4520(d) would generalize the notice required when a meeting is adjourned for more than 24 hours to another time and place:

(d) If a meeting is adjourned to another time and place for more than 24 hours the association shall deliver 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.

### **Recording a Meeting**

Proposed Section 4525 would preserve a member's existing right to attend a board meeting and speak (except with respect to any part of the meeting that is held in closed executive session).

State and local open meeting laws also guarantee the right to record a meeting, so long as doing so does not interfere with the conduct of the meeting. Gov't Code §§ 11124.1(a), 54953.5(a).

Should a similar rule apply to association meetings? The recording of meetings would make it easier for homeowners to document board activity and share information with other association members who were not present at a meeting. On the other hand, recording could have a chilling effect on free and candid discussion at meetings.

Public comment on this issue confirms that it is both important and controversial. See Exhibit pp. 4-8, 13, 15-16. **The issue has been noted for separate study.** The comments that we received on the issue will be considered when it is taken up for separate study.

### **Meeting Location**

Existing statutory law is silent on where a homeowner association 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. 10 Cal. Code Regs. § 2792.20(b).

DRE regulations provide safe harbor rules for the drafting of new CC&Rs. They do not affect CC&Rs drafted before their enactment, or CC&Rs that are amended after the period of developer control. This means that some associations will not be subject to the DRE rule on meeting locations.

**Proposed Section 4530 would codify the substance of the DRE regulation.**

### **Teleconference**

Corporations Code Section 7211(a)(6) specifically authorizes the use of teleconferencing in a nonprofit mutual benefit corporation board meeting.

Government open meeting laws also allow teleconferencing. See Gov't Code §§ 11123(b), 54953(b).

The Davis-Stirling Act does not specifically address teleconferencing, but the language used in Section 1363.05 is not well adapted to the use of teleconferencing.

Section 1363.05(f) defines a "meeting" as "any congregation of a majority of the members of the board **at the same time and place...**" (emphasis added). That could be read to exclude a teleconference, if a majority of the directors are not in a single physical location. That would raise questions about whether a meeting held by teleconference is (a) unlawful, or (b) exempt from statutory open meeting requirements (because no "meeting" is taking place).

The Commission knows from its own experience that teleconferencing can be necessary from time to time to include members who cannot reach the meeting location. That problem may be even more common in a CID that is comprised largely of second homes; some directors may not be able to reach a meeting that is held within the development.

**Proposed Section 4535 adds language specifically authorizing the use of teleconferencing in board meetings.** 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 provision that requires that members be present in the same location. Finally, it states basic procedural requirements that are drawn from the teleconference provisions of mutual benefit corporation law and state and local open meeting laws. Thus:

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) An association 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) A director 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 4535 is comparable to Corporations Code Section 7211(a)(6) and Government Code Sections 11123(b) & 54953(b). See also Section 4090 (“board meeting” defined).

Mr. Green suggests two additional requirements:

- (1) If teleconference is used, the meeting must be recorded.
- (2) If teleconference is used, any member must be provided the means to participate in the meeting by teleconference.

See Exhibit p. 13.

It is not clear why the use of a teleconference should trigger a recording requirement. Recording is not required by the teleconference provisions of the Corporations Code or the government open meeting laws. See Corp. Code § 7211(a)(6); Gov’t Code §§ 11123(b), 54953(b).

In addition, the staff is concerned that the burden imposed by a mandatory recording requirement could deter beneficial use of teleconferencing. **The staff is not convinced of the need for the proposed change.**

Mr. Green’s second suggestion is also problematic. While the policy goal of including all interested members in a teleconference is laudable, Mr. Green’s second proposal could add significantly to the cost and practical difficulty associated with teleconferencing. Again, that could deter beneficial use of teleconferencing. **The staff recommends against expanding the teleconference requirements in this way.**

### **Executive Session**

Proposed Section 4540 continues the provisions of existing law that allow a board to meet in closed executive session in certain specified circumstances.

Existing law **allows** the board to meet in executive session to consider member discipline, an assessment dispute, and to consider a member request for an assessment payment plan.

In addition, a member who is the subject of disciplinary action may **require** that the board consider the matter in executive session and is guaranteed the right to attend that session. These rights apparently do not apply when the board is considering an assessment dispute or payment plan request. They probably

should. As with disciplinary action, an assessment dispute or payment plan request exposes a member to potential embarrassment within the community.

**Proposed Section 4540(b)-(c) would give any member who is the subject of discipline, an assessment dispute, or an assessment payment plan request the right to have that matter considered in executive session and to address the board.**

CID homeowner Melvyn Klein has raised a related concern. He feels that the decision of whether to conduct member discipline in closed executive session should be left entirely to the member (i.e., the board should not have discretion to meet in executive session over the objection of the member who is the subject of the disciplinary proceeding). The member whose privacy is at issue would then choose whether privacy or publicity is more important in the particular circumstances.

Mr. Klein's concern could be addressed by revising proposed Civil Code Section 4540 as follows:

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

(b) The board shall adjourn to executive session to consider member discipline, an assessment dispute, or a request for a payment plan for overdue assessment debt, if requested to do so by the member who is the subject of the matter to be considered.

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

### **Should that change be made?**

### **Board Actions by Written Assent**

Corporations Code Section 7211(b) allows the board of a mutual benefit corporation to act without holding a meeting, if all members of the board assent to the action in writing.

Section 1363.05 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" under Section 1363.05 and would therefore not trigger the various open meeting requirements.



This is an example of the sort of serial communication that is prohibited under the state and local open meeting laws. Gov't Code §§ 11122.5(b), 54952.2(b). If an association board were to use the written assent procedure aggressively it could do much of its business without advance notice to members or an opportunity for members to observe and comment. That seems contrary to the purpose of the open meeting requirements.

However, it may be that the written assent procedure is necessary to facilitate efficient handling of routine noncontroversial business.

**Proposed Section 4545 would continue the written assent procedure.** A note following proposed Section 4090 asks for comment on the policy merits of that procedure.

### **Member Motion at Board Meeting**

Ms. Shaban suggests that a member should be authorized to make or second a motion at an association board meeting. See Exhibit pp. 1-2.

The staff is not aware of any statute or regulation that governs the manner in which motions are made or considered by a homeowner association board (or by the board of a mutual benefit corporation generally).

Without judging the substantive merit of the proposed change, the staff would note that the proposal is probably too controversial for inclusion in the proposed law. **If the Commission agrees, Ms. Shaban's suggestion will be added to the list of substantive suggestions for future Commission study.**

### MEMBER MEETING

The Davis-Stirling Common Interest Development Act ("Davis-Stirling Act") includes two provisions that govern the conduct of a member meeting. See Section 1363(d) (parliamentary procedure) and (e) (notice of matters to be considered).

There are also a number of Corporations Code provisions that govern the conduct of a member meeting in a nonprofit mutual benefit corporation. 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).

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 attached staff draft.** Proposed Sections 4575-4620 set out a complete set of rules for conducting a member meeting in a CID. Those provisions would supersede the comparable Corporations Code provisions. See Section 4025(a)(2).

The Corporations Code provisions relating to proxies and written ballots have not been included. Those provisions are closely tied to election procedures, which will be addressed later in the study.

Specific issues relating to the proposed member meeting provisions are discussed below.

### **Meeting Location**

Corporations Code Section 7510(a) allows a member meeting to be held anywhere, provided that the location is designated in the bylaws. If no location is designated, the meeting is to be held at the “principal executive office” of the corporation.

Proposed Section 4575(c) provides instead 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. That would parallel the rule proposed for board meetings (proposed Section 4530) and the Department of Real Estate Regulation. See 10 Cal. Code Regs. § 2792.20(b). **The staff recommends that approach.**

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 non-resident owners. A meeting in the development itself would at least be convenient to those owners who are resident year-round.

Note too that a CID with a scattered member population could use a mailed ballot in lieu of a meeting (Corp. Code § 7513) or could use teleconferencing to provide satellite locations for participation in the meeting (Corp. Code § 7510(f)).

### **Teleconference**

Corporations Code Section 7510(f) authorizes use of teleconferencing in conducting a member meeting. **Proposed Section 4590 continues that policy,** but

it does so with language that is drawn from the proposed board meeting teleconferencing provision. See proposed Section 4535. Use of the same standards for both types of meetings should simplify compliance with the law.

### **Court Ordered Meeting**

If a regular member meeting or written ballot is not held as required, a member may petition the superior court for an order to compel that the meeting or written ballot be held. Corporations Code Section 7510(c)-(d) provides:

(c) If a corporation with members is required by subdivision (b) to hold a regular meeting and fails to hold the regular meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the formation of the corporation or after its last regular meeting, or if the corporation fails to hold a written ballot for a period of 60 days after the date designated therefor, then the superior court of the proper county may summarily order the meeting to be held or the ballot to be conducted upon the application of a member or the Attorney General, after notice to the corporation giving it an opportunity to be heard.

(d) The votes represented, either in person (or, if proxies are allowed, by proxy), at a meeting called or by written ballot ordered pursuant to subdivision (c), and entitled to be cast on the business to be transacted shall constitute a quorum, notwithstanding any provision of the articles or bylaws or in this part to the contrary. The court may issue such orders as may be appropriate including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice of the meeting.

Part of Corporations Code Section 7511(c) provides a similar rule for a special meeting:

If the notice [of the special meeting] is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

### **Those provisions are restated in proposed Section 4615.**

One provision merits special attention. Corporations Code Section 7510(d) provides:

(d) The votes represented, either in person (or, if proxies are allowed, by proxy), at a meeting called or by written ballot ordered pursuant to subdivision (c), and entitled to be cast on the business to be transacted shall constitute a quorum, notwithstanding any provision of the articles or bylaws or in this part to the contrary.

That provision is restated in proposed Section 4615(e) as follows:

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

The staff believes that the proposed language captures the substance of existing law (except for the proxy provision, which will be addressed later in the study), but the result seems odd. Should the fact that the court has ordered the meeting to be held result in a waiver of any quorum requirement? A staff note following Section 4615 asks whether the proposed revision correctly captures the substance of existing law and whether the waiver of any quorum requirement makes sense as a matter of policy.

Waiver of the quorum requirement might make sense if the focus is on the problem of an obstructionist board (i.e., a board that refuses to hold a meeting in order to block an action that it opposes). In that situation, the quorum waiver helps to facilitate an action that is being improperly undermined by the board. It also serves as a deterrent. A board that refuses to hold a meeting could wind up in a worse position with respect to the action that it hopes to prevent.

Viewed another way, the quorum waiver rule opens a loophole. A board that seeks member approval of an action, but doubts that it can marshal a quorum for that purpose, could refuse to hold the meeting. A complicit member would then petition the court to compel the meeting. If the court orders the meeting, then the quorum requirement is waived by operation of law.

Note that the quorum waiver rule applies to a court-ordered regular meeting, but not to a court-ordered special meeting. The staff note asks for comment on whether that distinction is justified.

#### RECORD INSPECTION

Public comments raise new issues relating to the proposed record inspection provisions. They are discussed below.

### **Access to Membership List**

Ms. Shaban reports that a request for her association's membership list was denied. Instead, the association offered to deliver her letter to the members, without providing her with their address information.

Corporations Code Section 8330 allows an association to offer a reasonable alternative to inspection of the membership list, provided that the alternative would accomplish the purpose of the request in a timely manner. The alternative offered by Ms. Shaban's association is specifically contemplated by the law and seems to be fairly typical.

Newly enacted Civil Code Section 1365.2(a)(1)(I), which becomes operative on July 1, 2006, arguably limits the use of such alternatives. It requires disclosure of the membership list, with one exception. A homeowner may opt out of being included in the membership list. A member who asks to inspect the list can also request that the board deliver materials to any members who have opted out of the list.

Proposed Civil Code Sections 4710(b) and 4715 would continue the new approach, which should substantially address Ms. Shaban's concern.

### **Inspection of Association Correspondence**

Ms. Shaban suggests that a member should be able to inspect attorney letters that contain information related to the member's interest as a member. See Exhibit pp. 2-3. She cites as an example a letter that her association received from a county attorney warning of flood risks.

In analyzing this suggestion, it is necessary to distinguish between correspondence between an association and its **own** counsel and communication between an association and a **third party** attorney (or any other third party, for that matter).

Confidential correspondence between the association and its own counsel is privileged. Evid. Code § 954. See also Code Civ. Proc. § 2018.030 (attorney work product). The member's record inspection right does not apply to material that is privileged. See proposed Civil Code Section 4700(b)(2).

Correspondence between an association and a third party (whether an attorney or not) would not be privileged. However, the existing record inspection provision does not provide for member inspection of such correspondence. That seems to be the real source of the problem in Ms. Shaban's example.

So long as privacy concerns are accommodated, the staff believes that there are good reasons to allow member inspection of association correspondence. This could be implemented by adding the following paragraph to the list of records that are subject to member inspection under proposed Civil Code Section 4700(a):

(13) Official written correspondence of the association, other than correspondence that relates to litigation, the formation of a contract with a third party, personnel matters, member discipline, an assessment dispute, or a request for a payment plan for overdue assessments.

The exceptions in this provision are drawn from the criteria for determining which matters are to be considered by an association board in executive session. Those are matters that the Legislature has already determined should be kept private.

This would be a significant substantive change. The staff is not sure how controversial such a proposal might be. It could be added to the proposed law with a note specifically drawing attention to the change and asking for comment on whether it is appropriate. **Should the staff make that change?**

### **Record Reproduction Fees**

Proposed Section 4720 would continue existing Section 1356.2(c)(4)-(5), which allows an association to charge a fee to a member requesting a record, in order to recoup the reasonable cost of reproduction and redaction of the record.

Mr. Green suggests that the fee should be waived if an association does not maintain its records in a manner that facilitates efficient retrieval and reproduction. See Exhibit p. 14.

Such a rule would encourage disputes over relatively small sums of money. **The staff recommends against modifying existing law on this point.**

### **Time for Response to Request for Documents**

Mr. Green objects to the 10 business days provided, in proposed Section 4705(b), to respond to a request for records prepared in the current fiscal year. See Exhibit p. 14. Such documents should be made available “instantly” because they should be readily available to the association. *Id.*

Many associations are self-managed by volunteers. A volunteer may not be able to drop everything to immediately comply with a record request.

Providing a reasonable time for response is especially important because existing law establishes a small claims court remedy for noncompliance with a records request, which can include a \$500 civil penalty. An unreasonably short response time would probably result in widespread noncompliance with the letter of the law, which would invite litigation over unavoidable minor delays.

**The response time provided in the proposed law seems appropriate.**

### **Simplification of Judicial Review Procedure**

Under existing law, there are two types of court proceedings that can result from a record inspection request: (1) The association may petition for an order setting the request aside. Corp. Code § 8331. (2) The requesting member may petition the court for enforcement of the inspection request. Civ. Code § 1365.2(f); Corp. Code § 8336. That scheme was continued in the previous draft of the proposed law (in proposed Sections 4735 (action to set aside request) and 4740 (action to compel compliance)).

On further reflection, the staff believes that the parallel judicial remedies provided in existing law present an opportunity for simplification. It is not clear that an association would ever need to preempt enforcement by bringing an action to set a request aside. The more efficient approach would be for the association to wait and see whether the requesting member will accept denial of the request. If not, then an action brought by the member should be sufficient to resolve the issue.

**The attached draft does not include the provision for an action to set aside a record request.** Instead, the provision for judicial enforcement has been revised to preserve all of the possible substantive outcomes provided in existing law:

#### **§ 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 court.

(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 the 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.

Those revisions would significantly simplify the proposed law.

## RECORD MAINTENANCE

### **Duty to Maintain**

Corporations Code Section 8320 requires that the board of a nonprofit mutual benefit corporation maintain accounting records, meeting minutes, and the membership list.

**That requirement would be continued in proposed Section 4775. In addition, Section 4775 would expand the list of records type that must be kept.** The expanded list would include (1) the types of records that are subject to



member inspection, and (2) other types of business records that should be maintained by any well run nonprofit organization.

In developing the latter category of records, the staff attempted to identify 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. See, e.g., Walter Grady, *Record Retention*, *Echo Journal*, March 2003. Proposed Section 4775 is generally consistent with that body of advice.

An expanded recordkeeping requirement would probably impose additional costs on some associations. If that makes the proposed section too controversial for inclusion in a project of this type, it could be pared down to include only records that are subject to member inspection or that are required to be maintained under Corporations Code Section 8320.

### **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 hints at an answer, but it is misleading. Existing Section 1365.2(i) sets out periods during which records **must be made available to members for inspection**:

(i) 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 decisionmaking authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently made available.

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 documents listed in Section 1365.2 are subject to specific retention requirements that exceed three years. See, e.g., 22 Cal. Code Regs. § 1085-2 (employment records maintained for four years); 26 C.F.R. § 1.6001-1(e) (federal tax records maintained while material to tax assessment or collection).

In addition, documents that could be relevant in future litigation should be maintained for at least as long as the applicable statute of limitations. See, e.g.,

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

As a practical matter, the governing documents and records relating to their amendment should probably be kept permanently, as they are fundamental to the governance of the association and the rights of members. Title records should also be permanent.

It would be helpful to homeowners if the law were to provide better guidance on the issue of record retention. That could be done in a limited way (dispelling potential misconceptions) or in a more thorough way (providing a comprehensive set of retention requirements). Those approaches are discussed below.

*Limited Approach — Make Clear that Other Requirements Exist*

At a minimum, the staff would recommend that language be added to make clear that the rules for inspection of records do not control how long a record must be retained for other purposes. That would at least put homeowners on notice that other requirements exist. This could be done by amending proposed Section 4700 (which continues the substance of existing Section 1365.2(i)):

4700. ...

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

(1) Any record that was prepared three or more fiscal years prior to the fiscal year in which the inspection request is delivered. This paragraph does not apply to the minutes of a member meeting, a board meeting, or a meeting of a committee that exercises a power of the board. Minutes must be made available for inspection permanently. This paragraph governs the period during which an association shall make a record available for inspection and does not affect any other requirement that an association retain a record.

In addition, it would be helpful to provide Comment language that refers to the most significant retention requirements. For example, the Comment to proposed Section 4775 (which would state the records that must be kept) could be revised to include the following guidance:

4775. ...

**Comment.** ... This section does not specify a period for which a record must be maintained. Each association must make its own determination as to how long a record should be maintained, subject to any applicable legal requirements. Important legal requirements include the following:

- Meeting minutes; retain permanently. See Section 4770(b).
- Other records subject to member inspection; retain for at least three years. See Section 4770(b).
- Payroll records; retain for three years. See 29 C.F.R. §§ 516.5.
- Employment records; retain for four years. See 22 Cal. Code Regs. § 1085-2.
- Federal tax returns; retain while material to tax assessment or collection. See 26 C.F.R. § 1.6001-1.

