

## **BOARD RESPONSIBILITIES**

**Association boards must always perform their duties in accordance with current state law, and the governing documents of their association. The contents of this section are not meant to be exhaustive in that regard and are general in nature.**

**The section contents were accurate as of the date of the revision and were checked against the civil code as presented on the Davis-Stirling web site ([www.davis-stirling.com](http://www.davis-stirling.com)) at that time. Each year, the legislature has made updates to the statutes applicable to homeowners associations. So, over time, these contents may be at variance them. The current statutes always take precedence over these contents.**

**Where questions arise relative to current statutes or association governing documents, obtaining the advice of council is strongly recommended.**

## GENERAL DUTIES OF HOA BOARDS

HOA boards of directors are responsible for the following:

- 1) **Maintenance.** Maintain the common areas on behalf of the membership (Civ. Code §4775)
- 2) **Rules Enforcement.** Enforce the governing documents via warnings, hearings, fines, suspension of privileges, and litigation. To enforce its rules, an association must have a published rules enforcement policy in place. When an association has notice of a rules violation, whether through a board member, committee member, employee, managing agent or resident, specific steps must be followed until the violation is resolved. The steps are: a Violation Notice, a Hearing, application of Penalty, Internal Dispute Resolution (IDR), Alternate Dispute Resolution (ADR) and Litigation. (Civ. Code §5930.)
- 3) **Financial Management.** Boards are obligated to collect assessments necessary to properly maintain the property and enforce the governing documents. (Civ. Code §5600.) To that end, they must prepare budgets, levy and collect assessments, pay bills, review financial records, and prepare year-end financial statements.
  - a) Financial Review Requirement (Civ. Code §5500.)
    - i) Unless the governing documents impose more stringent standards, each board member shall Review, on a monthly basis, a current reconciliation of the association's operating accounts, a current reconciliation of the association's reserve accounts, the current year's actual operating revenues and expenses compared to the current year's budget, the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts, an income and expense statement for the association's operating and reserve accounts, and the check register, monthly general ledger, and delinquent assessment receivable reports.
    - ii) The financial review requirement may be met when every individual member of the board, or a subcommittee of the board consisting of the treasurer and at least one other board member, reviews the documents and statements described independent of a board meeting, so long as the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting.
- 4) **Operational Management.** Manage the day to day operations of the association. This includes retaining (as needed) management services, legal services, landscape vendors, pest control, operating amenities (pools, tennis courts, clubhouses, equestrian facilities, golf course, etc.), purchasing insurance, etc.
- 5) **Keeping Books and Records.** The board must keep detailed and accurate records. This includes accurate copies of the CC&Rs, articles of incorporation, bylaws, plats of survey, rules and regulations (and all amendments of these), minutes of all board and owner meetings, insurance policies, contracts, leases, and other agreements in effect, current list of the names and addresses of the members, copies of ballots and proxies from past elections, itemized accounting of the budgeted and actual receipts and expenditures of the HOA with supporting budgetary and financial documents.

To carry out their duties, boards have authority as provided by the governing documents and statutes. Directors must perform their duties as fiduciaries.

## HOA BOARD MEMBER FIDUCIARY DUTY

Because board members are entrusted with the money and property of the association they are held to a higher standard and must avoid conflicts of interest. They are deemed "fiduciaries" and have a duty to act in the best interests of the membership. Directors of nonprofit corporations such as the Association are fiduciaries who are required to exercise their powers in accordance with the duties imposed by the Corporations Code. This fiduciary relationship is governed by the statutory standard that requires directors to exercise due care and undivided loyalty for the interests of the corporation.

**Two Broad Duties.** Upon their election to the board of a common interest development, directors become fiduciaries with powers to act on behalf of the association. As fiduciaries, directors are held to a higher standard of conduct and have two primary duties: (i) duty of care, and (ii) duty of loyalty. This applies to directors of both incorporated and unincorporated associations.

- 1) **DUTY OF CARE** (Due Diligence; Duty to Investigate). Directors must be diligent and careful in performing the duties they have undertaken. (*Burt v. Irvine Company.*) Directors must:
  - a) Attend and participate in meetings so they can be informed about the association's business.
  - b) Make reasonable inquiry re maintenance issues, rules violations, etc.
  - c) Make decisions.
  - d) Keep corporate records.
  - e) Enforce the governing documents.
- 2) **DUTY OF LOYALTY** (No Self-Dealing). Directors must act in the best interests of the association even if at the expense of their own interests. This is more than just embezzlement of funds; it includes steering contracts to family members or taking actions that result in personal benefits to the director at the expense of the association. Violation could result in (i) liability for all profits received, (ii) all damages caused by the breach, and (iii) punitive damages. The duty of undivided loyalty applies when the board of directors of the association considers maintenance and repair contracts, the operating budget, creation of reserve and operating accounts, etc. Directors may not make decisions for the association that benefit their own interests at the expense of the association and its members. The duty of loyalty can extend to the support of board decisions.

**Delegating Duties.** Boards can delegate many of their duties. However, there are some duties that cannot be delegated. They include the following:

- Appointing executive committees or their members;
- Approving settlement agreements;
- Attending board meetings;
- Voting on motions;
- Electing officers;
- Filling vacancies on the board;
- Reviewing the association's finances;
- The decision to record a lien for delinquent assessments;
- The decision to foreclose on a lien;

## HOA BOARD MEMBER FIDUCIARY DUTY

- The decision to file a lawsuit.

**Business Judgment.** In determining whether directors violated their fiduciary duties, courts will use the Business Judgment Rule. To avoid potential breaches, boards should adopt an ethics policy to guide directors.