A staff note following the section could ask for input from practitioners on other retention requirements that should be noted in the Comment.

#### *Thorough Approach – Codify Retention Requirements*

A more helpful approach would be to add language providing a comprehensive and clear set of record retention requirements, consistent with the requirements imposed by other law.

The core record retention requirements would be those that govern any nonprofit corporation (e.g., tax records). In addition, a CID has other responsibilities that may implicate other retention requirements. It owns and maintains real property, which involves records relating to title, property taxation, maintenance, construction defects, and member improvement requests. It may be an employer, with responsibility for records relating to payroll, employment taxes, fair labor laws and litigation, occupational safety, unemployment insurance, workers compensation, benefit programs, and the like. A CID can also operate a small business (e.g., a fitness center, grocery store, restaurant, golf course, etc.), which could trigger regulations that govern businesses generally or a particular business type. The variety of activities that could trigger a record retention requirement make it difficult to do a comprehensive search for applicable requirements.

When faced with such a broad-ranging research task, secondary sources are often very useful. Unfortunately, most secondary sources on CID law and nonprofit corporation governance are entirely silent on the subject of record retention.

Other sources recommend a schedule for record retention, but do so without describing the legal basis of the recommendations. See, e.g., Walter Grady, *Record Retention*, Echo Journal, March 2003. That makes it difficult to determine whether a proposed retention period is based on a legal requirement or is merely advice about what would constitute good management.

As a result, the staff is unsure that it has identified all of the record retention requirements that could apply to a CID. That uncertainty poses a risk. A codification of retention requirements that is incomplete, or that becomes obsolete over time, could do more harm than good.

The risk could be reduced, in three ways:

- (1) *Make clear in the proposed law that other requirements may exist.*
- (2) *Solicit comment from experts on what other requirements may exist.* The staff has already done this to some extent, but the tentative recommendation would provide a broader vehicle for input on the issue.
- (3) *Draft the retention requirements very conservatively.* Most retention requirements are in the range of three to four years. A general retention requirement of four years would ensure compliance with all such requirements.

The principal exception is federal tax records, which can remain material to tax assessment and collection for six years (or in the case of a fraudulent or unfiled return, perpetually). See Internal Revenue Service, U.S. Department of the Treasury, Publication No. 583, *Starting a Business and Keeping Records* 15 (2003).

It would also make sense to retain documents that might be relevant in a latent construction defect case for at least ten years. For simplicity's sake, the proposed law could require permanent retention of those records (along with other records that have permanent practical significance, even if not required by law to be retained permanently).

Proposed Section 4780 implements the approach described above:

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 execution or, in the case of a document that expires or becomes superseded, four years after the document has expired or been superseded.

(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.

(4) A tax return or other tax-related record.

(5) A deed or other record that relates to title of real property within the common interest development.

(6) A record that relates to the design, construction, or physical condition of the common interest development.

(c) This section does not apply to a record that is discarded or destroyed before January 1, 2008.

**Comment.** Section 4780 is new. Subdivision (a) states a default retention period of four years, but makes clear that other law or an association's governing documents may impose a longer retention period.

Subdivision (c) 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 prior to 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).

**Staff Note.** The Commission invites comment on whether the proposed retention periods would be helpful and are appropriate. The Commission also requests information about any other record retention requirement that could apply to a homeowner association.

**The staff is not prepared to recommend proposed Section 4780 as the better alternative, but believes that Section 4780 is more likely to provoke useful comment than the less ambitious approach described earlier.**

#### ANNUAL REPORTS

Existing law requires three different annual reports to the membership:

- (1) Section 1365(a) requires distribution of a pro forma operating budget, from 30 to 90 days **before** the end of the fiscal year. A number of other provisions require that specified information be included in that report. See, e.g., proposed Sections 4035 (name and address of board contact) and 4550(d) (access to minutes);

existing Sections 1363.850 (informal dispute resolution), 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 (alternative dispute resolution), 1378 (architectural review procedure).

- (2) In an association with \$75,000 or more in annual gross income, Section 1365(b) requires distribution of a CPA review of the association's financial statement, within 120 days **after** the end of the fiscal year.
- (3) Corporations Code Sections 8321-8322 require distribution of an annual report, within 120 days **after** the end of the fiscal year.

In addition, any 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 a detailed financial statement to the association. See Section 1365.3.

The staff sees opportunities for simplification of these requirements.

### **Notice of Availability**

Existing law recognizes that there may be members who are not interested in receiving every report. Section 1365(c) allows for distribution of a summary of the pro forma operating budget rather than the budget itself. 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, Corporations Code Section 8321 provides for distribution of notice of the availability of a nonprofit mutual benefit corporation's annual report, rather than the report itself. Again, instructions are to be provided on how to obtain a complete copy of the report at no cost.

**The attached draft generalizes that approach so that it applies to all annual reporting requirements.** See proposed Sections 4800-4830.

Note that an association would also be free to distribute a complete report, rather than a notice of its availability, if that is the better approach for the association.

### **Member Handbook**

Over time, the law has been amended to add several new annual disclosures to the mailing of the annual budget report. That mailing is now a bit of a grab bag. The proposed law would separate the nonbudgetary add-ons into a new type of report, the "member handbook." See proposed Section 4810. This would

not diminish the information available to members, but would simply repackage it into more thematically coherent bundles. 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 may receive.

### **Community Service Organization Report**

Existing Section 1365.3 requires that a community service organization provide a financial report to the association it serves, if it receives 10 percent or more of its revenue from the association or its members. See proposed Section 4110 (“community service organization” defined).

Section 1365.3 requires the preparation of a report that:

... meets the requirements of Section 5012 of the Corporations Code, and that describes in detail administrative costs and identifies the payees of those costs in a manner consistent with the provisions of Section 1365.2. If the community service organization does not comply with the standards, the report shall disclose the noncompliance in detail. ...

It is not clear what is meant by “in a manner consistent with the provisions of Section 1365.2.” Section 1365.2 governs member inspection of association records. It does not include any obvious “standards” that a community service organization would need to follow in preparing a financial report.

The closest thing to a relevant standard in Section 1365.2 would be the provisions that establish exceptions to disclosure for certain types of information (e.g., information that could lead to identity theft or compromise personal privacy). It may be that Section 1365.2 is directing a community service organization not to include such information in its report. If that is the intended meaning, it should be stated more directly.

A staff note following proposed Section 4815 asks for input on this issue.

## **DIRECTOR STANDARD OF CONDUCT**

### **Tort Liability of Volunteer Director or Officer**

Existing Section 1365.7 limits the tort liability of a volunteer association director or officer, provided that (1) the director or officer is acting within the scope of his or her duties, (2) the action is in good faith and was not willful, wanton, or grossly negligent, and (3) specified liability insurance is maintained.

The section includes a number of limitations on its application. It does not apply to the declarant (i.e., the developer), a person who receives compensation

from the declarant, or a person who receives compensation from a financial institution that purchased a separate interest in a foreclosure sale. Nor does it apply to a person who owns three or more separate interests in the development. The section does not apply to a mixed use association (i.e., an association that includes even one nonresidential unit).

**Section 1365.7 is continued in proposed Section 4850.**

### **Conflicts of Interest**

The Commission has received several complaints about board members who contract, as individuals, to provide services to their associations. The Nonprofit Mutual Benefit Corporation Law limits (but does not absolutely prohibit) that sort of self-dealing.

Eventually, the Commission should study whether to recommend different conflict rules for a homeowner association than apply to a nonprofit mutual benefit corporation generally. That question is too substantive for the current phase of the study.

However, the proposed law could serve to educate directors about the requirements of existing law. That could be done in one of two ways:

- (1) By restating the substance of the relevant Corporations Code provisions in the proposed law. **The staff recommends against that approach.** The conflict provisions are part of an article that does not significantly overlap with the provisions of the Davis-Stirling Act. There is no compelling reason to disturb that article.
- (2) By adding a statutory cross-reference. **That is the approach taken in the proposed law.** See proposed Section 4855 (“A contract or other transaction between an incorporated association and a director or officer of the association is governed by Sections 7233 to 7235, inclusive, of the Corporations Code.”).

A third alternative would be to do nothing new in the proposed law. The conflict of interest provisions of the Corporations Code would continue to stand on their own authority.

### MANAGING AGENTS

The existing Davis-Stirling Act includes two provisions that govern the conduct of managing agents. Section 1363.1 requires that a managing agent make certain disclosures to an association before entering into a contract to provide services.



Section 1363.2 requires that certain association funds be maintained in a trust account. It states specific requirements for the maintenance of such an account.

**The proposed law would continue the substance of those provisions in proposed Sections 4900 and 4905, respectively.** In each case, the staff has revised existing law fairly extensively, in order to make it easier to understand. Staff notes following those sections ask for comment on whether any of the revisions would have a substantive effect (which was not the staff's intent).

Business and Professions Code Sections 11500-11506 provide a program for the certification of a "common interest development manager" on the completion of certain voluntary education requirements. Section 11504 requires that a common interest development manager make certain annual disclosures to the association that it serves. It might eventually make sense to relocate those provisions into the Davis-Stirling Act. However, at present the provisions are subject to a January 1, 2008, sunset date. **Pending the results of that review, the staff would recommend that those sections be left in their current location.** The proposed law leaves a gap in the numbering at the end of the managing agent article. The certification provisions could be located there later, if it makes sense to do so.

## DISPUTE RESOLUTION

### Disciplinary Action

Most homeowner associations have authority to enforce the rules and restrictions provided in their governing documents. The Davis-Stirling Act regulates the exercise of that power in the following ways:

- An association may not impose a monetary fine unless it is authorized to do so by the governing documents. Before imposing a fine, the association must adopt a fixed schedule of penalties. Section 1363(g).
- An association may not use nonjudicial foreclosure to collect a purely punitive fine. Sections 1367(c), 1367.1(e).
- A member who is to be disciplined has a right to notice and a hearing before the board. Section 1363(h).

**Those provisions are continued without significant change** in proposed Sections 5000-5015. Staff notes ask for input on a number of minor issues relating to those provisions.

In addition, the Vehicle Code includes a provision regulating an association's authority to have a car towed for violation of parking rules. Veh. Code § 22658. **The proposed law leaves that provision in place (where it is part of a larger statutory scheme) but includes a statutory cross-reference to it.** See proposed Section 5020.

### **Internal Dispute Resolution**

Existing Sections 1363.810-1363.850 require that an association provide an internal dispute resolution process that is available to its members at no cost. Those provisions were enacted on the Commission's recommendation. See 2004 Cal. Stat. ch. 754; *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).

**Those provisions are continued without substantive change** in proposed Sections 5050-5070.

### **Alternative Dispute Resolution as Prerequisite to Litigation**

Existing Sections 1369.510-1369.590 require, in general, that ADR be offered before filing an action to enforce CID law or the governing documents. A number of improvements were made to those provisions on the Commission's recommendation. See 2004 Cal. Stat. ch. 754; *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).

**Those provisions are continued without substantive change** in proposed Sections 5075-5115.

### **Civil Action to Enforce Governing Documents**

Section 1354 provides for judicial enforcement of an association's governing documents. **That section is continued without substantive change in proposed Section 5125.**

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

There are a number of existing provisions that provide for a civil action to enforce a specific CID statutory provision. 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).

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

unavailable except where it is specifically authorized. For example, the Davis-Stirling Act provides that an association is responsible for maintenance of the common area (Section 1364(a)) 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 staff 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, etc.). The staff suspects that the existing hit and miss approach reflects historical inconsistency between different CID reform bills, rather than a conscious choice to limit judicial enforcement to certain limited parts of the Davis-Stirling Act.

In order to provide clear guidance on the issue, **proposed Section 5130 would authorize a civil action to enforce any provision of the Davis-Stirling Act:**

5130. In addition to any other remedy provided by law, an interested person may bring an action in superior court to enforce a provision of this part.

**Comment.** Section 5130 is new.

**Staff Note.** Section 5130 would provide for judicial enforcement of any provision of the Davis-Stirling Common Interest Development Act. This would eliminate the implication that a civil action may only be brought to enforce a provision of this part if there is specific statutory authorization for that action. 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). The Commission invites comment on whether this provision would be problematic.

In addition to that change, it is tempting to try to unify all of the existing judicial enforcement provisions into a single generally applicable provision. However, the existing provisions are substantively different in important ways (e.g., whether they allow for the imposition of civil penalties or an award of attorney fees and costs). Reconciliation of those provisions would result in substantive changes that are probably too controversial to be addressed in the proposed law. **The staff will make a note to study the matter separately.**

## MISCELLANEOUS ISSUES

### **Period for Member Reversal of Operating Rule**

Under existing Section 1357.140 (continued in proposed Section 6120), the members of an association have 30 days after adoption of an operating rule to submit a request for a special meeting to reverse the rule change. Ms. Shaban suggests increasing that time period. See Exhibit p. 2.

The 30 day period was the subject of specific legislative attention during the process of enacting the rulemaking provisions. Those reforms were enacted in 2003. See 2003 Cal. Stat. ch. 557. Barring evidence of a significant problem, **the staff would recommend against tinkering with such recently established law.**

### **Door Knockers**

Existing law limits an association's ability to restrict certain types of noncommercial displays on a member's separate interest property. See Section 1353.6 (continued in proposed Civil Code Section 4305). Ms. Shaban suggests that the scope of that provision should be extended to protect an owner's choice of door knocker hardware. See Exhibit p. 1.

While it is understandable that a homeowner might object to such a degree of control by an association, **the proposed change seems inappropriate.**

Section 1353.6 protects actual and symbolic speech: signs, posters, flags, and banners. By contrast, a choice of door knocker hardware raises purely aesthetic considerations.

### **Formulation of Board Policy**

CACM suggests that it might be helpful if boards were required or encouraged to adopt formal policies on major governance issues. See Exhibit p. 5. Its letter provides a sample policy regarding the conduct of board meetings (at Exhibit p. 6), and an outline of other topics that should perhaps be addressed in policy documents (at Exhibit pp. 9-10). **The staff will note this suggestion in the cumulative list of topics for eventual consideration in connection with the study of CID law.**

Respectfully submitted,

Brian Hebert  
Assistant Executive Secretary

Date: February 23, 2006

To: California Law Commission

From: Janet Shaban, Ph. D., Woodside (Sacramento, California, CID) Homeowner

Subject: Memorandum 2006-4

4090. "Board meeting."

This requirement would mean that "business that is conducted by a series of separate conversations, electronic mail messages, and the like" would be prohibited. The key is "business that should be conducted in the open is not discussed privately." If the matter is one that should be discussed openly, in the presence of association members, then the matter should not be permitted to be private, whether contact occurs in face-to-face contact, via telephone or e-mail, etc.

One concern I have is with some board members' excluding others while meeting as a minority. If they meet as a minority, their meeting isn't regarded as a "meeting." Hence members A, B, and C could meet, then A, B, and D, perhaps D and E. F and G aren't included. Yet there has been, technically speaking, no board meeting.

4305. Noncommercial display

I ask for the addition of two words, which I have italicized: "(a) . . . 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, banner, or *door knocker* within a member's separate interest or exclusive use common area." (Alternatively, the architectural section might include reference to the allowance of door knockers.)

4620. Notice of board meeting

Yes, the notice of a meeting should include the meeting's agenda, whether the meeting is one regularly scheduled or not.

4625. Board meetings open

At the January, 2006, Woodside board association meeting a homeowner asked if only the Woodside board could make a motion. "Yes," the board president replied. I asked if the *CC&Rs* so specified. A board member said she would ask the Woodside attorney's opinion. (Another board member explained that only board members could make motions since the meeting was a board, not an association, meeting. I asked when there was an association meeting. Only once a year, at the annual election, when the election is the only business at hand.)

At the February 21, 2006, board association meeting the board member reported the attorney

concluded with the president—no motions from members—and referred to 1363.05—“The board of directors of the association shall permit any member of the association to speak at any meeting of the association or the board of directors, except for meetings . . . held in executive session. A reasonable time limit . . . to speak . . .” I asked if the attorney had provided a rationale for the decision that only board members could make motions. The answer was that he could be consulted further for “hundreds of dollars.” The association manager then announced California law specifically prohibited association members, those not on the board—mere rabble?—from making motions. I asked if an association member could request a board member to make a motion. The answer was yes, though the request might not be answered in the affirmative. The board member providing this answer smiled as she said this. I would like to see language that permits association members the right not only to speak but also to make and second motions at board association meetings.

The board member who told me the monthly meetings were board rather than association meetings informed me that homeowners did not have to be permitted at the monthly association board meetings! To her credit, she did express interest in seeing a copy of California laws pertaining to CIDs.

Yes, meetings should be recorded and permanent records kept.

#### 4655. Application of article

“A meeting of a committee that exercises a power of the board”—same provisions apply as apply to board.

Oh, yes, please. Presently the only committee at Woodside that has its meeting time announced (sometimes) is the architectural committee’s—though its agenda is not announced. It should be.

#### 6120. Reversal of rule change by members

Are association members able to make a written request only within thirty days after the general notice of the rule change or enforcement of the existing rule? I’m thinking of a situation where the rule might not be seen as problematic until more than thirty days have passed. Then what? Perhaps sixty days would be more reasonable.

#### 4700. Scope of inspection rights

I asked to see the Woodside membership list and was told my request had to be approved by the Woodside attorney. The reason for my request was that I wanted to contact people like me, people who had been told they had to remove their door knockers (even though there was no rule prohibiting door knockers). My request was denied. I was told Woodside would contact these people for me. Recently a homeowner wanted a membership list so that she could contact people like her, people who had been flooded at Woodside, so that she could inform them of a flood

support group. Her request was denied. I would say both of these requests were “related to the requesting member’s interest as a member.”

Homeowners should have access to attorneys’ letters that contain information relevant to their, the homeowners’, concerns. Had residents of Woodside known of county attorney Gregory O’Dea’s letters warning Woodside of its continued vulnerability to flooding and of Woodside attorney Daniel P. Whaley’s request for a letter that omitted mention of “flood risks to Woodside,” they might have taken cautionary measures prior to being flooded—another flood in a series—in December, 2005. I’m proposing that homeowners be notified of the existence of such correspondence and provided, if they so request, the right to inspect and copy it.

**LETTER FROM CALIFORNIA ASSOCIATION OF COMMUNITY  
MANAGERS (APRIL 21, 2006)**

April 21, 2006

Mr. Brian Hebert  
California Law Revision Commission  
4000 Middlefield Road #D-1  
Palo Alto, CA 94303-4739

*Sent Via Email*

Dear Brian:

Re: CLRC Memorandum 2006 – 04

Thank you for the opportunity to respond to the CLRC's Memorandum that relates in part to recording of board meetings.