**Personal Liability.** As volunteers, directors are protected from personal liability through the governing documents and various laws provided they meet certain standards. Such protections are necessary otherwise it would be nearly impossible to recruit people to serve on association boards of directors. Protections against legal exposure are extended to directors as follows:

1. D&O Insurance. Directors and Officers insurance protects against errors and omissions made while in office.
2. Statutory Indemnity. The Davis-Stirling Act protects volunteers from personal liability while on the board of directors provided they meet certain criteria. Directors and officers can also be indemnified by their association if they had no reasonable cause to believe their conduct was unlawful. The Corporations Code extends further protections under the Business Judgement Rule.
3. Governing Documents. Typically, an association's CC&Rs and bylaws both contain exculpatory language as well as hold harmless and indemnity provisions protecting officers and directors from liability for negligent acts and omissions while in office.

**Statute of Limitations.** The statute of limitations for an action against an association or board member for breach of fiduciary duties is three (3) years from the discovery of the wrongful act.

**IMPORTANT FACTS HOA BOARD MEMBERS MUST KNOW****1. ANNUAL BUDGET AND POLICY DISCLOSURES**

Upon written consent of members, associations may distribute documents and disclosures electronically; otherwise, all documents must be distributed by first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier.

- a. At least 30 days prior to distributing the annual budget, notify members of their obligation to provide the association with their contact information.
- b. 30-90 days prior to the start of the fiscal year the Association must distribute an **Annual Budget Report** to all owners. The report must include the following:
  - i. A full budget or a summary showing the estimated revenue and expenses on an accrual basis. [NOTE: Boards must notify members, not less than 30 nor more than 60 days prior to any increase in regular assessments or any special assessment];
  - ii. A summary of the reserves;
  - iii. A statement as to whether the board will defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement
  - iv. A statement as to whether one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves. If so, the statement shall set out the estimated amount, commencement date, and duration of the assessment;
  - v. A statement as to the mechanism or mechanisms (including assessments, borrowing, other assets, deferral of selected replacements or repairs, or alternative mechanisms) by which reserves will be funded to repair or replace major components;
  - vi. The procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to major components the association is obligated to maintain;
  - vii. A statement as to whether the association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.
  - viii. A summary of the association's insurance.
  - ix. The Assessment and Reserve Funding Disclosure Summary form shall accompany each annual budget report or summary of the annual budget report;
  - x. The completed "Charges For Documents Provided" disclosure

**IMPORTANT FACTS HOA BOARD MEMBERS MUST KNOW**

- c. 30-90 days prior to the start of the fiscal year the Association must distribute an **Annual Policy Statement** to all owners. The statement must include the following:
  - i. The name and address of the person designated to receive official communications to the association;
  - ii. A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses;
  - iii. The location, if any, designated for posting of a general notice;
  - iv. Notice of a member's option to receive general notices by individual delivery;
  - v. Notice of a member's right to receive copies of meeting minutes;
  - vi. A statement of assessment collection policies;
  - vii. A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments;
  - viii. A statement describing the association's discipline policy, if any, including any schedule of penalties for violations of the governing documents;
  - ix. A summary of dispute resolution procedures;
  - x. A summary of any requirements for association approval of a physical change to property;
  - xi. The mailing address for overnight payment of assessments;
  - xii. Any other information that is required by law or the governing documents or that the board determines to be appropriate for inclusion.

**2. FINANCIAL MANAGEMENT**

- a. If the Association has over \$10,000 of gross revenue, a financial statement must be prepared annually, including a balance sheet, an income statement and a statement of changes in financial position.
- b. Each month, the board must comply with the Financial Review requirements and ratify the review at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting.
- c. The board may borrow from the reserves for operating shortfalls, providing it announces the intent in a noticed meeting and it repays the funds within one year. Refer to the Civil Code. The reserve funds of the Association may be used for litigation related to the component.
- d. Increases to the assessments greater than 20% and special assessments may be approved by a majority of a quorum.
- e. Post-petition (after bankruptcy filing) assessments may not be collectable. (Refer to court rulings.).
- f. If an owner sends a written request for the Association's legal documents, the Association must respond within 10 days.
- g. At least once every three years the board shall conduct a Reserve Study.

**IMPORTANT FACTS HOA BOARD MEMBERS MUST KNOW****3. TAXES AND REVIEWS**

- a. All Associations must file tax returns and pay taxes on revenue not related to membership.
- b. If the Association wishes to file Form 1120 tax returns and protect net income from tax, the owners must pass a resolution as to the disposition of net income, as required under Revenue Ruling 70-604.
- c. The Associations tax rate is 30% if it files Form 1120h, and as low as 15% if it files Form 1120.
- d. No primarily residential Association needs to pay a California franchise tax.
- e. All Associations with \$75,000 or more gross revenue must have a CPA review or audit (dependent on the wording in the documents) the books and records of the Association.

**4. MEETINGS AND NOTICES**

- a. Notice of Meeting shall be posted at least 4 days prior to the meeting. The Notice shall include a complete Agenda. Items not on the Agenda may not be discussed or acted on by the Board at the meeting. Refer to the Civil Code. Ci
- b. Association meetings must be conducted by parliamentary procedure.
- c. The minutes or summary of minutes, of any meeting of the board (other than executive session) must be dated and signed by the secretary of the board, and made available to the members within 30 days of the meeting. Members must be notified in writing as to where they can obtain a copy of those minutes.
- d. If 5% of the membership request in writing a special meeting, the Association must notify all members within 35-90 days.
- e. If a quorum is not present at a special or annual meeting, the only business that may be conducted is a motion to adjourn.
- f. When an election is held at a meeting of the members, nominations must be held open until a motion is passed to close them.
- g. Nominees may solicit funds from the membership to pay for their campaigns.