CACM conducted a survey of its members and volunteers specifically related to a member taping meetings of the Board. While this is not intended to be all inclusive, the following comments generally represent the theme of responses we received concerning the issue. CACM has provided additional comments at the end of each response for the consideration by the CLRC. Though CACM is not taking a position on recording as of yet, we do believe that it is important to recognize the need to allow each board to set policy in order to most effectively serve its own association.

***Response #1***

“As an attorney serving CID's for the last 20 years my thinking has evolved over the years. I firmly believe that developing a culture of transparency in the operations of the association is the best way to avoid controversy. When owners feel (often unjustly) that things are “secret” they tend to react badly. Beyond proper executive sessions, the owners should be given every reason to believe that the Board and management have nothing to hide. Perception is reality.”

“When it comes to taping meetings, in my opinion the Chair of the meeting has the authority to allow it or not. I typically advise Boards to adopt a meeting policy (sample attached), that covers, among other things, taping. Allowing the Chair to decide provides flexibility. If the taping is being done for purposes of harassment, interferes with the orderly process of the meeting, or certain members have a legitimate privacy right to protect (such as the police officer example), the right to tape can be denied.”

“And, don't forget, taping can be a very effective way to stop abuse by owners at Board meetings. I have often advised a Board to videotape meetings where an owner has had a history of being rude and abusive during Board meetings. It's a very effective tool in “chilling” abusive behavior by owners.”

**CACM Comment:** As an organization whose membership manages thousands of



community associations in California, we recognize and support the important concept of transparency in community associations. The difficulty is the balancing act – balancing the needs of all owners versus the one or two that “want it their way.”

We do support the concept of proper governance in CIDs, wherein the board is the corporate entity that should create policy. In other words, volunteer directors must define a set of concepts (based on DS Act, their governing documents, etc.) and principles that provide a complete framework for efficient, focused and productive carrying out of the task of governing the CID. Doing so enables them to experience true accountability. Because directors are held to a much higher standard of behavior and fiduciary responsibility than the non-elected owner, they must have the authority to make decisions and be given the protection afforded under the Business Judgment Rule. A sample governance policy on taping meetings is attached for your review as Addendum A.

CACM suggests the CLRC consider having a discussion regarding the need to encourage CID boards to publish a comprehensive list of policies that conform to existing law and their governing documents. Attached as Addendum B is a list of sample policies CID boards should adopt if relevant to their community.

### ***Response #2***

“At all the communities I’ve managed, up to [association name omitted] taping has been under the auspices of the recording secretary. Communities have varied in the time period that they save the tapes. In all cases, the tapes have been available for folks to listen to without having copies available for them to take with them. In all cases, taping by private parties has been prohibited.”

“Currently at [association name omitted] the Board meetings are televised live and have been for years. Obviously, recordings of the meetings by someone at home can be done. The A/V Committee makes a DVD of the meetings and they are available for check out by someone who did not have a chance to see it live or tape it.”

“Yes. We have had some embarrassing moments. Thirty days ago a Board member told another one that the next time he comes to a meeting that he ought to sit in the back row with a dunce cap on. Yes. An ‘independent’ newsletter has transcribed comments, from time-to-time, to appear in their periodical.”

“With all of that, I’m not sure why we want to fight the trend. With modern communication technology, the practice will become more and more frequent. I have a philosophy of ‘cooperating so you can control,’ which I learned in dealing with the press. They are going to get a story so providing the facts is ..., better than saying ‘no comment’ or resisting. I do believe that there ought to be policy that private tapings are prohibited but making the public tapings available is not always a bad thing.”

**CACM Comment:** This is another example of the balancing act each association must keep in mind. The procedure put into place at this association recognizes the need for transparency, recognizes how technology requires policy changes and reduces the

chilling and deposition like atmosphere of taping by an individual.

***Response #3***

“I believe that taping a board meeting is not in the best interest of the community. The only thing that taping can accomplish is another way to ‘catch’ someone attempting to do the best job they can. As long as we have volunteer board members, there will be guffaws and probably more misstatements than we like, but nevertheless, it is about governance of a community and holding people to a ‘deposition’ like atmosphere does not engender trust and faith.”

“The loser in all of this is the homeowner who only wants to pay a reasonable amount of maintenance fees and live his life, and maybe, just maybe, we can convince him to serve a term on the board. Although he may begin his service with good intentions, he will be tape recorded, challenged every step of the way and will not be able to be a productive board member because of all the ‘empowerment to the homeowner’ legislation.”

**CACM Comment:** Our members are expressing grave concern over the lack of volunteers stepping forward to govern CIDs. For example, the inability to achieve a quorum at member meetings to elect directors, the reluctance of many volunteer directors to assess owners as required by Civil Code Section 1365 because they “don’t want to be the bad guys,” more legislative mandates every year, and threats against board members are being perceived as significant deterrents by the volunteer directors.

We refer the CLRC to an article in the Los Angeles Times on April 3, 2006, by Daniel Yi, relating to threats and abuse against volunteer boards. Adding mandatory tape recording may only serve as one more deterrence to step forward to volunteer as well as increase expenses to the community.

***Response #4***

“Recording of meetings would bring us closer to the ‘governmental agency’ realm rather than the corporate realm. My preference is not to allow taping of meetings: too easy to take something out of context; alteration of the tapes; inability to hear everything without microphones; etc. If push comes to shove and taping of meetings is allowed, it will lead to another managerial nightmare of tape storage, retrieval of tapes, being asked to do research from the tapes, etc., etc. The next question is why would taping be necessary? If the minutes are accurate and reflect the ACTION of the Board, this is the official corporate record and the tapes become superfluous.”

**CACM Comment:** As the CLRC knows, minutes, along with other significant records must be made available to all owners within a specified time frame. If consideration of mandated recording of meetings occurs, additional costs via increased assessments could now be incurred by the association members. Currently and in many cases, the manager takes and transcribes the minutes as part of their contract services and then provides the draft to the board for review and acceptance. There is no extra fee to take minutes.

Increased costs could potentially include the necessity of hiring a professional recording

secretary, transcribing every single word stated by the board, and then maintaining tapes for record keeping purposes. If an owner wants to obtain an actual “copy” of a previously taped meeting, several questions arise as to the costs and monitoring of the duplication of the tape. In this age of sophisticated technology, it is easy to manipulate photos, recordings, and many other forms of records. Could minutes of the taped meeting noting action taken by the board suffice as the corporate record instead of adding additional administrative costs and potential legal costs to “review, store, retrieve, etc.” tapes of meetings?

***Response #5***

“The minutes are to be a record of Board decisions, actions, resolutions, reports, requests from homeowners and any voting by the Board that goes along with these items. The minutes are not to record the back and forth ‘he said- she said’ that goes on either during or prior to any Board action. “

***Response #6***

“Since 9/11, Sarbanes Oxley and Katrina, Americans are sensitive to open governance, and suspicious of those interest groups that want to protect the privacy of contractual relationships, such as the management and legal counsel relationships to CID’s. Shedding the light of day on proceedings is a kind of group therapy for the expulsion of past sins, and the “gotcha” syndrome that indicates this is just a ‘sign of things to come’.”

***Response #7***

“While managing a very large community association in [name of community omitted], this was a huge issue and it is in litigation. The Board has an action against the ex-president who insists it’s his right to tape. He tapes all meetings, including committee meetings (only exception, Executive Session).”

“The Board was advised to make and read a policy stating that taping the meetings was prohibited. They did. This didn’t matter, he did it anyway. They went so far as to call the Sheriff to remove him. He wouldn’t budge. Meetings were cancelled and business was backed up.”

“The homeowners were upset because he used the information on the tapes, took it out of context and sent newsletters to residents in his delegate district using the information. More than likely, it wasn’t positive information he was distributing.”

“We had a several law enforcement officers (owners) who did not want their faces shown much less their addresses recorded or published. In fact, one officer stood with her back in front of the camera when she spoke. She is a valued committee member and they needed her but her fear held her back many times. Several years ago, this association hired an attorney specializing in constitutional law. In essence, this community would be actively against taping meetings.”

**CACM Comment:**

This response exemplifies the chilling effect of taping as well as the abuse that can occur

when taping is done on an individual basis rather than allowing the board to set policy based on the community's unique needs.

***Response #8***

“I too have had historical experience with an owner taping meetings after the President announced several times throughout the meeting that the Association did not allow such taping. It may come as no surprise that the tape was edited by the member and used during a pending lawsuit between the member and the Association. Multiple witnesses were called at great expense during deposition to defend against the edited version of the tape and the Association in the end, prevailed.”

“Although taping will chill other members from speaking as many won't speak if the taping is known, it's generally not the actual taping of the meeting that is dangerous, it's what enterprising, techno guru members can do to 'cut and paste' the tape that causes me great concern.

**Conclusion**

CID Boards are accountable to a defined ownership. *The board's job is to govern their community.* Leadership, effective policy making, delegation of authority (not responsibility) and the overall role of a fiduciary is the real job. The board is the link between the owners and the organization and utilizes the necessary resources to implement their decisions. The resources are other volunteers (i.e. committees), and third party contractors which include professional community management, legal counsel, risk management professionals, etc. that implement to directives of the board.

Should an effort be made to legislate the recording of meetings of volunteer directors, CACM would strongly encourage the CLRC to consider putting sufficient protections in place for abuses of the practice by individuals. We also suggest that the CLRC investigate and discuss the potential deterrent to volunteer directors obtaining insurance to protect them against the potential negative impact on Directors' and Officers' liability insurance policies and the issuing insurance companies, who might be obligated to respond and defend lawsuits as described in Response #8.

Thank you again for the opportunity to offer our insights.

Very truly yours,

/S/

Karen D. Conlon, CCAM  
President

## ADDENDUM A - SAMPLE

### WE'RE THE BEST HOMEOWNERS ASSOCIATION Policy for Homeowner Participation at Meetings of the Board of Directors

Adopted April 2006

At a duly noticed Board meeting on April \_\_\_\_, 2006, after providing members with notice of the proposed policy as required by Civil Code §135.7.130, the Board of Directors adopted the following policy regarding homeowner participation at meetings of the Board of Directors.

1. **Business Purpose.** Meetings of the Board of Directors are for the purpose of addressing and conducting Association business. While members are invited and encouraged to attend all Board meetings, members do not have the right to disrupt or interfere with the orderly process of the meeting. This policy is intended to clarify the members' rights to attend and speak at Board meetings.
2. **Agenda Items.** The Board has discretion to establish the Agenda. For example, the Board may include as an agenda item the matter requested by a member, or may defer it to a subsequent meeting. The Board may also deny a member's request to place an item on the Agenda if the item does not constitute legitimate Association business or has been previously addressed and disposed of by the Board of Directors. During the meeting, a member may speak to an item on the Agenda if recognized by the chair of the meeting, and if such participation is consistent with the orderly process of the meeting.
3. **Homeowner Forum.** In accordance with Civil Code Section 1363.05, the Open Meeting Act, any member of the Association may speak at any meeting of the Association or the Board of Directors, except for meetings of the Board held in executive session. The Board provides for a time for members to speak during the "Homeowner Forum." Reasonable time limits may be placed on the time each speaker has to speak, at the Chair's discretion.
4. **Video/Audio taping.** Tape recording or videotaping of any Board meeting, by the Board or a member, shall be permitted only if such taping is approved by the Chair of the meeting.
5. **Courtesy.** All attendees, including Board members, shall at all times be respectful in communicating their positions and views. Personal attacks and threats will not be tolerated. The chair of the meeting, and/or a majority of the Directors, may vote to exclude any attendee from the meeting for a violation of this policy, and/or adjourn the Board meeting to another time or place and exclude the member from attending the continued meeting.

# **ADDENDUM B**

## **Board Policies and Resolutions**

- Media relations
- Oversight of vendors and projects
- Emergency authority Including: Repairs, Mold/hazardous materials
- Adoption of annual administrative calendar
- Adoption of Annual maintenance/operations calendar
  
- Financial policies that include:
  - Investments
  - Purchasing
  - Board spending limits
  - Ratification of emergency actions
  - Bidding and contracts
  
- Risk management including:
  - Proper addendums to contracts
  - Community facility use agreements
  - Additional insured endorsements
  - Certificates of insurance
  - Safety meetings
  
- Communication policies including:
  - Email
  - Written correspondence
  - Web site protocols
  - Identification of the spokesperson for the community
  - Newsletter/magazine/television article guidelines
  - Program, advertising and censorship protocols
  
- Board Meeting Conduct Rules including taping of board meetings
  
- Full Board support of Board decisions – the “One Voice Policy”
  
- Development of a business Plan and Long Range Strategic Plan
  
- Resolution Notebook with all resolutions codified and searchable via keyword search
  
- Record Retention Policy
  
- Reserve Funding Level Policy
  
- Human Resources including position descriptions, employee handbook

- Board Succession Planning
- Disaster Preparedness
- Contact information for all residents, including day, evening phone numbers, email, emergency and family member contact information
- Retention of all legal opinions - organized and categorized
- Proper Record keeping
- Policies adopting the statutory requirements
- Election Procedures/Historical Records of Elections
- Policies regarding Insurance Coverage, including:  
Specific amounts and types of insurance coverage required/desired by Association  
Vendor insurance requirements
- Operational Policies and Procedures and Rules of the daily operation of the corporation's business

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**ELECTRONIC MAIL FROM HOWARD GREEN (APRIL 23, 2006)**

Hi - resending my earlier e-mail requesting discussion of section 4145.  
I saw NO response from you, so perhaps it got lost in the mail.  
Or perhaps my "form" was not correct -- if so please advise how to submit for public comment and discussion.

I am taking the time now to add several comments where the Staff asked for input within -04.

TIA Howard Green 508 - 945 - 4645

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&4145. Adequacy of the definition of **Governance Documents**:

Section 4145 fails to **enumerate** sufficiently the range of documents which could easily qualify:

The phrase "*and any other document that governs the operation of the CID or its association*" is too VAGUE.

While totality may never be achieved, the following are prime candidates:

Any / ALL of those listed in Chapter 5 (Article 1-7) of this Revision

Why is there NO specific reference to the FOLLOWING Types of Documents which frequently exist, carry authority, etc

Policies, Practices & Regulations of the CID

Approved & Draft Minutes of the Board of Directors and Committees of the CID

Contract provisions between the CID and any Management Firms (dealing often with delegation of powers)

**Lists of Officials necessary to understand and interact with Governing Officials**

Rosters of Officers (elected & appointed) incl addresses, phones, e-mail

Roster of Management Level Employees & Professional Consultants to the CID

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&4620(a)      Agenda to include Details and Support Materials

It is important that the Agenda not be limited to broad topical headings, but specific line items and enough detail so that a reasonably knowledgeable person can decide if they wish to provide input. This means that draft proposals, background information, etc should be attached to the agenda.

See related comments under 4705

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&4625            Recording of the Meeting

YES            Suggest that a maximum of **no less than 4 Video Recorders be allowed**, and unlimited personal Audio Recorders. As a professional video operator, one can capture meetings well with “locked down” cameras, and with hardly any disruption from camera action. Digital video cameras now are in the \$500 + range and can easily be linked together for a decent record of the meeting.

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&4635            Teleconference Meetings

Should a teleconference meeting be held, then a master recording must be maintained by the Association as a business record and reproduced for any requesting member within the same document production times provided elsewhere.

In addition, any Member of the Association, by prior general application, may be included in all such hookups, and shall bear no costs if he provides a local telephone number for such tie-in.

Alternative technologies, such as Internet Streaming, may be employed in a similar manner.

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&4705 Document Delivery Timing

The 10 day rule should NOT run for “current documents”:

“Instant availability” should be provided for requests of items prepared within the last two weeks, or that are requested “in advance”. These would include agendas, meeting packet materials, minutes, etc. Why should any delay be permitted for routine items?

If one wanted to protect against unreasonable demands, then perhaps a response standard could be established of 10 minutes per page of a document, but how can any serious delay be allowed for a meeting handout, prepared the day before a BoD gathering, and made available only to the Directors?

As part of this concept, every document being discussed or provided to the BoD as background, should be part of a packet available either by mail, e-mail, pickup at the “office”, or at the meeting site. Treasurers’ who walk in to meetings with financial materials for approval, without prior distribution for examination, should be censured. Therefore it may be appropriate to require PRIOR or EARLY disclosure of certain defined documents prior to being submitted for approvals.

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&4720 Fees for Copy and Redaction Services

The association shall endeavor to maintain records in a manner that allows inspection and / or copy services to be performed with the minimum reasonable costs.

Every organization is expected to have a suitable records retention system to support their business needs. A requesting party shall not be burdened by retrieval fees where records have not been maintained chronologically by type of document.

Any records originally created as electronic documents will be retained both in paper and electronic formats, and the requesting party shall have the option as to the type of copies to be provided.

The association shall endeavor to separate redactable information identified in 4710 on paper and in electronic records, in a manner that subsequent manual effort is minimized or eliminated.

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end of this message

**ELECTRONIC MAIL FROM NORMA WALKER AND CAROLE  
HOCHSTATTER (APRIL 26, 2006)**

To: California Law Review Commission  
Comments for hearing on April 27, 2006  
Statutory Clarification and Simplification of CID Law

From: Norma Walker, Carole Hochstatter

We appreciate Janet Shaban's comments and suggestions which gave us pause! We agree that any member that requests an executive session because of discipline should have the option of electronic recording. The member is at a disadvantage without the recording as one listener rather than many. A solution begs to be found to address the loophole in the homeowner association "open meeting act."

We as members present at many meetings of our association are aware that minutes sent to homeowners did not reflect all motions carried. When a member requested a correction to the minutes the board [agreed] to the correction; however, the correction was not made for (4) four months. Omissions from our association minutes include: (2) two directors resignations, a call for volunteer directors replace vacancies, vendors given fee increases, and board meetings without notice, and board budget motions without notice. It took a complaint to the Attorney General before our association delivered the 2006 budget to the members, and to date the response to explain why to the Attorney General has not been made, or SENT.

Volunteer boards have a fiduciary obligation to be transparent to the association members. All financial decisions that are not handled public are suspect.

When volunteer boards of directors treat codes, and CC&R's as "**suggested behaviors**"\_ it leads to managing the association as if it were the board's "Plantation."

We will comment on the election issues when it is an agenda item.

Thank you for the opportunity to make/send comments.

**NORMA WALKER**

## **ELECTRONIC MAIL FROM JANET SHABAN (APRIL 26, 2006)**

Subject: Corrected First Supplement to Memo 2006-4 (Statutory Clarification and Simplification of CID Law: Public Comment)

Date: April 26, 2006  
To: California Law Commission  
From: Janet Shaban, Ph. D., CID homeowner (Woodside Association, Sacramento, California)

Subject: First Supplement to Memorandum 2006-4 (Statutory Clarification and Simplification of CID Law: Public Comment)

### Meeting Recording

I favor alternative #1: Recording guaranteed: "A member may record a board meeting, other than any part of the meeting held in executive session. The board may set reasonable limitations on the manner in which recording is conducted."