**5. STATEMENT BY COMMON INTEREST DEVELOPMENT ASSOCIATION**

Since July 2003, every unincorporated association formed to manage a common interest development must file a Statement by Common Interest Development Association, biennially, in the month of JULY. A filing fee is required. The required form is available at [https://bpd.cdn.sos.ca.gov/corp/pdf/so/corpua\\_cid.pdf](https://bpd.cdn.sos.ca.gov/corp/pdf/so/corpua_cid.pdf). If the street address of the association's onsite office or the street address of the responsible officer or managing agent of the association changes, the association must file a complete Statement by Common Interest Development Association. Upon changing its status to that of a corporation, the association must comply with the filing requirements for incorporated associations.

**IMPORTANT FACTS HOA BOARD MEMBERS MUST KNOW****6. MODIFICATIONS & CHANGES: PROPERTY RIGHTS**

- a. Modifications to units by the owners may not be approved by the board if such modifications encroach onto the common areas or otherwise use common amenities in a manner inconsistent with the undivided, general community use.
- b. Existing drainage patterns may not be disturbed without prior express written approval of the Architectural Committee. Work that may affect drainage to or from neighboring properties usually will not be approved.
- c. Refer to the current Architectural Forms regarding board approval

**7. EMPLOYEES & CONTRACTORS OF THE ASSOCIATION**

- a. All unincorporated contractors who are paid over \$600 per year must receive a Form 1099 from the Association.
- b. Every employer or independent contractor in Calif. (including the Association) must have a written Injury and Illness Prevention Program.
- c. Federal and state laws determine whether a person qualifies as an independent contractor. Many "employees" of the Association are mislabeled and therefore denied their legal right to employee status.
- d. The Board of Directors could be held liable for injuries to unlicensed, uninsured subcontractors.
- e. Fidelity insurance, whether that of the Association or management, probably does not protect the Association's funds from the manager's action.
- f. All associations, whether or not they have employees, should carry Workers' Compensation insurance that extends to volunteer labor. All independent contractors working for the Association must provide the manager or board with a certificate of insurance and name the Association as additional insured.

**SUGGESTED WELCOME LETTER**

The LOMMA board thinks a welcome letter can address the main items of concern to new residents and trust it will ease the burden on Association Boards a little.

The LOMAA Board encourages a member of your board hand deliver this letter to the new residents soon after they move in as part of a welcome to the Association.

A Microsoft word template for a sample letter can be found on the LOMAA Oakmont web site in the sample document section ([www.lomaaokmont.org/sample-docs](http://www.lomaaokmont.org/sample-docs)).

## GENERAL INTEREST ITEMS

### SUMMARY OF OAKMONT PROTECTIVE RESTRICTIONS, ARCHITECTURAL GUIDELINES AND GOOD NEIGHBOR PRACTICES APPLICABLE TO ALL OAKMONT RESIDENTS

**RESIDENTIAL OCCUPANCY & PETS:** The primary resident must be 55 years of age or older. The primary resident's spouse and any other residing adult, upon whom the primary resident depends for economic or physical support, may be of any age. All other residents must be not less than 45 years of age. Live-in guests are limited to not more than 90 days per calendar year. Homes are for personal residence only and are not to be used as a business. Dogs and cats or other usual household animals are limited to 2 per residence. They are to be confined to the residence and, if walked, must be on a leash at all times. Pets are not allowed to roam and must be trained not to use the common area lawns or shrubbery. Pets that become a nuisance to residence are subject to removal from the area.

- **REMODELING & ALTERATIONS:** All exterior remodeling, relandscaping, home alterations or additions, including exterior painting and roof replacement, must be first approved by the Board and Architectural Committee.
- **GARAGES, CARPORTS & PARKING:** Enclosed garages are to be used for the storage of vehicles and other personal items. Garage doors are to be kept closed at all times except when a vehicle is entering or exiting. However, if it is necessary to open them for ventilation on excessively hot days, and you are not afraid of snakes, they may be opened not more than 18 inches. Carports are for the storage of vehicles only. Storage will only be allowed within enclosed storage areas. Vehicles are not to be left on the street or in driveways overnight. Recreational vehicles in the process of being loaded or unloaded may park in front of the owners residence for a period up to 72 hours otherwise, they must be stored in the owner's enclosed garage or at the central Recreational Vehicle and Mini Warehouse area on Stone Bridge Road.
- **BILLBOARDS & SIGNS:** No billboard, poster, or sign shall be displayed on any residence or erected upon the Association's common property without the approval of your Board and the Architectural Committee. The only exception is the display of customary signs of reasonable dimension advertising the property is for sale or rent.
- **CLOTHESLINES:** Clotheslines, racks, and other apparatus used for the purpose of airing or drying must be concealed from view from the common area or adjacent property. They shall not be placed in carports or open garages.
- **COMMON AREA:** There shall be no obstruction of the common area and no rubbish or debris of any kind shall be placed or permitted to accumulate thereon. No nuisance shall be permitted to exist upon any portion of the common property that is detrimental to any of the property in the vicinity or to the residents. Your Board manages landscaping and maintenance of the common area and any plantings thereon will require approval by the Board and, when major changes are made, the Architectural Committee. Remodeling or constructing additions to a home or deck, which require encroachment of the common area, must be approved, not only by the Board and the Architectural Committee, but also by all (100%) of the Association's homeowners.
- **SAFETY & SECURITY:** The Oakmont speed limit is 25 MPH because our streets are not like the typical urban neighborhood. Here we give the right-of-way to the walking residents and golf cart drivers as well as to the quail, deer, rabbits, and other animal species. Please be extra careful when driving your vehicle in Oakmont. Security is provided by the Santa Rosa Police Department and a local security service is hired by the OVA to patrol our streets at night. When you are going to be away from home over night, let your neighbors know so they can watch for any unusual activity. It is a good idea to put some of your inside table lamps on timers so that it does not appear that you are away. While we have relatively few burglaries, they do sometimes occur and usually at residences where garage doors are left open.
- **ACTIVITIES:** There is a bountiful array of enjoyable activities in Oakmont. Lawn bowling, tennis courts, 3 swimming pools, an arts association, a newly expanded gym, bridge clubs, bible clubs, travel clubs, a garden club, walkers club, a club for RV rovers, shuffleboard, dominos, a computer learning center, shopping trips, musical concerts, book reviews, classes of all sorts including instruction in several foreign languages, ceramics, and even tai chi. There are two good restaurants, Grapes and the Quail Inn. The Oakmont Golf Club is one of the finest in the western states. Oakmont is a very friendly and enjoyable place to live. Make the most of it!

(Rev 5-3-99)

**GENERAL INTEREST ITEMS****GENERAL INFORMATION  
ABOUT THE LAW AND THE OAKMONT COMMUNITY**

**THIS MEMO ATTEMPTS TO SUMMARIZE SOME, BUT NOT ALL THE CHANGES IN THE LAW WHICH APPLY TO THE OAKMONT COMMUNITY. IF YOU HAVE ANY QUESTIONS ABOUT YOUR LEGAL RIGHTS, WE SUGGEST YOU CONSULT WITH YOUR OWN LEGAL ADVISORS.**

All the residents of Oakmont are subject to the laws of the United States of American and of the State of California. By becoming a resident within the Oakmont community, each person in Oakmont also becomes a party to certain contractual obligations between the members and the Oakmont Village Association, a California Corporation ("OVA"). In addition, some of the residents of Oakmont live within maintained areas which are governed by what are sometimes referred to as "maintenance subassociations." Those residents within those maintained areas also are parties to the agreements which govern those maintained areas.

The agreements to which all Oakmont residents are parties are the Articles of Incorporation and the Bylaws of the OVA and the covenants, conditions and restrictions ("CC&RS") which have been recorded against each subdivision within Oakmont since the inception of the community. In Oakmont, the CC&Rs are also known as "Protective Restriction."

Oakmont began as a planned development with the recording of the first set of CC&Rs in 1964. Since then, each successive subdivision has been annexed into Oakmont and has incorporated substantially the same form of CC&Rs as the previous subdivisions. This was done to maintain consistency. In the meanwhile, since the early 1960's there have been significant changes in California law. The remainder of this memorandum summarizes some of the more significant changes in California law which apply to the Oakmont community and which supersede or augment provisions in Oakmont's CC&Rs.

## SELECTED CIVIL CODE SECTIONS

### AGE RESTRICTION

#### **URUH ACT, CIVIL CODE §51.2, §51.3 ET. SEQ.**

The earlier subdivisions and CC&R's in Oakmont have age restrictions limiting occupancy to persons age 45 and older. Since 1984, those restrictions are no longer enforceable. The current age minimum is 55, with certain limited exceptions (Civil Code §51.2 et.seq.)

Oakmont is a senior citizen housing development. Under the law, a senior citizen housing development is allowed to restrict occupancy to a qualified resident ("senior citizen") who is age 55 or older. An additional "qualified permanent resident" who does not have to be age 55 or older may reside in the unit if that individual meets all of the following conditions:

- i) The person was residing with the senior citizen or qualifying resident before the death, hospitalization or other prolonged absence or dissolution of the marriage with that senior citizen or qualifying resident;
- ii) Was 45 years of age or older or was a spouse, cohabitant or person providing primary physical or economic support to the qualifying resident or to the senior citizen; and
- iii) Has an ownership interest in, or expects an ownership interest in, the dwelling within the development.

### DOCUMENT AUTHORITY

#### **Civil Code §4205. Hierarchy of Document Authority.**

- (a) To the extent of any conflict between the governing documents and the law, the law shall prevail.
- (b) To the extent of any conflict between the articles of incorporation and the declaration, the declaration shall prevail.
- (c) To the extent of any conflict between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration shall prevail.
- (d) To the extent of any conflict between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration shall prevail.

### CC&R AMENDMENT

#### **Civil Code §4270. Amendment Procedure.**

- (a) A declaration may be amended pursuant to the declaration or this act. Except where an alternative process for approving, certifying, or recording an amendment is provided in Section 4225, 4230, 4235, or 4275, an amendment is effective after all of the following requirements have been met: [Old: Civ. Code §1355(a)]
  - (1) The amendment has been approved by the percentage of members required by the declaration and any other person whose approval is required by the declaration.
  - (2) That fact has been certified in a writing executed and acknowledged by the officer designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association.
  - (3) The amendment has been recorded in each county in which a portion of the common interest development is located.  
[Old: Civ. Code §1355(b)(3)]
- (b) If the declaration does not specify the percentage of members who must approve an amendment of the declaration, an amendment may be approved by a majority of all members, pursuant to Section 4065. [Old: Civ. Code §1355(b)(2)]

**SELECTED CIVIL CODE SECTIONS****Civil Code §4275. Judicial Authorization of Amendments.**

[Old: Civ. Code §1356]