I favor the same recording allowance for committee meetings. (A rules hearing committee meeting, that is, a hearing to determine if someone has violated a rule, comes notably to mind.)

### Executive Session

I agree with Ms. Klein, that "a board could close [member discipline] proceedings in order to shield its actions from the scrutiny of other members." Members should be allowed to choose whether to have their "discipline"—might there be a better word?—proceedings private or public.

I therefore support the change in 4640 (a), that is, the elimination of "member discipline, an assessment dispute." No longer would the board be entitled to adjourn to executive session.

Discipline—"Punishment inflicted by way of correction and training"—does imply the member is guilty, when in fact she might be innocent.

### Member Motion at Board Meeting

I asked that members be allowed to make and second motions at association board meetings. Do people anticipate such a privilege would be too controversial? If so, put it on the "list of substantive suggestions," please. Put it under "freedom of speech" or "let them eat cake."

### Access to Membership List

Yes, if 4710(b) and 4715 require (and I trust Mr. Hebert) "disclosure of the membership list," the exception being the homeowner who wishes not to be on the list, who can be contacted via delivery of materials by the board, is fine with me,

though I think the delivery would more likely be made by the association management.

#### Inspection of Association Correspondence

Had Woodside association members been able to see the county attorney's letter that warned of Woodside's continued vulnerability to flooding (and his reference to the Woodside's attorney request that the county attorney omit mention of this risk), they might have profited by this information. Mr. Hebert understands that such correspondence would not have been privileged and yet the current record inspection provision in the law does not provide for member inspection of such correspondence. I would indeed appreciate the addition of the right to examine and copy official written correspondence to Civ. Code Section 4700(a)– "(13) Official written correspondence of the association, other than correspondence that relates to litigation, the formation of a contract with a third party, personnel matters, member discipline, an assessment dispute, or a request for overdue assessments."

Woodside was, had been, or would be—I don't know the events' timing—involved in litigation with the county. (I understand Woodside held the county responsible for Woodside's being flooded.) I gather association members would have been able to read the county attorney's letter only prior to litigation's occurring or after its concluding. Please correct me if I am mistaken.

I begin to think that if a people live in a CID, they should be on the board, so that, if, for no other reason, they might be informed, which can mean knowing what others should and would like to know but do not and cannot. This bothers me.

#### Noncommercial display

I do object to being told to remove the knocker that had hung on my door without comment for over fifteen years, not because the demand reflected "aesthetic control by an association"—control, yes, aesthetic, no—but because no rule prohibited or prohibits door knockers and yet I was found guilty of a rule violation. When my attorney argued on my behalf, the board, or rather, one pivotal person, gave reasons, heretofore untold, for door knockers not being allowed. The "reasons" were manufactured. They lacked credibility. These are the behaviors I find objectionable.

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## PROPOSED LEGISLATION

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

4 \_\_\_\_.

5 For ease of reference, material that is new or significantly different from a previous draft has  
6 been shaded with a grey background.

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

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

### PART 5. COMMON INTEREST DEVELOPMENTS

#### CHAPTER 1. PRELIMINARY PROVISIONS

##### Article 1. General Provisions

###### § 4000. Short title

14 4000. This part shall be known and may be cited as the Davis-Stirling Common  
15 Interest Development Act.

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

###### § 4005. Effect of headings

18 4005. Division, part, title, chapter, and article headings do not in any manner  
19 affect the scope, meaning, or intent of this part.

20 **Comment.** Section 4005 continues former Section 1350.5 without substantive change. It is a  
21 standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code §  
22 4.

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

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

29 **Comment.** Section 4010 is new. It is a standard provision found in many codes. See, e.g., Bus.  
30 & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a); Veh. Code § 2. See also  
31 Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of  
32 amended statutory provision). The last clause makes clear that a statutory reference to a provision  
33 within this part includes a reference to the former law from which it is drawn. Cf. Gov't Code §  
34 9604 (reference to previously existing provision deemed reference to restatement or  
35 continuation).

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

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

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

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

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

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

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

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

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

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

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

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

#### 44 § 4015. Application of part

45 4015. (a) This part applies to a common interest development.

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

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

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

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

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

4 **§ 4020. Nonresidential development**

5 4020. (a) The following provisions do not apply to a common interest  
6 development that is limited to industrial or commercial uses by zoning or by a  
7 declaration of covenants, conditions, and restrictions that is recorded in the official  
8 records of each county in which the common interest development is located:

9 (1) Section 4025.

10 (2) Section 4620.

11 (3) Article 7 (commencing with Section 4800) of Chapter 3.

12 (4) Article 5 (commencing with Section 6100) of Chapter 5.

13 (5) [Subdivision (b) of Section 1363.]

14 (6) [Section 1365.5.]

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

16 (8) [Section 1366.1.]

17 (9) [Section 1368.]

18 (10) [Section 1378.]

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

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

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

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

27 4025. (a) An association that is incorporated is governed by this part and by the  
28 Corporations Code, except that the following provisions of the Corporations Code  
29 do not apply to an association:

30 (1) Section 7211 of the Corporations Code.

31 (2) Sections 7510 to 7512, inclusive, of the Corporations Code.

32 (3) Chapter 13 (commencing with Section 8310) of Part 3 of Division 2 of the  
33 Corporations Code.

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

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

38 **Comment.** Section 4025 is new.

39 The provisions referenced in subdivision (a)(1) are superseded by Sections 4505-4515,  
40 4520(d)-(e).

41 Subdivision (a)(2) continues the substance of former Section 1356.2(m) without substantive  
42 change, except that Corporations Code Section 8332, 8334-8338 are also superseded.

1 The chapter cited in subdivision (a)(3) is superseded by Sections 4700 to 4830.  
2 Subdivision (b) makes clear that this part may apply specified provisions of the Corporations  
3 Code to an association that is unincorporated. See, e.g., Sections 4405(a)(2), [6120(d) & (f)].  
4 See also Section 4080 (“association”).

5 **§ 4030. Construction of zoning ordinance**

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

11 **Comment.** Section 4030 continues former Section 1372 without substantive change.  
12 See also Sections 4100 (“common interest development”), 4125 (“condominium project”),  
13 4175 (“planned development”), 4190 (“stock cooperative”).

14 **§ 4035. “Delivered to the board”**

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

20 **Comment.** Section 4035 is new. It provides a standard rule for delivery of a document to the  
21 board.  
22 See also Sections 4080 (“association”), 4085 (“board”), 4170 (“person”).

23 **§ 4040. “Individual notice”**

24 4040. (a) If a provision of this part requires “individual notice,” the notice shall  
25 be delivered to an identified person by one of the following methods:

26 (1) Personal delivery.

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

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

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

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

37 **Comment.** Section 4040 is new. See also Sections 4080 (“association”), 4150 (“governing  
38 documents”), 4160 (“member”).

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

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

5 **§ 4045. “General notice”**

6 4045. If a provision of this part requires “general notice,” the notice shall be  
7 provided to all members by one or more of the following methods:

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

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

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

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

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

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

20 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),  
21 4810 (“member handbook”).

22 **§ 4050. Time and proof of delivery**

23 4050. (a) This section governs the delivery of a document pursuant to this part.

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

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

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

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

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

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

38 **Comment.** The first clause of subdivision (b) of Section 4050 continues part of the substance  
39 of former Section 1350.7(b)(2).

40 The second clause of subdivision (b) and paragraphs (b)(1)-(3) are drawn from Code Civ. Proc.  
41 § 1013(a).

42 Subdivision (c) continues part of the substance of former Section 1350.7(b)(3).

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

1 **§ 4055. Delivery failure**

2 4055. (a) If a notice to a member is returned by the United States Postal Service  
3 marked to indicate that the United States Postal Service is unable to deliver the  
4 notice to the member at the given address, the association shall address any future  
5 notices to that member to the address of a separate interest owned by the member.

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

10 **Comment.** Section 4055 is new.

11 **§ 4060. Approved by the board**

12 4060. If a provision of this part requires that an action be approved by the board,  
13 the action shall be approved or ratified by the vote of the board or by the vote of a  
14 committee authorized to exercise the powers of the board, pursuant to Article 2  
15 (commencing with Section 4500) of Chapter 3.

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

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

19 **§ 4065. Approved by a majority of all members**

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

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

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

30 **§ 4070. Approved by a majority of a quorum of the members**

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

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

41 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 the substance of former Section 1351(a).

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 Section 4080 (“association”).

§ 4090. “Board meeting”

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

**Comment.** Section 4090 restates the substance of former Section 1363.05(f), with the following changes:

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

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

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

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

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

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

The Commission also invites comment on whether the policies served by open meeting requirements would be better served if the existing procedure for the conduct of board business



1 without a meeting (on the unanimous written consent of the directors) were modified or  
2 eliminated. See Corp. Code § 7211(b).

3 **§ 4095. “Common area”**

4 4095. (a) “Common area” means the entire common interest development  
5 except the separate interests therein.

6 (b) In a development in which the entire development is comprised of separate  
7 interests, common area may consist of mutual or reciprocal easement rights  
8 appurtenant to the separate interests.

9 **Comment.** Section 4095 continues former Section 1351(b) without substantive change, except  
10 that language providing that “[the] estate in the common area may be a fee, a life estate, an estate  
11 for years, or any combination of the foregoing” is continued in Section \_\_\_\_.

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

13 **Staff Note.** The language providing that “[the] estate in the common area may be a fee, a life  
14 estate, an estate for years, or any combination of the foregoing” is substantive and is not required  
15 as part of the definition of the term. It will be located with other provisions that relate to the form  
16 of title in a CID. See, e.g., Civ. Code § 1362.

17 **§ 4100. “Common interest development”**

18 4100. (a) “Common Interest development” means a real property development  
19 in which a separate interest is coupled with either of the following:

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

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

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

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

31 (1) A community apartment project.

32 (2) A condominium project.

33 (3) A planned development.

34 (4) A stock cooperative.

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

37 See also Sections 4080 (“association”), 4095 (“common area”), 4125 (“condominium  
38 project”), 4175 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”).

39 **§ 4105. “Community apartment project”**

40 4105. “Community apartment project” means a real property development in  
41 which a right of exclusive occupancy of a specified part of the development is  
42 coupled with an undivided interest in the development as a whole.

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

2 **§ 4110. “Community service organization”**

3 4110. (a) “Community service organization” means a nonprofit entity, other than  
4 the association, that is organized to provide services to residents of a common  
5 interest development or to the public in addition to the residents, to the extent that  
6 the common area is available to the public.

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

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

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

17 **§ 4115. “Condominium”**

18 4115. “Condominium” means a separate interest in a condominium project,  
19 coupled with an undivided interest in all or part of the common area of the  
20 condominium project.

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

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

25 **§ 4120. “Condominium plan”**

26 4120. “Condominium plan” means a plan of the type described in Section 6075.

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

28 **§ 4125. “Condominium project”**

29 4125. (a) “Condominium project” means a real property development in which  
30 separate ownership of a specified part of the development is coupled with an  
31 undivided interest in all or part of the common area.

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

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

38 (d) The boundaries of a separate interest shall be described on a recorded final  
39 map, parcel map, or condominium plan. A description of a separate interest may  
40 refer to (1) boundaries described in the recorded final map, parcel map, or

1 condominium plan, (2) physical boundaries, either in existence, or to be  
2 constructed, such as walls, floors, and ceilings of a structure or any portion  
3 thereof, (3) an entire structure containing one or more separate interests, or (4) any  
4 combination thereof.

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

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

9 See also Sections 4095 (“common area”), 4115 (“condominium”), 4120 (“condominium  
10 plan”), 4185 (“separate interest”).

11 **Staff Notes.** (1) Proposed Section 4125 restates existing Section 1351(f) in order to parallel  
12 the language and construction used in proposed Sections 4105 (“community apartment project”),  
13 4175 (“planned development”), and 4190 (“stock cooperative”). The section also eliminates  
14 duplicative language and makes fuller use of defined terms. These changes are intended to  
15 improve clarity and are not intended to affect the substance of the existing definition of  
16 “condominium project.” The Commission requests public input on whether any of the drafting  
17 changes would have a substantive effect.

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

#### 22 § 4130. “Declarant”

23 4130. “Declarant” means the person or group of persons designated in the  
24 declaration as declarant, or if no declarant is designated, the person or group of  
25 persons who sign the original declaration or who succeed to special rights,  
26 preferences, or privileges designated in the declaration as belonging to the person  
27 who signed the original declaration.

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

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

#### 30 § 4135. “Declaration”

31 4135. “Declaration” means the document, however denominated, that contains  
32 information that is substantially equivalent to the information required by Section  
33 6025.

34 **Comment.** Section 4135 continues former Section 1351(h) without substantive change except  
35 that exact equivalence with the requirements of Section 6025 is not required. A declaration  
36 recorded prior to January 1, 1986 may not contain all of the information required by Section  
37 6025.

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

#### 40 § 4140. “Director”

41 4140. “Director” means a natural person elected, designated, or selected to serve  
42 on the board.

1       **Comment.** Section 4140 is new. It is added for drafting convenience. See Corp. Code §§ 7220,  
2 7224-7225, 7520-7527 (election or selection of director).

3       See also Section 4085 (“board”).

4       **§ 4145. “Exclusive use common area”**

5       4145. (a) “Exclusive use common area” means a part of the common area  
6 designated by the declaration to be used exclusively by one or more, but fewer  
7 than all, of the members. The right of exclusive use is appurtenant to the separate  
8 interests of those members.

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

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

19       **Comment.** Section 4145 restates former Section 1351(i) without substantive change, except  
20 that the reference in subdivision (c) to “telephone” wiring is generalized.

21       See also Sections 4095 (“common area”), 4135 (“declaration”), 4160 (“member”), 4185  
22 (“separate interest”).

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

28       **§ 4150. “Governing documents”**

29       4150. “Governing documents” means the declaration, bylaws, articles of  
30 incorporation or association, and any other document that governs the operation of  
31 the common interest development or its association.

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

33       See also Sections 4080 (“association”), 4100 (“common interest development”), 4135  
34 (“declaration”).

35       **§ 4155. “Managing agent”**

36       4155. (a) “Managing agent” means a person who, for compensation or in  
37 expectation of compensation, exercises control over the assets of a common  
38 interest development.

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

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

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

1       **Comment.** Section 4155 generalizes former Section 1363.1(b).  
2       See also Sections 4080 (“association”), 4100 (“common interest development”), 4170  
3       (“person”).

4       **§ 4160. “Member”**

5       4160. “Member” means an owner of a separate interest in a common interest  
6       development.

7       **Comment.** Section 4160 is new. It is added for drafting convenience.  
8       See also Section 4100 (“common interest development”), 4185 (“separate interest”).

9       **§ 4165. “Operating rule”**

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

13       **Comment.** Section 4165 generalizes former Section 1357.100(a) without substantive change.  
14       See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest  
15       development”).

16       **§ 4170. “Person”**

17       4170. “Person” means an individual, corporation, government or governmental  
18       subdivision or agency, business trust, estate, trust, partnership, limited liability  
19       company, association, or other entity.

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

21       **§ 4175. “Planned development”**

22       4175. “Planned development” means a real property development of any of the  
23       following types:

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

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

31       (c) If the common area consists entirely of mutual or reciprocal easement rights  
32       appurtenant to the separate interests, a development in which separate ownership  
33       of a specified part of the development is coupled with membership in an  
34       association that has the power to enforce an obligation of an owner of a separate  
35       interest with respect to the beneficial use and enjoyment of the common area by  
36       means of an assessment that may become a lien upon the separate interests in  
37       accordance with [Section 1367 or 1367.1].

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

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

1    **§ 4180. “Rule change”**

2    4180. “Rule change” means the adoption, amendment, or repeal of an operating  
3    rule by the board.

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

6    **§ 4185. “Separate interest”**

7    4185. (a) In a community apartment project or stock cooperative, “separate  
8    interest” means the exclusive right to occupy an apartment or unit.

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

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

16   **Comment.** Section 4185 restates former Section 1351(l) without substantive change, except  
17   that language providing that “[the] estate in a separate interest may be a fee, a life estate, an estate  
18   for years, or any combination of the foregoing” is continued in Section \_\_\_\_.

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

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

25   **§ 4190. “Stock cooperative”**

26   4190. (a) “Stock cooperative” means a real property development in which a  
27   right of exclusive occupancy of a specified part of the development is coupled  
28   with an ownership interest in a corporation that is formed or availed of primarily  
29   for the purpose of holding title to the development as a whole.

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

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

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

38   **Comment.** Section 4190 continues former Section 1351(m) without substantive change, except  
39   that language providing that the corporation’s ownership of the development may be “either in  
40   fee simple or for a term of years” is continued in Section \_\_\_\_.

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

42   ☞ **Staff Note.** Existing language providing that the corporation’s ownership of the development  
43   may be “either in fee simple or for a term of years” is substantive and is not required as part of

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

3 CHAPTER 2. MEMBER RIGHTS

4 Article 1. Bill of Rights [Reserved]

5 Article 2. Limitation of Association Authority  
6 to Regulate Property Use

7 **§ 4300. Application of article**

8 4300. This article includes provisions that limit the authority of an association to  
9 regulate the use of a member's separate interest. Nothing in this article is intended  
10 to affect the application of any other provision that limits the authority of an  
11 association to regulate the use of a member's separate interest, including, but not  
12 limited to, the following provisions:

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

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

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

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

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

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

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

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

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

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

36 **§ 4305. Noncommercial display**

37 4305. (a) Except as otherwise provided in this section, the governing documents  
38 of an association may not prohibit the display of the flag of the United States or

1 any other noncommercial sign, poster, flag, or banner within a member’s separate  
2 interest or exclusive use common area.

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

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

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

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

12 (4) The display is not a flag and is more than 9 square feet in size.

13 (c) An association may prohibit the display of a flag other than the flag of the  
14 United States, if the flag is more than 15 square feet in size.

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

18 **Comment.** Section 4305 continues former Sections 1353.5 and 1353.6 without substantive  
19 change, except that Section 4305(b)(2) now applies to a flag of the United States.

20 **Staff Note.** Proposed Section 4305 preserves two existing distinctions between the  
21 treatment of the U.S. flag and any other noncommercial display: (1) an association may not limit  
22 the display of a U.S. flag that is more than 15 square feet in size, and (2) a person who prevails in  
23 challenging a restriction on the display of the U.S. flag is entitled to attorney’s fees. The  
24 Commission invites comment on whether those distinctions should be preserved (and if not,  
25 whether the special rules should be eliminated or generalized).