- (a) If in order to amend a declaration, the declaration requires members having more than 50 percent of the votes in the association, in a single class voting structure, or members having more than 50 percent of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the association, or any member, may petition the superior court of the county in which the common interest development is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the association members in the manner provided in the declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:
- (1) The governing documents.
  - (2) A complete text of the amendment.
  - (3) Copies of any notice and solicitation materials utilized in the solicitation of member approvals.
  - (4) A short explanation of the reason for the amendment.
  - (5) Any other documentation relevant to the court's determination.
- (b) Upon filing the petition, the court shall set the matter for hearing and issue an ex parte order setting forth the manner in which notice shall be given.
- (c) The court may, but shall not be required to, grant the petition if it finds all of the following:
- (1) The petitioner has given not less than 15 days written notice of the court hearing to all members of the association, to any mortgagee of a mortgage or beneficiary of a deed of trust who is entitled to notice under the terms of the declaration, and to the city, county, or city and county in which the common interest development is located that is entitled to notice under the terms of the declaration.
  - (2) Balloting on the proposed amendment was conducted in accordance with the governing documents, this act, and any other applicable law.
  - (3) A reasonably diligent effort was made to permit all eligible members to vote on the proposed amendment.
  - (4) Members having more than 50 percent of the votes, in a single class voting structure, voted in favor of the amendment. In a voting structure with more than one class, where the declaration requires a majority of more than one class to vote in favor of the amendment, members having more than 50 percent of the votes of each class required by the declaration to vote in favor of the amendment voted in favor of the amendment.
  - (5) The amendment is reasonable.
  - (6) Granting the petition is not improper for any reason stated in subdivision (e).
- (d) If the court makes the findings required by subdivision (c), any order issued pursuant to this section may confirm the amendment as being validly approved on the basis of the affirmative votes actually received during the balloting period or the order may dispense with any requirement relating to quorums or to the number or percentage of votes needed for approval of the amendment that would otherwise exist under the governing documents.
- (e) Subdivisions (a) to (d), inclusive, notwithstanding, the court shall not be empowered by this section to approve any amendment to the declaration that:
- (1) Would change provisions in the declaration requiring the approval of members having more than 50 percent of the votes in more than one class to vote in favor of an amendment, unless members having more than 50 percent of the votes in each affected class approved the amendment.
  - (2) Would eliminate any special rights, preferences, or privileges designated in the declaration as belonging to the declarant, without the consent of the declarant.
  - (3) Would impair the security interest of a mortgagee of a mortgage or the beneficiary of a deed of trust without the approval of the percentage of the mortgagees and beneficiaries

## SELECTED CIVIL CODE SECTIONS

specified in the declaration, if the declaration requires the approval of a specified percentage of the mortgagees and beneficiaries.

- (f) An amendment is not effective pursuant to this section until the court order and amendment have been recorded in every county in which a portion of the common interest development is located. The amendment may be acknowledged by, and the court order and amendment may be recorded by, any person designated in the declaration or by the association for that purpose, or if no one is designated for that purpose, by the president of the association. Upon recordation of the amendment and court order, the declaration, as amended in accordance with this section, shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by the governing documents.
- (g) Within a reasonable time after the amendment is recorded the association shall deliver to each member, by individual delivery, pursuant to Section 4040, a copy of the amendment, together with a statement that the amendment has been recorded.

## MANAGEMENT

### **Civil Code §4800. Association as Manager.**

[Old: Civ. Code §1363(a)]

A common interest development shall be managed by an association that may be incorporated or unincorporated. The association may be referred to as an owners' association or a community association.

### **Civil Code §4805. Association's Corporate Powers.**

[Old: Civ. Code §1363(c)]

- (a) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.
- (b) The association, whether incorporated or unincorporated, may exercise the powers granted to an association in this act.

### **Civil Code §4920. Notice of Board Meetings.**

[Old: Civ. Code §1363.05(f)]

- (a) Except as provided in subdivision (b), the association shall give notice of the time and place of a board meeting at least four days before the meeting.
- (b)
  - (1) If a board meeting is an emergency meeting held pursuant to Section 4923, the association is not required to give notice of the time and place of the meeting.
  - (2) If a nonemergency board meeting is held solely in executive session, the association shall give notice of the time and place of the meeting at least two days prior to the meeting.
  - (3) If the association's governing documents require a longer period of notice than is required by this section, the association shall comply with the period stated in its governing documents. For the purposes of this paragraph, a governing document provision does not apply to a notice of an emergency meeting or a meeting held solely in executive session unless it specifically states that it applies to those types of meetings.
- (c) Notice of a board meeting shall be given by general delivery pursuant to Section 4045.
- (d) Notice of a board meeting shall contain the agenda for the meeting.

## SELECTED CIVIL CODE SECTIONS

### Civil Code §4925. Open Meetings; Open Forum

- (a) Any member may attend board meetings, except when the board adjourns to, or meets solely in, executive session. As specified in subdivision (b) of Section 4090, a member of the association shall be entitled to attend a teleconference meeting or the portion of a teleconference meeting that is open to members, and that meeting or portion of the meeting shall be audible to the members in a location specified in the notice of the meeting. [Old: Civ. Code §1363.05(b)]
- (b) The board shall permit any member to speak at any meeting of the association or the board, except for meetings of the board held in executive session. A reasonable time limit for all members of the association to speak to the board or before a meeting of the association shall be established by the board. [Old: Civ. Code §1363.05(h)]

### Civil Code §4930. Limitations on Meeting Content.

[Old: Civ. Code §1363.05(i)]