26 **§ 4310. Pets**

27 4310. (a) No governing documents shall prohibit the owner of a separate interest  
28 within a common interest development from keeping at least one pet within the  
29 common interest development, subject to reasonable rules and regulations of the  
30 association. This section may not be construed to affect any other rights provided  
31 by law to an owner of a separate interest to keep a pet within the development.

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

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

40 (d) For the purposes of this section, “governing documents” shall include, but  
41 are not limited to, the conditions, covenants, and restrictions of the common  
42 interest development, and the bylaws, rules, and regulations of the association.



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

4 **Comment.** Section 4310 continues former Section 1360.5 without change.

5 **§ 4315. Roofing materials**

6 4315. (a) An association may not require that a homeowner install or repair a  
7 roof in a manner that is in violation of Section 13132.7 of the Health and Safety  
8 Code.

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

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

23 **§ 4320. Television antenna or satellite dish**

24 4320. (a) Except as otherwise provided in this section, a provision of the  
25 governing documents is void to the extent that it would prohibit or restrict the use  
26 or installation of an antenna.

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

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

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

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

36 (4) A requirement that the association approve the installation before installation  
37 takes place.

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

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

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

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

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

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

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

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

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

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

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

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

36 **§ 4325. Marketing restriction**

37 4325. (a) A provision of the governing documents that arbitrarily or  
38 unreasonably restricts a member's ability to market the member's interest in a  
39 common interest development is void.

40 (b) An association shall not charge a fee in connection with the marketing of a  
41 member's interest that exceeds the actual cost to the association that results from  
42 the marketing of the member's interest.

43 (c) An association shall not require that a member use a particular real estate  
44 broker to market the member's interest.

45 (d) For the purposes of this section, "market" and "marketing" mean listing,  
46 advertising, or obtaining or providing access to show the member's interest.

1 **Comment.** Subdivision (a) of Section 4325 restates the substance of former Section 1368.1(a).  
2 The phrase “rule or regulation” has been generalized to include any provision of the association’s  
3 governing documents.

4 Subdivision (b) restates the substance of former Section 1368.1(b)(1). Subdivision (b) is a  
5 specific application of the general rule provided in [Section 1366.1].

6 Subdivision (c) restates the substance of former Section 1368.1(b)(2). Language making clear  
7 that the provision does not affect marketing by an association is not continued because the  
8 restated language makes clear that the limitation only affects marketing by an individual member.

9 Subdivision (d) continues former Section 1368.1(c) without substantive change.

10 Subdivision (e) continues former Section 1368.1(d) without substantive change.

11 **§ 4330. Access to separate interest property**

12 4330. Except as otherwise provided in law, an order of the court, or an order  
13 pursuant to a final and binding arbitration decision, an association may not deny a  
14 member or other occupant of a separate interest physical access to the separate  
15 interest, either by restricting access through the common area, or by restricting  
16 access solely to the separate interest.

17 **Comment.** Section 4330 continues the substance of former Section 1361.5.

18 **CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE**

19 **Article 1. Association Existence and Powers**

20 **§ 4400. Association**

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

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

24 **§ 4405. Association powers**

25 4405. (a) Whether incorporated or unincorporated, an association may exercise  
26 the following powers:

27 (1) The powers granted in this part.

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

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

34 **Comment.** Section 4405 restates the substance of former Section 1363(c).

35 **§ 4410. Standing**

36 4410. An association has standing to institute, defend, settle, or intervene in  
37 litigation, arbitration, mediation, or administrative proceedings in its own name as

1 the real party in interest and without joining with it the individual owners of the  
2 common interest development, in matters pertaining to the following:

3 (a) Enforcement of the governing documents.

4 (b) Damage to the common area.

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

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

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

11 **§ 4415. Comparative fault**

12 4415. (a) In an action maintained by an association pursuant to subdivision (b),  
13 (c), or (d) of Section 4410, the amount of damages recovered by the association  
14 shall be reduced by the amount of damages allocated to the association or its  
15 managing agents in direct proportion to their percentage of fault based upon  
16 principles of comparative fault.

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

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

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

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

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

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

37 **§ 4420. No limitation of rights**

38 4420. Except as expressly provided by statute, the rights of members provided in  
39 this chapter may not be limited by contract or by the governing documents.

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

1 **☞ Staff Note.** Proposed Section 4420 is drawn from existing Corporations Code Section 8313.  
2 The existing section only applies to provisions that govern reports and records. Proposed Section  
3 4420 would expand the scope of application to include the provisions that govern board and  
4 member meetings, elections, director conduct, and managing agents. The Commission invites  
5 comment on whether that expansion would create problems. The Commission also invites  
6 comment on whether proposed Section 4420 should be expanded further, to encompass the entire  
7 Davis-Stirling Common Interest Development Act.

## 8 Article 2. Board Meeting

### 9 § 4500. Short title

10 4500. This article shall be known and may be cited as the Common Interest  
11 Development Open Meeting Act.

12 **Comment.** Section 4500 continues the substance of former Section 1363.05(a).

### 13 § 4505. Convening or adjourning a meeting

14 4505. (a) A board meeting may be called by the board chair, the president, the  
15 vice president, the secretary, or any two directors.

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

18 **Comment.** Subdivision (a) of Section 4505 is comparable to Corporations Code Section  
19 7211(a)(1).

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

### 22 § 4510. Quorum

23 4510. Unless the governing documents provide otherwise, a majority of the total  
24 number of directors authorized by the governing documents constitutes a quorum.  
25 The governing documents may not provide for a quorum that is less than one-fifth  
26 of the number of directors authorized, or less than two, whichever is larger.

27 **Comment.** Section 4510 is comparable to Corporations Code Section 7211(a)(7). See Section  
28 4025. Note that in an association with only one director, one director is a majority of the total  
29 number of directors and would therefore constitute a quorum.

### 30 § 4515. Board action

31 4515. (a) Except as otherwise provided by law, an action approved by a majority  
32 of directors present at a meeting at which a quorum is present is the action of the  
33 board. The governing documents may not provide a lower threshold for approval  
34 of a board action.

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

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

1 **§ 4520. Notice of board meeting**

2 4520 (a) Unless the time and place of a meeting is fixed by the governing  
3 documents, the association shall provide general notice (Section 4045) of a board  
4 meeting, and shall provide individual notice (Section 4040) of the board meeting  
5 to directors and to any association member who has requested notice of meetings.  
6 The notice shall state the time and place of the board meeting and shall include an  
7 agenda for the board meeting.

8 (b) Unless the governing documents provide for a longer period of notice, the  
9 association shall deliver notice of the time and place of a board meeting at least  
10 four days prior to the meeting.

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

16 (d) If a meeting is adjourned to another time and place for more than 24 hours  
17 the association shall deliver notice of the time and place at which the meeting will  
18 reconvene, by general notice (Section 4045) and by individual notice (Section  
19 4040) to a director who was not present at the meeting and to any member who  
20 has requested notice of board meetings. The notice shall be delivered before the  
21 meeting reconvenes.

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

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

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

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

31 **Comment.** Subdivisions (a) and (b) of Section 4520 restate the substance of former Section  
32 1363.05(g), with three changes:

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

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

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

38 Subdivision (c) restates the substance of former Section 1363.05(h).

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

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

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

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

7 **§ 4525. Board meeting open**

8 4525. (a) Any member may attend a board meeting, except for any part of the  
9 meeting held in executive session.

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

13 **Comment.** Subdivision (a) of Section 4525 continues part of the substance of former Section  
14 1363.05(b). The part of former Section 1363.05(b) that described the basis for meeting in  
15 executive session is continued in Section 4540(a)-(b).

16 Subdivision (b) continues the substance of former Section 1363.05(i), except that the  
17 establishment of a time limit on member testimony is now optional.

18 **§ 4530. Board meeting location**

19 4530. A board meeting shall be held within the common interest development  
20 unless the board determines that a larger meeting room is required than is  
21 available within the common interest development. A board meeting held outside  
22 of the common interest development shall be held as close as is practicable to the  
23 common interest development.

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

26 **§ 4535. Teleconference**

27 4535. (a) If all of the following conditions are satisfied, a director who is not  
28 physically present at the noticed location of a board meeting may participate in the  
29 meeting by teleconference:

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

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

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

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

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

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

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

4 **Comment.** Section 4535 is comparable to Corporations Code Section 7211(a)(6) and  
5 Government Code Sections 11123(b) & 54953(b). See also Section 4090 (“board meeting”  
6 defined).

7 **§ 4540. Executive session**

8 4540. (a) The board may adjourn to executive session to consider litigation,  
9 matters relating to the formation of contracts with third parties, member discipline,  
10 an assessment dispute, or personnel matters.

11 (b) The board shall adjourn to executive session to consider member discipline,  
12 an assessment dispute, or a request for a payment plan for overdue assessment  
13 debt, if requested to do so by the member who is the subject of the matter to be  
14 considered.

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

19 **Comment.** Subdivisions (a)-(b) of Section 4540 continue part of the substance of former  
20 Section 1363.05(b). The remainder of former Section 1363.05(b) is continued in Section 4525(a).

21 Subdivision (c) generalizes part of the substance of former Section 1363.05(b) that allowed a  
22 subject of disciplinary action to attend an executive session at which the disciplinary action is  
23 considered.

24 **§ 4545. Action without a meeting**

25 4545. (a) An action required or permitted to be taken by the board may be taken  
26 without a meeting, if all directors individually or collectively consent in writing to  
27 that action. The written consent shall be filed with the minutes of the proceedings  
28 of the board.

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

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

34 **§ 4550. Minutes**

35 4550. (a) Within 30 days after a board meeting, including a meeting held in  
36 executive session, the board shall prepare minutes of the board meeting.

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

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



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

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

6 Subdivision (b) restates the substance of former Section 1363.05(c). Language addressing the  
7 timing of the preparation of the minutes for a meeting held in executive session is not continued.  
8 Subdivision (a) provides a general timing rule.

9 Subdivision (c) continues the substance of the second sentence of former Section 1363.05(d).  
10 The second sentence of subdivision (c) makes express what is implicit in former Section  
11 1363.05(d), that a member has an absolute right to inspect meeting minutes and is not required to  
12 state a permissible purpose in order to obtain a copy.

13 Subdivision (d) restates the substance of former Section 1363.05(e).

14 **§ 4555. Civil action to enforce article**

15 4555. (a) A member may bring a civil action for declaratory or equitable relief  
16 for a violation of this article by the member's association, including injunctive  
17 relief, restitution, or a combination thereof, within one year of the date the cause  
18 of action accrues.

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

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

26 **Comment.** Section 4555 restates the substance of former Section 1363.09(a)-(b), to the extent  
27 that it applied to board meetings.

28 **Staff Note.** Section 1363.09 provides for an award of costs and expenses to the association if  
29 the court finds that the requesting member's action is "frivolous, unreasonable, or without  
30 foundation." That seems to be aimed at limiting an award of association fees to a case involving a  
31 frivolous claim. However, the language may be too broad for that purpose. It allows for an award  
32 of fees where the action was "without foundation." The meaning of that phrase is unclear, but it  
33 could be read to encompass any case in which the court finds against the plaintiff. The  
34 Commission requests comment on whether it might be better to use language drawn from Code of  
35 Civil Procedure Section 1038, which governs an award of fees in a frivolous case brought under  
36 the Tort Claims Act. For example: "The court may award reasonable costs and expenses,  
37 including reasonable attorney's fees, to the association if it finds that the action was not brought  
38 in good faith and with reasonable cause."

39 **§ 4560. Application of article**

40 4560. (a) This article applies to a board meeting or a meeting of a committee  
41 that exercises a power of the board.

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

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

Subdivision (b) continues part of the substance of former Section 1363(i).

### 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. Notwithstanding the governing documents, an association shall hold a regular member meeting in any year in which a director is to be elected, in order to conduct the election and to transact any other business that requires action by the members.

(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 as is practicable to the common interest development.

(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 the substance of Corporations Code Section 7510(e). See Section 4600.

Subdivision (c) is new.

Subdivision (d) restates the substance of former Section 1363(d).

#### § 4580. Quorum

4580. (a) Unless the bylaws provide otherwise, the quorum for a member meeting is one-third of the voting power of the association.

(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).

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

#### § 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.

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

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

9 **Comment.** Section 4585 is comparable to the third sentence of Corporations Code Section  
10 7512(a) and subdivisions (c)-(d) of that section.

11 **Staff Note.** Proposed Section 4585 does not include language on the application of proxies.  
12 The use of proxies will be examined in connection with the rules on elections and revisited in this  
13 section.

14 **§ 4590. Teleconference**

15 4590. (a) If all of the following conditions are satisfied, a member who is not  
16 physically present at the noticed location of a member meeting may participate in  
17 the meeting by teleconference:

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

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

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

25 (4) The vote of any member who is not present shall be cast orally.

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

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

32 **Comment.** Section 4590 is comparable to Corporations Code Section 7211(a)(6) and  
33 Government Code Sections 11123(b) & 54953(b).

34 **§ 4595. Notice of regular meeting**

35 4595. (a) The board shall deliver individual notice (Section 4040) of a regular  
36 meeting to each member who, on the date of the notice, is entitled to vote at the  
37 meeting. The notice shall be delivered at least 10 days, but not more than 90 days,  
38 before the date of the meeting.

39 (b) The notice of a regular meeting shall include the date, time, and place of the  
40 meeting. If the board makes arrangements for participation in the meeting by

1 teleconference, the notice shall include instructions on how to participate by  
2 teleconference.

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

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

10 (2) The members shall not act on any matter that is not described in the notice  
11 and that requires the approval of the members under Section 7222, 7224, 7233,  
12 7812, 8610, or 8719 of the Corporations Code, unless the matter is required to be  
13 approved by the unanimous vote of those entitled to vote on the matter, or the  
14 general nature of the matter is described in each of the documents waiving notice  
15 under Section 4610.

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

18 **Comment.** The introductory clause of subdivision (c) of Section 4595 continues the substance  
19 of former Section 1363(e). Section 4595 is comparable to Corporations Code Sections 7511(a),  
20 (f); 7512(b).

21 **Staff Note.** Proposed Section 4595(c) restates the substance of Corporations Code Section  
22 7511(f). The Commission invites comment on whether the restatement would result in a  
23 substantive change.

#### 24 § 4600. Special meeting of the members

25 4600. (a) The following persons may call a special meeting of the members at  
26 any time, for any lawful purpose, by adoption of a board resolution or by delivery  
27 of a written request to the board (Section 4035) that states the business to be  
28 transacted at the special meeting:

29 (1) The board.

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

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

32 (4) Members representing five percent or more of the voting power of the  
33 association.

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

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

40 (2) The location of the special meeting.

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

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

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

7 **Comment.** Section 4600 is comparable to Corporations Code Sections 7510(e) and 7511(a),  
8 (c).

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

13 **§ 4605. Meeting adjournment**

14 4605. (a) Unless the governing documents provide otherwise, a member meeting  
15 may be adjourned to another time or place without giving written notice of the  
16 reconvened meeting, if both of the following conditions are satisfied:

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

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

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

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

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

26 **§ 4610. Waiver of requirements**

27 4610. (a) Notwithstanding the requirements of this article, a court may find that  
28 a notice is valid if it was given in a fair and reasonable manner.

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

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

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

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

5 **Comment.** Subdivision (a) of Section 4610 is comparable to Corporations Code Section  
6 7511(g).

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

8 **Staff Note.** Proposed Section 4610(b)(1) does not include language on the application of  
9 proxies. The use of proxies will be examined in connection with the rules on elections and  
10 revisited in this section.

11 **§ 4615. Court-ordered meeting**

12 4615. (a) If an association is required to hold a member meeting or conduct a  
13 written ballot and does not do so, a member or the Attorney General may apply to  
14 the superior court for a summary order compelling the association to hold the  
15 member meeting or conduct the written ballot.

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

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

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

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

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

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

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

35 **Comment.** Section 4615 is comparable to Corporations Code Sections 7510(c)-(d) and  
36 7511(c).

37 **Staff Note.** Proposed Section 4615(e) restates the first sentence of Corporations Code Section  
38 7510(d). The Commission would like to receive comment on whether the restated provision  
39 would cause any substantive change in the law. The Commission also requests comment on the  
40 policy reflected in proposed subdivision (e). Why should the quorum requirement be waived  
41 when a court orders that a regular meeting be held? Should the same result apply when the court  
42 orders that a special meeting be held? Would it be better to recast the provision so that it does not  
43 apply in every case, but is available to the court as one possible “appropriate order” that it can  
44 issue in granting relief?

1 **§ 4620. Court-ordered modification of meeting requirements**

2 4620. (a) A director, officer, or member may petition the superior court for an  
3 order modifying any requirement of this part or the governing documents that  
4 governs the conduct of a member meeting or a written ballot.

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

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

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

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

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

23 (3) A reasonable amendment of the declaration.

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

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

30 **Comment.** Section 4620 is comparable to Corporations Code Section 7515.  
31 Subdivision (d)(3) continues the general substance of former Section 1356.

32 Article 4. Elections [Reserved]

33 Article 5. Inspection of Records

34 **§ 4700. Scope of inspection right**

35 4700. (a) Except as otherwise provided in this article, a member may inspect the  
36 following association records:

37 (1) The governing documents.

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

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

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

4 (5) A balance sheet, income and expense statement, budget comparison, or  
5 general ledger. This paragraph applies to any record of the types described,  
6 regardless of whether the record is interim or final, audited or unaudited, prepared  
7 pursuant to a fixed schedule or on an ad hoc basis. For the purposes of this  
8 paragraph, a “general ledger” is a report that shows all transactions that occurred  
9 in an association account over a specified period of time.

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

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

14 (8) An executed contract.

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

16 (10) A state or federal tax return.

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

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

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

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

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

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

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

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

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

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

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



1 **Comment.** Subdivision (a) of Section 4700 continues the substance of former Section  
2 1365.2(a), except for the following changes:

3 Subdivision (a)(1) is new.

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

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

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

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

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

17 Subdivision (b)(1) continues the substance of Section 1365.2(i) except that governing  
18 documents are required to be made available for inspection permanently.

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

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

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

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

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

24 Subdivision (c) restates the substance of former Section 1365.2(b)(2) and is comparable to  
25 Corporations Code Section 8311.

26 **Staff Notes.** Proposed Section 4700 restates portions of Section 1365.2 that define the scope  
27 of the record inspection right. The Commission requests comment on the following issues relating  
28 to this section:

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

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

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

44 (4) Proposed Section 4700(b)(1) would limit the time that records remain subject to inspection.  
45 Is that provision necessary if Section 4780 (record retention periods) is added? If the limit were  
46 removed, a record would be subject to inspection as long as the association is required to  
47 maintain it.

#### 48 § 4705. Inspection procedure

49 4705. (a) A member may deliver to the board (Section 4035) a written request to  
50 inspect an association record. The request shall identify the record to be inspected  
51 and shall state a purpose for the inspection that is reasonably related to the

1 member's interest as a member. The request may designate an agent to inspect the  
2 record on the member's behalf.

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

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

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

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

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

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

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

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

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

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

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

34 **§ 4710. Redaction**

35 4710. (a) Before making a record available for inspection, the association shall  
36 redact all of the following information from the record:

37 (1) Any financial account number.

38 (2) Any password or personal identification number.

39 (3) Any social security number or taxpayer identification number.

40 (4) Any driver's license number.

41 (5) Any other information, if it is reasonably probable that disclosure of the  
42 information will compromise the privacy of a member, lead to unauthorized use of  
43 a person's identity or financial resources, or to other fraud.

1 (b) Before providing a membership list, the association shall redact the name  
2 and address of any person who has elected to have that information redacted from  
3 the membership list pursuant to Section 4715.

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

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

8 Subdivision (c) restates the substance of former Section 1365.2(d)(4).

9 **Staff Note.** Under Section 1365.2(d)(1), redaction of personal information is optional. It is  
10 not clear why a CID director should have discretion in this regard. Proposed Section 4710 would  
11 make redaction mandatory. The Commission invites comment on this proposed change.

## 12 § 4715. Optional redaction from membership list

13 4715. (a) A member may elect, in writing, to have the member's name and  
14 address redacted from the membership list.

15 (b) A member who requests the membership list may also request that the  
16 association deliver material to any member whose information is redacted from  
17 the membership list. The association shall deliver the material to those members  
18 by individual delivery (Section 4040), within 10 business days after delivery of the  
19 request.

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

## 21 § 4720. Fees

22 4720. (a) The association may charge a fee to recover the direct and actual cost  
23 to copy or deliver a record. The association shall inform the member of the fee  
24 amount, and the member shall agree to pay the fee, before a copy is made or a  
25 record delivered.

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

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

## 33 § 4725. Permissible purpose

34 4725. (a) A member may only inspect and use an association record for a  
35 purpose that is reasonably related to the requesting member's interest as a  
36 member. A member may not inspect or use an association record for a commercial  
37 purpose.

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

1 **Comment.** Subdivision (a) of Section 4725 continues the substance of former Section  
2 1365.2(e). See also Corp. Code § 8338 (use of membership list).

3 Subdivision (b) is comparable to Corporations Code Sections 8331(a) and 8332, but it applies  
4 to any record and not just the association's membership list.

5 **§ 4730. Denial of request**

6 4730. (a) An association that denies a request for records under this article shall  
7 provide the requesting member a notice of denial, by individual delivery (Section  
8 4040), within 10 business days after delivery of the inspection request.

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

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

11 (2) An offer to attempt to resolve the matter through the association's internal  
12 dispute resolution procedure provided pursuant to Article 2 (commencing with  
13 Section 5050) of Chapter 4. The offer may include an alternative proposal for  
14 achieving the member's purpose.

15 **Comment.** Section 4730 is new.

16 **§ 4735. Action to enforce**

17 4735. (a) If an association has not complied with a document inspection request  
18 within the time provided, the requesting member may bring an action in the  
19 superior court to enforce the record inspection request. The action may be filed in  
20 the small claims division of the superior court if the amount of the demand does  
21 not exceed the jurisdiction of that court.

22 (b) If the court determines that there is no legal basis for the failure to comply  
23 with the record inspection request, it shall order compliance.

24 (c) If the court determines that disclosure is not required under this article, that  
25 disclosure would violate a member's constitutional rights, or that there is a  
26 reasonable probability that disclosure would lead to misuse of a record, it shall  
27 modify or set aside the record inspection request.

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

30 (1) If the association acted unreasonably in denying the request, the imposition  
31 of a civil penalty of up to \$500 against the association.

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

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

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

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

1 (e) The association bears the burden of proving the legal grounds for  
2 noncompliance with the records request.

3 (f) If the court finds that the association acted unreasonably in denying the  
4 record inspection request, it shall award reasonable costs and expenses, including  
5 reasonable attorney's fees, to the requesting member.

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

9 (h) Nothing in this section limits the right of the association to bring an action  
10 under Section 4740.

11 **Comment.** Subdivisions (a)-(c) of Section 4735 are comparable to former Section 1365.2(f)  
12 and Corporations Code Sections 8336 (action to enforce inspection right) and 8337 (costs and  
13 expenses).

14 Subdivision (d)(1) continues part of the substance of former Section 1365.2(f).

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

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

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

26 Subdivision (d)(5) is comparable to Corporations Code Sections 8331(g) and 8332.

27 Subdivision (e) is comparable to former Section 1365.2(a)(1)(I)(ii) and Corporations Code  
28 Sections 8331(f)(1) and 8332, except that it applies to all records and not just to a membership  
29 list.

30 Subdivisions (f)-(g) continue part of the substance of former Section 1365.2(f)..

31 Subdivision (h) is comparable to Corporations Code Section 8331(j).

32 **Staff Notes.** (1) Section 1365.2(f) provides for an award of costs and expenses to the  
33 requesting member if the association acted "unreasonably" in withholding access to records. That  
34 is different standard from the standard provided in Corporations Code Section 8337, which  
35 provides for an award of costs to the member if the association acted "without justification."  
36 Proposed Section 4735(f) continues the standard provided in the Davis-Stirling Act on the  
37 grounds that, in general, a specific standard is intended to control over a general one.

38 (2) Section 1365.2(f) provides for an award of costs and expenses to the association if the court  
39 finds that the requesting member's action is "frivolous, unreasonable, or without foundation."  
40 That seems to be aimed at limiting an award of association fees to a case involving a frivolous  
41 claim. However, the language may be too broad for that purpose. It allows for an award of fees  
42 where the action was "without foundation." The meaning of that phrase is unclear, but it could be  
43 read to encompass any case in which the court finds against the plaintiff. The Commission  
44 requests comment on whether it might be better to use language drawn from Code of Civil  
45 Procedure Section 1038, which governs an award of fees in a frivolous case brought under the  
46 Tort Claims Act. For example: "The court may award reasonable costs and expenses, including  
47 reasonable attorney's fees, to the association if it finds that the action was not brought in good  
48 faith and with reasonable cause."

1    **§ 4740. Action to enjoin improper use of records**

2       4740. An association may bring an action for injunctive relief and actual  
3 damages against any person who misuses association records. In addition, a court  
4 in its discretion may award exemplary damages for a fraudulent or malicious  
5 misuse of association records. If the association prevails in an action brought  
6 under this section, the court shall award the association reasonable costs and  
7 expenses, including reasonable attorney’s fees.

8       **Comment.** Section 4740 is comparable to Corporations Code Section 8338(b)-(d).

9    **§ 4745. Limited liability**

10       4745. An association, or an officer, director, employee, agent, or volunteer of an  
11 association, is not liable for damages that result from a failure to withhold or  
12 redact information pursuant to this article, unless the failure to withhold or redact  
13 the information was intentional, willful, or negligent.

14       **Comment.** Section 4745 restates the substance of former Section 1365.2(d)(3).

15    **Staff Note.** Former Section 1356.2(d)(3) immunizes the association and its officers and  
16 agents from liability for damages resulting from a breach of the duty to withhold or redact certain  
17 personal information. However, that provision seems to allow for liability where the breach was  
18 merely negligent. Should the liability limitation provision be strengthened or otherwise modified,  
19 especially if the duty to redact is made mandatory? See proposed Section 4710 and note. For  
20 example, broader protection could be given to individuals by eliminating simple negligence as a  
21 basis for personal liability.

22    **§ 4750. Application of article**

23       4750. (a) For the purposes of this article, a community service organization is  
24 deemed to be an association, and a member of the community service organization  
25 or similar entity is deemed to be a member of an association.

26       (b) This article does not apply to common interest development in which  
27 separate interests are being offered for sale by a subdivider under the authority of a  
28 public report issued by the Department of Real Estate, so long as the subdivider or  
29 all subdividers offering those separate interests for sale, or any employees of those  
30 subdividers or any other person who receives direct or indirect compensation from  
31 any of those subdividers, comprise a majority of the members of the board of  
32 directors of the association. Notwithstanding the foregoing this article shall apply  
33 to a common interest development no later than 10 years after the close of escrow  
34 for the first sale of a separate interest to a member of the general public pursuant  
35 to the public report issued for the first phase of the development.

36       (c) If two or more associations have consolidated any of their functions under a  
37 joint neighborhood association or other joint organization, the members of each  
38 participating association shall have access to the records of the joint organization  
39 as if they were the records of the participating association.

40       **Comment.** Subdivision (a) of Section 4750 continues the substance of former Section  
41 1365.2(g).

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

1 Subdivision (c) continues part of the substance of former Section 1363(i).

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

8 **Article 6. Record Keeping**

9 **§ 4775. Duty to maintain records**

10 4775. (a) An association shall maintain at least one copy of the following  
11 association records, for the periods specified in Section 4780:

12 (1) The original governing documents and any amendment of or addition to the  
13 governing documents.

14 (2) The membership list, including the name, address, and membership class of  
15 each member.

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

18 (4) A written waiver, consent, or approval received under Section 4610.

19 (5) A report prepared pursuant to Article 7 (commencing with Section 4800).

20 (6) Books and records of account.

21 (7) A tax return or other tax-related record.

22 (8) A deed or other record that relates to title of real property within the  
23 common interest development.

24 (9) A record that relates to the design, construction, or physical condition of the  
25 common interest development.

26 (10) A record that relates to a proposed modification of a member's separate  
27 interest.

28 (11) A record that relates to litigation involving the association or legal services  
29 provided to the association.

30 (12) An employment or payroll record.

31 (13) An insurance policy or record relating to insurance coverage or claims.

32 (14) A contract to which the association is a party.

33 (15) A loan document.

34 (16) A ballot, proxy, or other record that relates to an election.

35 (17) A reserve funding study.

36 (18) A record that relates to enforcement of a restriction.

37 (b) The association may keep a record in paper form or in any other form that  
38 can be converted to a paper copy, provided that the paper copy accurately portrays  
39 the content of the record. A paper copy produced from a non-paper record is  
40 admissible in evidence and is accepted for all other purposes, to the same extent as  
41 an original paper record of the same information.

1 **Comment.** Subdivisions (a)(2)-(3), (a)(6), and (b) of Section 4775 are comparable to  
2 Corporations Code Section 8320. The other provisions of subdivision (a) are new.

3 **§ 4780. Record retention periods**

4 4780. (a) Unless a longer period is required by law or by the governing  
5 documents, an association shall retain a record listed in Section 4775 for at least  
6 four years after its date of execution or, in the case of a document that expires or  
7 becomes superseded, four years after the document has expired or been  
8 superseded.

9 (b) The association shall retain the following records permanently:

10 (1) The original governing documents and each amendment of or addition to the  
11 governing documents.

12 (2) The minutes of a member meeting, board meeting, or meeting of a  
13 committee that exercises a power of the board.

14 (4) A tax return or other tax-related record.

15 (5) A deed or other record that relates to title of real property within the  
16 common interest development.

17 (6) A record that relates to the design, construction, or physical condition of the  
18 common interest development.

19 (c) This section does not apply to a record that is discarded or destroyed before  
20 January 1, 2008.

21 **Comment.** Section 4780 is new. Subdivision (a) states a default retention period of four years,  
22 but makes clear that other law or an association's governing documents may impose a longer  
23 retention period.

24 Subdivision (c) provides that the requirements of this section only apply to a record held by an  
25 association at the time that the section became operative. Note that other record retention  
26 requirements may govern documents that were held by the association prior to that date. See, e.g.,  
27 Section 4770(b) (period during which records must be made available for member inspection); 22  
28 Cal. Code Regs. § 1085-2 (four year period for retention of employment records); 26 C.F.R. §  
29 1.6001-1 (retention of federal tax records while material to assessment or collection of tax); 29  
30 C.F.R. §§ 516.5 (three year period for retention of payroll records).

31 **Staff Note.** The Commission invites comment on whether the proposed retention periods  
32 would be helpful and are of appropriate length. The Commission also requests information about  
33 any other record retention requirement that could apply to a homeowner association.

34 **§ 4785. Director inspection**

35 4785. A director shall have the absolute right at any reasonable time to inspect  
36 all association books, records, and documents of every kind and to inspect the  
37 common area.

38 **Comment.** Section 4785 is comparable to Corporations Code Section 8334.

39 **Staff Note.** Corporations Code Section 8334 confers on a director an "absolute" right to  
40 inspect association records. In one case applying that section, the court concluded that the  
41 director's right to inspect records must yield to the right of a member to cast a secret ballot. See  
42 *Chantiles v. Lake Forest II Master Homeowners Ass'n*, 37 Cal. App. 4th 914 (1995) (director did  
43 not have right to review ballots and proxies; director's attorney permitted to prepare tallies  
44 without revealing individual member votes).



1 The specific issue in *Chantiles* should not arise again. Section 1363.03(c)(3)(E), which  
2 becomes operative on July 1, 2006, will require that an independent election inspector count all  
3 votes in a CID election. Furthermore, the ballots will not identify the person who cast the ballot.  
4 See Section 1363.03(e). In addition, Section 1363.03(f) provides that any member may witness  
5 the process of counting the ballots.

6 The Commission invites comment on whether the changes to election procedure are sufficient  
7 to protect member privacy. If not, should Section 4785 be revised to better balance member  
8 privacy and a director's duty as a fiduciary?

## 9 Article 7. Annual Reports

### 10 § 4800. Annual budget report

11 4800. (a) From 30 to 90 days before the end of the fiscal year, the board shall  
12 prepare an annual budget report.

13 (b) The annual budget report shall include all of the following information:

14 (1) The pro forma operating budget, prepared pursuant to [subdivision (a) of  
15 Section 1365].

16 (2) The assessment and reserve summary, prepared pursuant to [Section  
17 1365.2.5].

18 (3) The statement of the association's insurance coverage, prepared pursuant to  
19 [subdivision (e) of Section 1365].

20 (c) The board shall promptly deliver a copy of the current annual budget report  
21 to any member who requests a copy, at no cost to the member.

22 (d) The type used in the annual budget report shall be at least 12 points in size.

23 **Comment.** Section 4800 continues part of the substance of former Sections 1365(a) & (e);  
24 1365.2.5.

### 25 § 4805. Annual financial statement

26 4805. (a) Within 120 days after the end of the fiscal year, the board of an  
27 association that receives ten thousand dollars (\$10,000) or more in gross revenues  
28 or receipts during the fiscal year shall prepare an annual financial statement.

29 (b) The annual financial statement shall include all of the following information:

30 (1) A balance sheet as of the end of the fiscal year and an income statement and  
31 statement of changes in financial position for the fiscal year.

32 (2) If the financial statement was reviewed by an independent accountant, a  
33 copy of the accountant's report.

34 (3) If the financial statement was not reviewed by an independent accountant,  
35 the certificate of an authorized officer of the association that the financial  
36 statement was prepared without audit from the books and records of the  
37 association.

38 (4) If the association is incorporated, a statement of any transaction or  
39 indemnification of a type described in Section 8322 of the Corporations Code.

40 (c) The board shall promptly deliver a copy of the current annual financial  
41 statement to any member who requests a copy, at no cost to the member.

1 (d) The type used in the annual financial statement shall be at least 12 points in  
2 size.

3 **Comment.** Section 4805 is comparable to Corporations Code Section 8321. Subdivision (b)(2)  
4 requires inclusion of the report of an independent accountant, if the financial statement was  
5 reviewed by an independent accountant. An independent audit is required if an association  
6 receives more than \$75,000 in gross income in the fiscal year. See [Section 1365(b)].

7 **§ 4810. Member handbook**

8 4810. (a) Within 120 days after the end of the fiscal year, the board shall prepare  
9 a member handbook that contains all of the following information:

10 (1) The name and address of the person designated to receive official  
11 communications to the board, pursuant to Section 4035.

12 (2) Notice of a member's right to receive copies of meeting minutes, pursuant to  
13 subdivision (d) of Section 4550.

14 (3) A statement of the association's assessment collection policy, pursuant to  
15 [subdivision (d) of Section 1365 and Section 1365.1].

16 (5) A summary of alternative dispute resolution procedures, pursuant to Sections  
17 5070 and 5115.

18 (6) A summary of any requirements for association approval of a physical  
19 change to property, pursuant to [subdivision (c) of Section 1378].

20 (7) The location, if any, designated for posting of a general notice (Section  
21 4045).

22 (8) Any other information that is required by law or the governing documents or  
23 that the board determines to be appropriate for inclusion.

24 (b) The board shall promptly deliver a copy of the current member handbook to  
25 any new member and to any member who requests a copy, at no cost to the  
26 member.

27 (c) The type used in the annual financial statement shall be at least 12 points in  
28 size.

29 **Comment.** Section 4810 is new.

30 **§ 4815. Community service organization report**

31 4815. (a) Unless the governing documents impose more stringent standards, a  
32 community service organization that receives 10 percent or more of its funding  
33 from an association or its members shall prepare and distribute to the association  
34 an annual report that includes all of the following information:

35 (1) A financial statement.

36 (2) A detailed statement of administrative costs that identifies the person paid  
37 for each cost.

38 (3) If the report is not consistent with the requirements of Article 5  
39 (commencing with Section 4700), a statement describing the noncompliance in  
40 detail.

1 (4) If a community service organization is responsible for the maintenance of  
2 major components for which an association would otherwise be responsible,  
3 information regarding those components that the association requires to complete  
4 disclosures and reserve reports required under [this article.]

5 (b) An association may rely upon information received from a community  
6 service organization.

7 **Comment.** Section 4815 restates the substance of former Section 1365.3 except that the report  
8 must be made annually.

9 **Staff Notes.** (1) Existing Section 1365.3 requires that a report prepared by a community  
10 service organization be consistent with the provisions of Section 1365.2 and “comply with the  
11 standards.” The Commission is unsure of the meaning of that requirement and invites comment  
12 on the issue. Is the requirement intended to incorporate the redaction provisions of Section  
13 1365.2(d)?

14 (2) The reference in proposed Section 4815(a)(4) to “this article” is a reference to the  
15 provisions relating to reserve funding, which have not yet been added to the proposed law. The  
16 reference will be corrected when reserve fund requirements are addressed.

17 **§ 4820. Notice of availability**

18 4820. (a) When a report is prepared pursuant to Section 4800, 4805, 4810, or  
19 4815, the board shall deliver individual notice (Section 4040) to all members of  
20 the availability of the report.

21 (b) The notice of availability shall include a general description of the content of  
22 the report and instructions on how to request, at no cost, a complete copy of the  
23 report.