- (a) Except as described in subdivisions (b) to (e), inclusive, the board may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice that was distributed pursuant to subdivision (a) of Section 4920. This subdivision does not prohibit a member or resident who is not a director from speaking on issues not on the agenda.
- (b) Notwithstanding subdivision (a), a director, a managing agent or other agent of the board, or a member of the staff of the board, may do any of the following:
  - (1) Briefly respond to statements made or questions posed by a person speaking at a meeting as described in subdivision (b) of Section 4925.
  - (2) Ask a question for clarification, make a brief announcement, or make a brief report on the person's own activities, whether in response to questions posed by a member or based upon the person's own initiative.
- (c) Notwithstanding subdivision (a), the board or a director, subject to rules or procedures of the board, may do any of the following:
  - (1) Provide a reference to, or provide other resources for factual information to, its managing agent or other agents or staff.
  - (2) Request its managing agent or other agents or staff to report back to the board at a subsequent meeting concerning any matter, or take action to direct its managing agent or other agents or staff to place a matter of business on a future agenda.
  - (3) Direct its managing agent or other agents or staff to perform administrative tasks that are necessary to carry out this section.
- (d) Notwithstanding subdivision (a), the board may take action on any item of business not appearing on the agenda distributed pursuant to subdivision (a) of Section 4920 under any of the following conditions:
  - (1) Upon a determination made by a majority of the board present at the meeting that an emergency situation exists. An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action by the board, and that, of necessity, make it impracticable to provide notice.
  - (2) Upon a determination made by the board by a vote of two-thirds of the directors present at the meeting, or, if less than two-thirds of total membership of the board is present at the meeting, by a unanimous vote of the directors present, that there is a need to take immediate action and that the need for action came to the attention of the board after the agenda was distributed pursuant to subdivision (a) of Section 4920.
  - (3) The item appeared on an agenda that was distributed pursuant to subdivision (a) of Section 4920 for a prior meeting of the board that occurred not more than 30 calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.
- (e) Before discussing any item pursuant to subdivision (d), the board shall openly identify the item to the members in attendance at the meeting.

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### **Civil Code §4935. Executive Session Meetings.**

- (a) The board may adjourn to, or meet solely in, executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments, as specified in Section 5665. [Old: Civ. Code §1363.05(b)]
- (b) The board shall adjourn to, or meet solely in, executive session to discuss member discipline, if requested by the member who is the subject of the discussion. That member shall be entitled to attend the executive session. [Old: Civ. Code §1363.05(b)]
- (c) The board shall adjourn to, or meet solely in, executive session to discuss a payment plan pursuant to Section 5665. [Old: Civ. Code §1363.05(b)]
- (d) The board shall adjourn to, or meet solely in, executive session to decide whether to foreclose on a lien pursuant to subdivision (b) of Section 5705. [Old: Civ. Code §1367.4(c)(2)]
- (e) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership. [Old: Civ. Code §1363.05(c)]

### **Civil Code §4950. Meeting Minutes.**

- (a) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any board meeting, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member upon request and upon reimbursement of the association's costs for making that distribution. [Old: Civ. Code §1363.05(d)]
- (b) The annual policy statement, prepared pursuant to Section 5310, shall inform the members of their right to obtain copies of board meeting minutes and of how and where to do so. [Old: Civ. Code §1363.05(e)]

### **Civil Code §5000. Membership Meetings.**

- (a) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt. [Old: Civ. Code §1363(d)]
- (b) The board shall permit any member to speak at any meeting of the membership of the association. A reasonable time limit for all members to speak at a meeting of the association shall be established by the board. [Old: Civ. Code §1363.05(h)]

### **Civil Code §5240. Article Supersedes Corporations Code.**

- (a) As applied to an association and its members, the provisions of this article are intended to supersede the provisions of Sections 8330 and 8333 of the Corporations Code to the extent those sections are inconsistent. [Old: Civ. Code §1365.2(l)]
- (b) Except as provided in subdivision (a), members of the association shall have access to association records, including accounting books and records and membership lists, in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. [Old: Civ. Code §1363(e)]
- (c) The provisions of this article apply to any community service organization or similar entity that is related to the association, and to any nonprofit entity that provides services to a common interest development under a declaration of trust. This article shall operate to give a member of the organization or entity a right to inspect and copy the records of that organization or entity equivalent to that granted to association members by this article. [Old: Civ. Code §1365.2(g)]
- (d) The provisions of this article shall not apply to any common interest development in which separate interests are being offered for sale by a subdivider under the authority of a public report issued by the Department of Real Estate so long as the subdivider or all subdividers offering those separate interests for sale, or any employees of those subdividers or any other

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person who receives direct or indirect compensation from any of those subdividers, comprise a majority of the directors. Notwithstanding the foregoing, this article shall apply to that common interest development no later than 10 years after the close of escrow for the first sale of a separate interest to a member of the general public pursuant to the public report issued for the first phase of the development. [Old: Civ. Code §1365.2(m)]

### **Civil Code §5405. Common Interest Development Registry.**

[Old: Civ. Code §1363.6]

- (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:
- (1) A statement that the association is formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.
  - (2) The name of the association.
  - (3) The street address of the business or corporate office of the association, if any.
  - (4) The street address of the association's onsite office, if different from the street address of the business or corporate office, or if there is no onsite office, the street address of the responsible officer or managing agent of the association.
  - (5) The name, address, and either the daytime telephone number or e-mail address of the president of the association, other than the address, telephone number, or e-mail address of the association's onsite office or managing agent.
  - (6) The name, street address, and daytime telephone number of the association's managing agent, if any.
  - (7) The county, and, if in an incorporated area, the city in which the development is physically located. If the boundaries of the development are physically located in more than one county, each of the counties in which it is located.
  - (8) If the development is in an unincorporated area, the city closest in proximity to the development.
  - (9) The front street and nearest cross street of the physical location of the development.
  - (10) The type of common interest development managed by the association.
  - (11) The number of separate interests in the development.
- (b) The association shall submit the information required by this section as follows:
- (1) By incorporated associations, within 90 days after the filing of its original articles of incorporation, and thereafter at the time the association files its statement of principal business activity with the Secretary of State pursuant to Section 8210 of the Corporations Code.
  - (2) By unincorporated associations, in July 2003, and in that same month biennially thereafter. Upon changing its status to that of a corporation, the association shall comply with the filing deadlines in paragraph (1).
- (c) The association shall notify the Secretary of State of any change in the street address of the association's onsite office or of the responsible officer or managing agent of the association in the form and for a fee prescribed by the Secretary of State, within 60 days of the change.
- (d) The penalty for an incorporated association's noncompliance with the initial or biennial filing requirements of this section shall be suspension of the association's rights, privileges, and powers as a corporation and monetary penalties, to the same extent and in the same manner as suspension and monetary penalties imposed pursuant to Section 8810 of the Corporations Code.
- (e) The statement required by this section may be filed, notwithstanding suspension of the corporate powers, rights, and privileges under this section or under provisions of the Revenue and Taxation Code. Upon the filing of a statement under this section by a corporation that has suffered suspension under this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved from suspension, unless the corporation is held in suspension by the Franchise Tax Board by reason of Section 23301,

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- 23301.5, or 23775 of the Revenue and Taxation Code.
- (f) The Secretary of State shall make the information submitted pursuant to paragraph (5) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The information submitted pursuant to this section shall be made available for governmental or public inspection.
  - (g) Whenever any form is filed pursuant to this section, it supersedes any previously filed form.
  - (h) The Secretary of State may destroy or otherwise dispose of any form filed pursuant to this section after it has been superseded by the filing of a new form.