24 (c) A board may deliver, by individual notice (Section 4040) to all members, a  
25 complete copy of a report instead of the notice of availability of the report.

26 **Comment.** Section 4820 is new.

27 **§ 4825. Financial statement**

28 4825. A financial statement required by this article shall be prepared in  
29 conformity with generally accepted accounting principles or some other basis of  
30 accounting that reasonably sets forth the assets and liabilities and the income and  
31 expenses of the association or community service organization and discloses the  
32 accounting basis used in its preparation.

33 **Comment.** Section 4825 is similar to Corporations Code Section 5012.

34 **§ 4830. Judicial enforcement**

35 4830. (a) Any member may bring an action in superior court to enforce the  
36 requirements of this article. The court may, for good cause shown, extend the time  
37 for compliance with the requirements of this article.

38 (b) In any action or proceeding under this section, if the court finds the failure of  
39 the association to comply with the requirements of this article to be without  
40 justification, the court may award the member reasonable expenses, including  
41 attorney’s fees, in connection with the action or proceeding.

1 **Comment.** Section 4830 generalizes the substance of Corporations Code Section 8323.

2 **Article 8. Director Standard of Conduct**

3 **§ 4850. Director standard of conduct**

4 4850. (a) An association officer or director is not personally liable for a tortious  
5 act or omission of the officer or director, in excess of the amount of insurance  
6 coverage specified in paragraph (6), if all of the following requirements are met:

7 (1) The officer or director is a volunteer.

8 (2) The officer or director is a tenant of a separate interest or an owner of no  
9 more than two separate interests.

10 (3) The association is exclusively residential.

11 (4) The act or omission was performed within the scope of the officer's or  
12 director's association duties.

13 (4) The act or omission was performed in good faith.

14 (5) The act or omission was not willful, wanton, or grossly negligent.

15 (6) The association maintained and had in effect, at the time of the act or  
16 omission and at the time that a claim is made, insurance coverage for the general  
17 liability of the association and for the individual liability of an officer or director  
18 of the association for negligent acts or omissions in that capacity. In an association  
19 with 100 or fewer separate interests, the coverage for each type of liability shall be  
20 at least five hundred thousand dollars (\$500,000). In an association of more than  
21 100 separate interests, the coverage for each type of liability shall be at least one  
22 million dollars (\$1,000,000).

23 (b) For the purposes of this section, "volunteer" does not include the declarant or  
24 a person who receives direct or indirect compensation as an employee of the  
25 declarant, or as an employee of a financial institution that purchased a separate  
26 interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on  
27 real property. Payment of actual expenses incurred by a director or officer in the  
28 execution of the duties of that position does not affect the director's or officer's  
29 status as a volunteer.

30 (c) Nothing in this section limits the liability of the association for its negligent  
31 act or omission or for any negligent act or omission of an officer or director of the  
32 association.

33 (d) For the purposes of this section, an officer's or director's association duties  
34 include making a decision on whether to conduct an investigation of the common  
35 interest development for latent deficiencies prior to the expiration of the applicable  
36 statute of limitations and whether to commence a civil action against the builder  
37 for defects in design or construction. This subdivision is intended to clarify the  
38 application of this section. It is not intended to expand or limit the fiduciary duties  
39 owed by a director or officer.

40 **Comment.** Section 4850 restates the substance of former Section 1365.7. See also Corp. Code  
41 § 7231 (standard of care and liability of director of nonprofit mutual benefit corporation).

1 **§ 4855. Transaction involving incorporated association and director or officer**

2 4855. A contract or other transaction between an incorporated association and a  
3 director or officer of the association is governed by Sections 7233 to 7235,  
4 inclusive, of the Corporations Code.

5 **Comment.** Section 4855 is new. Nothing in this section is intended to expand or limit the law  
6 governing a transaction between an incorporated association and a director or officer of the  
7 association.

8 **Article 9. Managing Agent**

9 **§ 4900. Prospective managing agent disclosure**

10 4900. (a) A prospective managing agent of a common interest development shall  
11 provide a written disclosure to the board before entering into a management  
12 agreement. The disclosure shall be provided as soon as is practicable after entering  
13 into negotiations, but in no event more than 90 days before entering into an  
14 agreement.

15 (b) The disclosure required under this section shall contain all of the following  
16 information:

17 (1) The name and business address of each owner or general partner of the  
18 managing agent. If the managing agent is a corporation, the disclosure shall  
19 include the name and business address of each shareholder owning more than 10  
20 percent of the shares of the corporation and each director or officer of the  
21 corporation

22 (2) For each person named in paragraph (1), a list of any relevant license or  
23 professional certification or designation held by that person. A license,  
24 certification, or designation is relevant if it relates to a service to be provided by  
25 the managing agent, including architectural design, construction, engineering, real  
26 estate, accounting, real property management, or community association  
27 management. The list shall indicate the type of license, certification, or  
28 designation, the issuing authority, the issuance date, and any expiration date.

29 **Comment.** Section 4900 restates the substance of former Section 1363.1. See also Section  
30 4100 (“managing agent” defined).

31 **Staff Notes.** (1) Proposed Section 4900 significantly revises Section 1363.1. The  
32 Commission would like to receive comment on whether the revisions would make any change to  
33 the substance of the existing section.

34 (2) Section 1363.1(a) requires that the disclosure be made no later than 90 days before entering  
35 into an agreement. If that requirement is adhered to, the contracting process would take at least 90  
36 days to complete. Is that time frame realistic in practice? Should the 90 day minimum be adjusted  
37 or deleted?

38 **§ 4905. Trust fund account**

39 4905. (a) A managing agent who receives funds belonging to an association,  
40 other than for deposit into an escrow account or account under the control of the  
41 association, shall deposit the funds into a trust fund account.

1 (b) The trust fund account shall be maintained in California, in a federally  
2 insured financial institution. The account shall be maintained in the name of the  
3 managing agent as trustee for the association or in the name of the association.

4 (c) On the written request of the board, the trust fund account shall be created as  
5 an interest bearing account. No interest earned on funds in the account shall inure  
6 directly or indirectly to the benefit of the managing agent or to an employee of the  
7 managing agent.

8 (d) The managing agent shall inform the board of the nature of the trust fund  
9 account, including a statement of how any interest will be calculated and paid,  
10 whether service charges will be paid to the depository and by whom, and whether  
11 there are any notice requirements or penalties for withdrawal of funds from the  
12 account.

13 (e) Funds in a trust fund account may only be disbursed in accordance with  
14 written instructions from the association that is entitled to the funds.

15 (f) The managing agent shall maintain a separate record of the receipt and  
16 disposition of all funds described in this section, including any interest earned on  
17 the funds.

18 (g) The managing agent shall not commingle the funds of an association with  
19 the funds of any other person, except as provided in subdivision (h).

20 (h) A managing agent who commingled the funds of two or more associations  
21 on or before February 26, 1990 may continue to do so if all of the following  
22 requirements are met:

23 (1) The board of each affected association has given its written assent to the  
24 commingling.

25 (2) The managing agent maintains a fidelity and surety bond in an amount that is  
26 adequate to protect each association and that provides each association at least 10  
27 days' notice prior to cancellation. The managing agent shall provide each affected  
28 board with the name and address of the bonding company, the amount of the bond,  
29 and the expiration date of the bond. If there are any changes in the bond coverage  
30 or the company that provides the coverage, the managing agent shall disclose that  
31 fact to the board of each affected association as soon as practical, but in no event  
32 more than 10 days after the change.

33 (3) The managing agent provides a written statement to each affected board  
34 describing any benefit received by the managing agent from the commingled  
35 account or the financial institution where the funds will be on deposit.

36 (4) A completed payment on behalf of an association is deposited within 24  
37 hours or the next business day and does not remain commingled for more than 10  
38 calendar days. As used in this subdivision, "completed payment" means funds  
39 received that clearly identify the account to which the funds are to be credited.

40 (i) The prevailing party in an action to enforce this section shall be entitled to  
41 recover reasonable legal fees and court costs.

42 (j) As used in this section, "financial institution" has the meaning provided in  
43 Section 31041 of the Financial Code.

1 **Comment.** Section 4905 restates the substance of former Section 1363.2. See also Section  
2 4100 (“managing agent” defined).

3 **Staff Notes. (1)** Proposed Section 4905 significantly revises Section 1363.2. The  
4 Commission would like to receive comment on whether the revisions would make any change to  
5 the substance of the existing section.

6 **(2)** The Commission invites comment on whether proposed Section 4905(h) continues to serve  
7 a useful purpose. It would seem to be the better practice not to allow commingling at all. Should  
8 subdivision (h) be deleted? A transitional period could be provided for the separation of accounts  
9 that are currently commingled under that provision.

## 10 CHAPTER 4. DISPUTE RESOLUTION AND ENFORCEMENT

### 11 Article 1. Disciplinary Action

#### 12 § 5000. Authority to impose disciplinary fine

13 5000. An association shall not fine a member for a violation of the governing  
14 documents unless, at the time of the violation, the governing documents expressly  
15 authorize the use of a fine and include a schedule of the amounts that can be  
16 assessed for each type of violation.

17 **Comment.** Section 5000 restates the substance of former Section 1363(g), with two  
18 exceptions:

19 (1) It does not continue language relating to the distribution of copies of the enforcement  
20 policy. Distribution of the governing documents is governed by other law. See Sections  
21 [1368(a)(1)] (seller’s disclosure), 4700(a)(1) (record inspection), 6115 (notice of proposed rule  
22 change).

23 (2) It provides that the authority to fine and schedule of fine amounts must exist at the time of  
24 the violation. This prevents ex post facto punishment.

25 **Staff Note.** The authority to impose a fine is a significant power. Should a board that is not  
26 authorized to impose fines by the declaration, articles, or bylaws be able to grant itself that power  
27 by adopting an operating rule (which can be adopted by the board unilaterally)? Or should the  
28 authority to impose fines derive only from the declaration, articles, or bylaws?

#### 29 § 5005. Disciplinary hearing

30 5005. (a) The board shall only impose discipline at a meeting of the board at  
31 which the accused member shall have an opportunity to be heard.

32 (b) At least 10 days before meeting to hear a disciplinary matter, the board shall  
33 deliver an individual notice to the accused member (Section 4040) that includes all  
34 of the following information:

35 (1) The provision of the governing documents that the member is alleged to  
36 have violated and a brief summary of the facts constituting the alleged violation.

37 (2) The penalty that may be imposed for the violation.

38 (3) The time, date, and location of the meeting at which the matter will be heard.

39 (4) A statement that the accused member has a right to attend the meeting,  
40 address the board, and request that the matter be considered in closed executive  
41 session.

1 (c) Within 15 days after hearing a disciplinary matter, the board shall deliver a  
2 written decision to the accused member, by individual notice (Section 4040). If the  
3 board imposes a penalty, the written decision shall state the provision of the  
4 governing documents violated and the penalty for the violation.

5 **Comment.** Section 5005 restates the substance of former Section 1363(h), with the following  
6 changes:

7 (1) Subdivision (a) is new. It states expressly what is clearly implied.

8 (2) Subdivision (b)(2) is new.

9 **Staff Note.** The disciplinary hearing provision only applies to a violation of the governing  
10 documents. However, a board can also impose a monetary charge to recover the cost to repair  
11 damage to the common area that was caused by the member or the member's guest or tenant.  
12 There is no provision for a hearing to consider whether the member actually caused the damage.  
13 A charge to reimburse for repair of damages can lead to nonjudicial foreclosure. See Section  
14 1367.1(d). Should there be some sort of hearing required before such a charge can be assessed  
15 against a member?

16 **§ 5010. Nonjudicial foreclosure not permitted to collect disciplinary fine**

17 5010. (a) A fine imposed by the association for a violation of the governing  
18 documents, however described, shall not become a lien against the member's  
19 separate interest that is enforceable by the sale of the interest under Sections 2924,  
20 2924b, and 2924c.

21 (b) Subdivision (a) does not apply to the following monetary charges:

22 (1) A penalty for late payment of a regular or special assessment.

23 (2) A monetary charge to reimburse the association for the actual costs of  
24 repairing damage to the common area caused by the member.

25 **Comment.** Section 5010 restates the substance of former Sections 1367(c) and 1367.1(e).

26 **Staff Note.** The words "however described" are used in proposed Section 5010(a) to make  
27 clear that the rule's application does not depend on the terminology used to describe a fine.

28 **§ 5015. Responsibility for guest, invitee, or tenant**

29 5015. For the purposes of this article, a member is responsible for a violation of  
30 the governing documents by the member's guest, invitee, or tenant.

31 **Comment.** Section 5015 is consistent with former Sections 1363(g), except that the rule has  
32 been broadened to provide that a member is responsible for a tenant's violation.

33 **Staff Note.** Existing Section 1363(g) provides that a member is responsible for a violation of  
34 the governing documents by the member's guest or invitee. By contrast, existing Sections  
35 1367(b) and 1367.1(d) provide that a member may be charged for damage to the common area  
36 caused by the member or the member's guest or tenant.

37 Proposed Section 5015 would resolve that inconsistency by broadening the scope of  
38 responsibility to include a violation by a member's tenant. The damage reimbursement provisions  
39 of Sections 1367 and 1367.1 will be given the same scope (i.e., a member will be liable for  
40 damage caused by the member's guest, invitee, and tenant). The Commission invites comment on  
41 that approach.



1 **§ 5020. Removing vehicle from common interest development**

2 5020. The authority of an association to cause the removal of a vehicle from a  
3 common interest development is governed by Section 22658.2 of the Vehicle  
4 Code.

5 **Comment.** Section 5020 is new. See also Veh. Code §§ 22658 (removal of vehicle from  
6 private property), 22853 (notice of removed vehicle).

7 **Article 2. Internal Dispute Resolution**

8 **§ 5050. Application of article**

9 5050. (a) This article applies to a dispute between an association and a member  
10 involving their rights, duties, or liabilities under this part, under the Nonprofit  
11 Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of  
12 Division 2 of Title 1 of the Corporations Code), or under the governing  
13 documents.

14 (b) This article supplements, and does not replace, Article 3 (commencing with  
15 Section 5075), relating to alternative dispute resolution as a prerequisite to an  
16 enforcement action.

17 **Comment.** Section 5050 continues former Section 1363.810 without substantive change.

18 **§ 5055. Fair, reasonable, and expeditious dispute resolution procedure required**

19 5055. (a) An association shall provide a fair, reasonable, and expeditious  
20 procedure for resolving a dispute within the scope of this article.

21 (b) In developing a procedure pursuant to this article, an association shall make  
22 maximum, reasonable use of available local dispute resolution programs involving  
23 a neutral third party, including low-cost mediation programs such as those listed  
24 on the Internet Web sites of the Department of Consumer Affairs and the United  
25 States Department of Housing and Urban Development.

26 (c) If an association does not provide a fair, reasonable, and expeditious  
27 procedure for resolving a dispute within the scope of this article, the procedure  
28 provided in Section 5065 applies and satisfies the requirement of subdivision (a).

29 **Comment.** Section 5055 continues former Section 1363.820 without substantive change.

30 **§ 5060. Minimum requirements of association procedure**

31 5060. A fair, reasonable, and expeditious dispute resolution procedure shall at a  
32 minimum satisfy all of the following requirements:

33 (a) The procedure may be invoked by either party to the dispute. A request  
34 invoking the procedure shall be in writing.

35 (b) The procedure shall provide for prompt deadlines. The procedure shall state  
36 the maximum time for the association to act on a request invoking the procedure.

37 (c) If the procedure is invoked by a member, the association shall participate in  
38 the procedure.

1 (d) If the procedure is invoked by the association, the member may elect not to  
2 participate in the procedure. If the member participates but the dispute is resolved  
3 other than by agreement of the member, the member shall have a right of appeal to  
4 the association's board of directors.

5 (e) A resolution of a dispute pursuant to the procedure, that is not in conflict  
6 with the law or the governing documents, binds the association and is judicially  
7 enforceable. An agreement reached pursuant to the procedure, that is not in  
8 conflict with the law or the governing documents, binds the parties and is  
9 judicially enforceable.

10 (f) The procedure shall provide a means by which the member and the  
11 association may explain their positions.

12 (g) A member of the association shall not be charged a fee to participate in the  
13 process.

14 **Comment.** Section 5060 continues former Section 1363.830 without substantive change.

15 **§ 5065. Default meet and confer procedure**

16 5065. (a) This section applies in an association that does not otherwise provide a  
17 fair, reasonable, and expeditious dispute resolution procedure. The procedure  
18 provided in this section is fair, reasonable, and expeditious, within the meaning of  
19 this article.

20 (b) Either party to a dispute within the scope of this article may invoke the  
21 following procedure:

22 (1) The party may request the other party to meet and confer in an effort to  
23 resolve the dispute. The request shall be in writing.

24 (2) A member of an association may refuse a request to meet and confer. The  
25 association may not refuse a request to meet and confer.

26 (3) The association's board of directors shall designate a member of the board to  
27 meet and confer.

28 (4) The parties shall meet promptly at a mutually convenient time and place,  
29 explain their positions to each other, and confer in good faith in an effort to  
30 resolve the dispute.

31 (5) A resolution of the dispute agreed to by the parties shall be memorialized in  
32 writing and signed by the parties, including the board designee on behalf of the  
33 association.

34 (c) An agreement reached under this section binds the parties and is judicially  
35 enforceable if both of the following conditions are satisfied:

36 (1) The agreement is not in conflict with law or the governing documents of the  
37 common interest development or association.

38 (2) The agreement is either consistent with the authority granted by the board of  
39 directors to its designee or the agreement is ratified by the board of directors.

40 (d) A member of the association may not be charged a fee to participate in the  
41 process.

42 **Comment.** Section 5065 continues former Section 1363.840 without substantive change.

1 **§ 5070. Notice in member handbook**

2 5070. The member handbook (Section 4810) shall include a description of the  
3 internal dispute resolution process provided pursuant to this article.

4 **Comment.** Section 5070 continues former Section 1363.850 without substantive change.

5 **Article 3. Alternative Dispute Resolution**  
6 **Prerequisite to Civil Action**

7 **§ 5075. Definitions**

8 5075. As used in this article:

9 (a) “Alternative dispute resolution” means mediation, arbitration, conciliation,  
10 or other nonjudicial procedure that involves a neutral party in the dispute  
11 resolution process. The form of alternative dispute resolution chosen pursuant to  
12 this article may be binding or nonbinding, with the voluntary consent of the  
13 parties.

14 (b) “Enforcement action” means a civil action or proceeding, other than a cross-  
15 complaint, for any of the following purposes:

16 (1) Enforcement of this part.

17 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3  
18 commencing with Section 7110) of Division 2 of Title 1 of the Corporations  
19 Code).