### **Civil Code §5850. Schedule of Monetary Penalties.**

- (a) If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents, including any monetary penalty relating to the activities of a guest or tenant of the member, the board shall adopt and distribute to each member, in the annual policy statement prepared pursuant to Section 5310, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents. [Old: Civ. Code §1363(f)]
- (b) Any new or revised monetary penalty that is adopted after complying with subdivision (a) may be included in a supplement that is delivered to the members individually, pursuant to Section 4040.
- (c) A monetary penalty for a violation of the governing documents shall not exceed the monetary penalty stated in the schedule of monetary penalties or supplement that is in effect at the time of the violation.
- (d) An association shall provide a copy of the most recently distributed schedule of monetary penalties, along with any applicable supplements to that schedule, to any member upon request.

## ELECTIONS & VOTING

### **Civil Code §5100. Elections That Require Secret Balloting.**

- (a) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600 shall be held by secret ballot in accordance with the procedures set forth in this article. [Old: Civ. Code §1363.03(b)]
- (b) This article also governs an election on any topic that is expressly identified in the operating rules as being governed by this article.
- (c) The provisions of this article apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents. [Old: Civ. Code §1363.03(l)]
- (d) The procedures set forth in this article shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives. [Old: Civ. Code §1363.03(m)]
- (e) In the event of a conflict between this article and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this article shall prevail. [Old: Civ. Code §1363.03(n)]
- (f) Directors shall not be required to be elected pursuant to this article if the governing documents provide that one member from each separate interest is a director.

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### **Civil Code §5105. Election Rules.**

[Old: Civ. Code §1363.03(a)]

- (a) An association shall adopt rules, in accordance with the procedures prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the following:
  - (1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.
  - (2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.
  - (3) Specify the qualifications for candidates for the board and any other elected position, and procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member from nominating himself or herself for election to the board.
  - (4) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.
  - (5) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods:
    - (A) Appointment of the inspector or inspectors by the board.
    - (B) Election of the inspector or inspectors by the members of the association.
    - (C) Any other method for selecting the inspector or inspectors.
  - (6) Allow the inspector or inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties.
- (b) Notwithstanding any other provision of law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots. [Old: Civ. Code §1363.03(j)]

### **Civil Code §5110. Inspectors of Election.**

[Old: Civ. Code §1363.03(c)]

- (a) The association shall select an independent third party or parties as an inspector of elections. The number of inspectors of elections shall be one or three.
- (b) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services unless expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a) of Section 5105.
- (c) The inspector or inspectors of elections shall do all of the following:
  - (1) Determine the number of memberships entitled to vote and the voting power of each.
  - (2) Determine the authenticity, validity, and effect of proxies, if any.
  - (3) Receive ballots.
  - (4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

## SELECTED CIVIL CODE SECTIONS

- (5) Count and tabulate all votes.
  - (6) Determine when the polls shall close, consistent with the governing documents.
  - (7) Determine the tabulated results of the election.
  - (8) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.
- (d) An inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, and as expeditiously as is practical. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

### **Civil Code §5115. Voting Procedure.**

- (a) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following: [Old: Civ. Code §1363.03(e)]
  - (1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.
  - (2) The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.
- (b) A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum. [Old: Civ. Code §1363.03(b)]
- (c) An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents. [Old: Civ. Code §1363.03(b)]
- (d) Except for the meeting to count the votes required in subdivision (a) of Section 5120, an election may be conducted entirely by mail unless otherwise specified in the governing documents. [Old: Civ. Code §1363.03(k)]
- (e) In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot. [Old: Civ. Code §1355(b)(1)]

### **Civil Code §5120. Counting Ballots; Irrevocable.**

- (a) All votes shall be counted and tabulated by the inspector or inspectors of elections, or the designee of the inspector of elections, in public at a properly noticed open meeting of the board or members. Any candidate or other member of the association may witness the counting and tabulation of the votes. No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. The inspector of elections, or the designee of the inspector of elections, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector of elections, it shall be irrevocable. [Old: Civ. Code §1363.03(f)]
- (b) The tabulated results of the election shall be promptly reported to the board and shall be recorded in the minutes of the next meeting of the board and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Section 4045 of the tabulated results of the election. [Old: Civ. Code §1363.03(g)]

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### **Civil Code §5125. Custody of Ballots.**

[Old: Civ. Code §1363.03(h)]

The sealed ballots at all times shall be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 5145 for challenging the election has expired, at which time custody shall be transferred to the association. If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written request, make the ballots available for inspection and review by an association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

### **Civil Code §5130. Proxies.**

[Old: Civ. Code §1363.03(d)]

- (a) For purposes of this article, the following definitions shall apply:
  - (1) "Proxy" means a written authorization signed by a member or the authorized representative of the member that gives another member or members the power to vote on behalf of that member.
  - (2) "Signed" means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the member or authorized representative of the member.
- (b) Proxies shall not be construed or used in lieu of a ballot. An association may use proxies if permitted or required by the bylaws of the association and if those proxies meet the requirements of this article, other laws, and the governing documents, but the association shall not be required to prepare or distribute proxies pursuant to this article.
- (c) Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder shall cast the member's vote by secret ballot. The proxy may be revoked by the member prior to the receipt of the ballot by the inspector of elections as described in Section 7613 of the Corporations Code.