20 (3) Enforcement of the governing documents of a common interest  
21 development.

22 **Comment.** Section 5075 continues former Section 1369.510 without substantive change. The  
23 term “decisionmaking process” has been replaced with the more technically accurate term  
24 “dispute resolution process.” This is a nonsubstantive change.

25 **§ 5080. ADR prerequisite to enforcement action**

26 5080. (a) An association or an owner or a member of a common interest  
27 development may not file an enforcement action in the superior court unless the  
28 parties have endeavored to submit their dispute to alternative dispute resolution  
29 pursuant to this article.

30 (b) This section applies only to an enforcement action that is solely for  
31 declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim  
32 for monetary damages not in excess of five thousand dollars (\$5,000).

33 (c) This section does not apply to a small claims action.

34 (d) Except as otherwise provided by law, this section does not apply to an  
35 assessment dispute.

36 **Comment.** Section 5080 continues former Section 1369.520 without substantive change,  
37 except that subdivision (d) is obsolete and is not continued. That subdivision provided that the  
38 alternative dispute resolution requirements do not apply to an assessment dispute, except as  
39 otherwise provided by law. The application of this article to an assessment dispute is now  
40 governed by [former Section 1367.1.]

1    **§ 5085. Request for resolution**

2    5085. (a) Any party to a dispute may initiate the process required by Section  
3 5080 by serving on all other parties to the dispute a request for resolution. The  
4 request for resolution shall include all of the following:

5       (1) A brief description of the dispute between the parties.

6       (2) A request for alternative dispute resolution.

7       (3) A notice that the party receiving the request for resolution is required to  
8 respond within 30 days of service or the request will be deemed rejected.

9       (4) If the party on whom the request is served is the owner of a separate interest,  
10 a copy of this article.

11    (b) Service of the request for resolution shall be by personal delivery, first-class  
12 mail, express mail, facsimile transmission, or other means reasonably calculated to  
13 provide the party on whom the request is served actual notice of the request.

14    (c) A party on whom a request for resolution is served has 30 days following  
15 service to accept or reject the request. If a party does not accept the request within  
16 that period, the request is deemed rejected by the party.

17    **Comment.** Section 5085 continues former Section 1369.530 without substantive change.

18    **§ 5090. ADR process**

19    5090. (a) A party on whom a request for resolution is served may agree to  
20 participate in alternative dispute resolution by delivering a written acceptance to  
21 the party that served the request for resolution. The written acceptance shall be  
22 delivered as an individual notice (Section 4040).

23    (b) The parties shall complete the alternative dispute resolution within 90 days  
24 after delivery of the written acceptance, unless this period is extended by written  
25 stipulation signed by both parties.

26    (c) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence  
27 Code applies to any form of alternative dispute resolution initiated by a Request  
28 for Resolution under this article, other than arbitration.

29    (d) The costs of the alternative dispute resolution shall be borne by the parties.

30    **Comment.** Section 5090 continues former Section 1369.540 without substantive change,  
31 except that a procedure is added in subdivision (a) for written acceptance of a request for  
32 resolution.

33    **§ 5095. Tolling of statute of limitations**

34    5095. If a request for resolution is served before the end of the applicable time  
35 limitation for commencing an enforcement action, the time limitation is tolled  
36 during the following periods:

37       (a) The period provided in Section 5085 for response to a request for resolution.

38       (b) If the request for resolution is accepted, the period provided by Section 5090  
39 for completion of alternative dispute resolution, including any extension of time  
40 stipulated to by the parties pursuant to Section 5090.

41    **Comment.** Section 5095 continues former Section 1369.550 without substantive change.

1 **§ 5100. Certification of efforts to resolve dispute**

2 5100. (a) At the time of commencement of an enforcement action, the party  
3 commencing the action shall file with the initial pleading a certificate stating that  
4 one or more of the following conditions is satisfied:

5 (1) Alternative dispute resolution has been completed in compliance with this  
6 article.

7 (2) One of the other parties to the dispute did not accept the terms offered for  
8 alternative dispute resolution.

9 (3) Preliminary or temporary injunctive relief is necessary.

10 (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a  
11 demurrer or a motion to strike unless the court finds that dismissal of the action for  
12 failure to comply with this article would result in substantial prejudice to one of  
13 the parties.

14 **Comment.** Section 5100 continues former Section 1369.560 without substantive change.

15 **§ 5105. Stay of litigation for dispute resolution**

16 5105 (a) After an enforcement action is commenced, on written stipulation of  
17 the parties, the matter may be referred to alternative dispute resolution. The  
18 referred action is stayed. During the stay, the action is not subject to the rules  
19 implementing subdivision (c) of Section 68603 of the Government Code.

20 (b) The costs of the alternative dispute resolution shall be borne by the parties.

21 **Comment.** Section 5105 continues former Section 1369.570 without substantive change.

22 **§ 5110. Attorney's fees**

23 5110. In an enforcement action in which fees and costs may be awarded, the  
24 court, in determining the amount of the award, may consider whether a party's  
25 refusal to participate in alternative dispute resolution before commencement of the  
26 action was reasonable.

27 **Comment.** Section 5110 generalizes former Section 1369.580 so that it applies to any  
28 enforcement action and not just to an action to enforce the governing documents.

29 **§ 5115. Notice in member handbook**

30 5115. The member handbook (Section 4810) shall include a summary of the  
31 provisions of this article that specifically references this article. The summary  
32 shall include the following language: "Failure of a member of the association to  
33 comply with the alternative dispute resolution requirements of Section 5080 of the  
34 Civil Code may result in the loss of your right to sue the association or another  
35 member of the association regarding enforcement of the governing documents or  
36 the applicable law."

37 **Comment.** Section 5115 restates the substance of former Section 1369.590.

1 Article 4. Civil Actions

2 § 5125. Enforcement of governing documents

3 5125. (a) The covenants and restrictions in the declaration shall be enforceable  
4 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind  
5 all owners of separate interests in the development. Unless the declaration states  
6 otherwise, these servitudes may be enforced by any owner of a separate interest or  
7 by the association, or by both.

8 (b) A governing document other than the declaration may be enforced by the  
9 association against an owner of a separate interest or by an owner of a separate  
10 interest against the association.


11 (c) In an action to enforce the governing documents, the prevailing party shall be  
12 awarded reasonable attorney's fees and costs.

13 **Comment.** Section 5125 continues former Section 1354 without substantive change.

14 § 5130. Enforcement of this part

15 5130. In addition to any other remedy provided by law, an interested person may  
16 bring an action in superior court to enforce a provision of this part.

17 **Comment.** Section 5130 is new.

18  **Staff Note.** Section 5130 would provide for judicial enforcement of any provision of the  
19 Davis-Stirling Common Interest Development Act. This would eliminate the implication that a  
20 civil action may only be brought to enforce a provision of this part if there is specific statutory  
21 authorization for that action. See, e.g., §§ 1353.5 (display of U.S. flag), 1363.09 (election and  
22 board meeting), 1365.2(f) (record inspection), 1368(d) (seller disclosure). The Commission  
23 invites comment on whether this provision would be problematic.

24 CHAPTER 5. FINANCES [RESERVED]

25 CHAPTER 6. PROPERTY OWNERSHIP, USE, AND  
26 MAINTENANCE [RESERVED]

27 CHAPTER 7. GOVERNING DOCUMENTS

28 Article 1. General Provisions

29 § 6000. Creation of common interest development

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

34 (a) A declaration.

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

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

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

9 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest  
10 development”), 4120 (“condominium plan”), 4135 (“declaration”), 4185 (“separate interest”).

11 **§ 6005. Document authority**

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

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

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

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

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

28 **Article 2. Declaration**

29 **§ 6025. Content of declaration**

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

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

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

36 (c) The name of the association.

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

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

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

1 See also Sections 4080 (“association”), 4100 (“common interest development”), 4125  
2 (“condominium project”), 4130 (“declarant”), 4135 (“declaration”), 4160 (“member”), 4175  
3 (“planned development”), 4190 (“stock cooperative”).

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

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

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

11 “NOTICE OF AIRPORT IN VICINITY

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

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

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

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

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

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

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

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

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



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

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

8 **Comment.** Section 6035 continues former Section 1353(a)(3)-(4) without substantive change.  
9 See also Section 4100 (“common interest development”), 4135 (“declaration”).

10 **§ 6040. Amendment authorized**

11 6040. (a) Unless a declaration expressly provides otherwise, any provision of the  
12 declaration can be amended.

13 (b) If a provision of a declaration can be amended, it can be amended at any  
14 time.

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

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

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

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

37 See also Sections 4080 (“association”), 4100 (“common interest development”), 4135  
38 (“declaration”).

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

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

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

5 **§ 6045. Approval of amendment**

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

8 (b) If the governing documents do not provide a procedure for approval of an  
9 amendment of the declaration, an amendment may be approved by a majority of  
10 all members (Section 4065).

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

13 **Comment.** Section 6045 is comparable to the provisions of former Section 1355 that relate to  
14 approval of an amendment of the declaration. See Sections 4040 (individual notice), 4065  
15 (approved by all members).

16 See also Sections 4085 (“board”), 4135 (“declaration”), 4150 (“governing documents”), 4160  
17 (“member”).

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

26 (2) Civil Code Section 1356 authorizes a director or member to petition the superior court for  
27 an order lowering the number or percentage of affirmative votes required to approve an  
28 amendment of the declaration. A comparable order may be obtained under Corporations Code  
29 Section 7515, which is continued in proposed Section 4620. The staff does not see the benefit in  
30 providing two separate and slightly different provisions to achieve the same result. For that  
31 reason, Section 1356 is not continued in the proposed law.

32 **§ 6050. Approval of amendment to delete obsolete construction or marketing provision**

33 6050. Notwithstanding Section 6045, the deletion of a provision of the  
34 declaration may be approved by the board (Section 4060) and by a majority of a  
35 quorum of the members (Section 4070) if all of the following conditions are  
36 satisfied:

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

41 (b) The provision to be deleted authorizes access by the developer over or across  
42 the common area for the purposes of (1) completion of construction of the  
43 development, and (2) the erection, construction, or maintenance of structures or  
44 other facilities designed to facilitate the completion of construction or marketing  
45 of separate interests.

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

3 **Comment.** Section 6050 is comparable to former Section 1355.5 but applies only to the  
4 amendment of a declaration. The requirement of former Section 1355.5(c), that members be given  
5 notice before the board approves the amendment is not continued. Member notice is required  
6 before board meetings and before a member vote is held. See Sections 4520 (board meeting),  
7 4595 (member meeting).

8 See Sections 4060 (approved by the board), 4070 (approved by majority of quorum of all  
9 members). See also Sections 4085 (“board”), 4095 (“common area”), 4135 (“declaration”), 4160  
10 (“member”), 4185 (“separate interest”).

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

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

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

#### 26 § 6055. Effective date of amendment

27 6055. Notwithstanding any contrary provision of the governing documents, an  
28 amendment approved pursuant to this article becomes effective once the following  
29 actions have been completed:

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

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

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

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

### 41 Article 3. Articles of Incorporation

#### 42 § 6060. Content of articles

43 6060. (a) The articles of incorporation of an association that are filed with the  
44 Secretary of State on or after January 1, 1995, shall include all of the following:

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

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

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

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

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

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

19 See also Sections 4080 ("association"), 4100 ("common interest development"), 4155  
20 ("managing agent").

## 21 Article 4. Condominium Plan

### 22 § 6075. Content of condominium plan

23 6075. A condominium plan shall include all of the following:

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

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

30 (c) A certificate consenting to the recordation of the condominium plan pursuant  
31 to this part signed and acknowledged by all of the following persons:

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

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

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

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

40 (5) In a conversion of a community apartment project or stock cooperative to a  
41 condominium project that has been approved by the required number of owners,  
42 trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the

1 Government Code, by those owners, trustees, beneficiaries, and mortgagees who  
2 approved the conversion.

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

6 **Comment.** Section 6075 continues former Section 1351(e) without substantive change, except  
7 that last paragraph is not continued. That paragraph is continued without substantive change in  
8 Section 5060.

9 See also Sections 4095 (“common area”), 4120 (“condominium plan”), 4125 (“condominium  
10 project”), 4170 (“person”), 4185 (“separate interest”), 4190 (“stock cooperative”).

11 **§ 6080. Amendment of condominium plan**

12 6080. A condominium plan may be amended or revoked by a recorded  
13 instrument that is acknowledged and signed by all the persons whose signatures  
14 are required pursuant to subdivision (c) of Section 6075.

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

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

18 **Article 5. Operating Rules**

19 **§ 6100. Requirements for validity and enforceability**

20 6100. An operating rule is valid and enforceable only if all of the following  
21 requirements are satisfied:

22 (a) The rule is in writing.

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

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

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

29 (e) The rule is reasonable.

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

31 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4165 (“operating  
32 rule”).

33 **§ 6110. Application of rulemaking procedures**

34 6110. (a) Sections 6115 and 6120 only apply to an operating rule that relates to  
35 one or more of the following subjects:

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

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

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

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

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

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

8 (b) Sections 6115 and 6120 do not apply to the following actions by the board:

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

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

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

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

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

16 **Comment.** Section 6110 continues former Section 1357.120 without substantive change.

17 See also Sections 4080 ("association"), 4085 ("board"), 4095 ("common area"), 4145  
18 ("exclusive use common area"), 4150 ("governing documents"), 4160 ("member"), 4165  
19 ("operating rule"), 4180 ("rule change"), 4185 ("separate interest").

20 **§ 6115. Approval of rule change by board**

21 6115. (a) The board shall provide general notice (Section 4045) of a proposed  
22 rule change at least 30 calendar days before making the rule change. The notice  
23 shall include the text of the proposed rule change and a description of the purpose  
24 and effect of the proposed rule change. Notice is not required under this  
25 subdivision if the board determines that an immediate rule change is necessary to  
26 address an imminent threat to public health or safety or imminent risk of  
27 substantial economic loss to the association.

28 (b) A proposed rule change may be approved by the board (Section 4060).

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

35 (d) If the board determines that an immediate rule change is required to address  
36 an imminent threat to public health or safety, or an imminent risk of substantial  
37 economic loss to the association, the board may approve an emergency rule  
38 change (Section 4060) without providing general notice (Section 4045) of the  
39 proposed rule change. An emergency rule change is effective for 120 calendar  
40 days, unless the board provides for a shorter effective period. A rule change made  
41 under this subdivision may not be readopted under this subdivision.

42 **Comment.** Section 6115 restates former Section 1357.130 without substantive change. See  
43 Sections 4045 (general notice), 4060 (approved by the board).

1 See also Sections 4080 (“association”), 4085 (“board”), 4180 (“rule change”).

2 **§ 6120. Reversal of rule change by members**

3 6120. (a) Members of an association owning five percent or more of the separate  
4 interests may call a special member meeting to reverse a rule change that was  
5 approved by the board.

6 (b) A special member meeting may be called by delivering a request to the board  
7 (Section 4035) that includes the requisite number of member signatures, after  
8 which the board shall provide general notice (Section 4045) of the meeting and  
9 hold the meeting in conformity with Article 2 (commencing with Section 4500) of  
10 Chapter 3. A written request may only be delivered within 30 calendar days after  
11 general notice (Section 4045) of the rule change or enforcement of the resulting  
12 rule, whichever occurs first.

13 (c) For the purposes of Article 3 (commencing with Section 4700) of Chapter 3,  
14 collection of signatures to call a special meeting under this section is a purpose  
15 reasonably related to the interests of the members of the association. A member  
16 request to copy or inspect the membership list solely for that purpose may not be  
17 denied on the grounds that the purpose is not reasonably related to the member’s  
18 interests as a member.

19 (d) A decision to reverse a rule change may be approved by a majority of a  
20 quorum of the members (Section 4070), or if the declaration or bylaws require a  
21 greater proportion, by the affirmative vote or written ballot of the proportion  
22 required. In lieu of calling the meeting described in this section, the board may  
23 distribute a written ballot to every member of the association in conformity with  
24 the requirements of [Section 7513 of the Corporations Code].

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

28 (f) A meeting called under this section is governed by Article 3 (commencing  
29 with Section 4575) of Chapter 3 and [Sections 7612 and 7613 of the Corporations  
30 Code].

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

35 (h) As soon as possible after the close of voting, but not more than 15 calendar  
36 days after the close of voting, the board shall provide general notice (Section  
37 4045) of the results of the member vote.

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

40 **Comment.** Section 6120 continues former Section 1357.140 without substantive change. See  
41 Sections 4035 (delivered to board) 4045 (general notice), 4070 (approved by majority of quorum  
42 of the members).

1 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4160  
2 (“member”), 4180 (“rule change”), 4185 (“separate interest”).

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

6 **§ 6125. Applicability of article to changes commenced before and after January 1, 2004**

7 6125. (a) This article applies to a rule change commenced on or after January 1,  
8 2004.

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

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

13 **Comment.** Section 6125 continues former Section 1357.150 without substantive change.  
14 See also Sections 4085 (“board”), 4180 (“rule change”).

15 **Article 6. Unlawful Restrictions**

16 **§ 6150. Discriminatory restriction**

17 6150. (a) No governing document shall include a restrictive covenant in  
18 violation of Section 12955 of the Government Code.

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

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

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

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

37 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest  
38 development”), 4135 (“declaration”), 4150 (“governing documents”), 4170 (“person”).

39 **☞ Staff Note.** The use of the term “restrictive covenant” in existing Section 1352.5 would  
40 seem to limit its scope to a discriminatory provision in the recorded declaration (see Civ. Code §  
41 1468(d) (covenant must be recorded to bind successive owners)). That is contrary to the express  
42 terms of the section, which provide that it applies to a “declaration *or other governing*



1 *documents.*” Would it be appropriate to replace the term “restrictive covenant” with the broader  
2 term “rule or restriction”?

3 Article 7. Construction of Documents

4 **§ 6175. Liberal construction of instruments**

5 6175. (a) Any deed, declaration, or condominium plan for a common interest  
6 development shall be liberally construed to facilitate the operation of the common  
7 interest development, and its provisions shall be presumed to be independent and  
8 severable.

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

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

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

15 **§ 6180. Boundaries of units**

16 6180. In interpreting a deed or condominium plan, the existing physical  
17 boundaries of a unit in a condominium project, when the boundaries of the unit are  
18 contained within a building, or of a unit reconstructed in substantial accordance  
19 with the original plans thereof, shall be conclusively presumed to be its boundaries  
20 rather than the metes and bounds expressed in the deed or condominium plan, if  
21 any exists, regardless of settling or lateral movement of the building and  
22 regardless of minor variance between boundaries shown on the plan or in the deed  
23 and those of the building.

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

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

26 CHAPTER 8. CONSTRUCTION DEFECT LITIGATION

27 [RESERVED]

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