### **Civil Code §5135. Association Funds in Campaigns.**

[Old: Civ. Code §1363.04]

- (a) Association funds shall not be used for campaign purposes in connection with any association board election. Funds of the association shall not be used for campaign purposes in connection with any other association election except to the extent necessary to comply with duties of the association imposed by law.
- (b) For the purposes of this section, "campaign purposes" includes, but is not limited to, the following:
  - (1) Expressly advocating the election or defeat of any candidate that is on the association election ballot.
  - (2) Including the photograph or prominently featuring the name of any candidate on a communication from the association or its board, excepting the ballot, ballot materials, or a communication that is legally required, within 30 days of an election. This is not a campaign purpose if the communication is one for which subdivision (a) of Section 5105 requires that equal access be provided to another candidate or advocate.

### **Civil Code §5145. Judicial Enforcement of Election Procedures.**

[Old: Civ. Code §1363.09]

- (a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by the association, including, but not limited to, injunctive relief,

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restitution, or a combination thereof, within one year of the date the cause of action accrues. Upon a finding that the election procedures of this article, or the adoption of and adherence to rules provided by Article 5 (commencing with Section 4340) of Chapter 3, were not followed, a court may void any results of the election.

- (b) A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.
- (c) A cause of action under Sections 5100 to 5130, inclusive, with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

## REPORTS

### Civil Code §5300. Annual Budget Report.

- (a) Notwithstanding a contrary provision in the governing documents, an association shall distribute an annual budget report 30 to 90 days before the end of its fiscal year.
- (b) Unless the governing documents impose more stringent standards, the annual budget report shall include all of the following information:
  - (1) A pro forma operating budget, showing the estimated revenue and expenses on an accrual basis.
  - (2) A summary of the association's reserves, prepared pursuant to Section 5565.
  - (3) A summary of the reserve funding plan adopted by the board, as specified in paragraph (5) of subdivision (b) of Section 5550. The summary shall include notice to members that the full reserve study plan is available upon request, and the association shall provide the full reserve plan to any member upon request.
  - (4) A statement as to whether the board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.
  - (5) A statement as to whether the board, consistent with the reserve funding plan adopted pursuant to Section 5560, has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor. If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment.
  - (6) A statement as to the mechanism or mechanisms by which the board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms.
  - (7) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain. The statement shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (b) of Section 5570, and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.
  - (8) A statement as to whether the association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.
  - (9) A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies. For each policy, the summary shall include the name of the insurer, the type of insurance, the policy limit, and the amount of the deductible, if any. To the extent

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that any of the required information is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it with the annual budget report. The summary distributed pursuant to this paragraph shall contain, in at least 10-point boldface type, the following statement:

“This summary of the association’s policies of insurance provides only certain information, as required by Section 5300 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association’s insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association’s policies of insurance may not cover your property, including personal property or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.”

- (10) When the common interest development is a condominium project, a statement describing the status of the common interest development as a Federal Housing Administration (FHA)-approved condominium project pursuant to FHA guidelines, including whether the common interest development is an FHA-approved condominium project. The statement shall be in at least 10-point font on a separate piece of paper and in the following form:

“Certification by the Federal Housing Administration may provide benefits to members of an association, including an improvement in an owner’s ability to refinance a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.

This common interest development [is/is not (circle one)] a condominium project. The association of this common interest development [is/is not (circle one)] certified by the Federal Housing Administration.”

- (11) When the common interest development is a condominium project, a statement describing the status of the common interest development as a federal Department of Veterans Affairs (VA)-approved condominium project pursuant to VA guidelines, including whether the common interest development is a VA-approved condominium project. The statement shall be in at least 10-point font on a separate piece of paper and in the following form:

“Certification by the federal Department of Veterans Affairs may provide benefits to members of an association, including an improvement in an owner’s ability to refinance a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.

This common interest development [is/is not (circle one)] a condominium project. The association of this common interest development [is/is not (circle one)] certified by the federal Department of Veterans Affairs.”

- (12) A copy of the completed “Charges For Documents Provided” disclosure identified in Section 4528. For purposes of this section, “completed” means that the “Fee for Document” section of the form individually identifies the costs associated with providing each document listed on the form.

- (c) The annual budget report shall be made available to the members pursuant to Section 5320.  
 (d) The summary of the association’s reserves disclosed pursuant to paragraph (2) of subdivision (b) shall not be admissible in evidence to show improper financial management of an

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association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

- (e) The Assessment and Reserve Funding Disclosure Summary form, prepared pursuant to Section 5570, shall accompany each annual budget report or summary of the annual budget report that is delivered pursuant to this article.

### **Civil Code §5305. Review of Financial Statement.**

[Old: Civ. Code §1365(c)]

Unless the governing documents impose more stringent standards, a review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed to the members within 120 days after the close of each fiscal year, by individual delivery pursuant to Section 4040.

### **Civil Code §5310. Annual Policy Statement.**

- (a) Within 30 to 90 days before the end of its fiscal year, the board shall distribute an annual policy statement that provides the members with information about association policies. The annual policy statement shall include all of the following information:
- (1) The name and address of the person designated to receive official communications to the association, pursuant to Section 4035.
  - (2) A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses, pursuant to subdivision (b) of Section 4040.
  - (3) The location, if any, designated for posting of a general notice, pursuant to paragraph (3) of subdivision (a) of Section 4045.
  - (4) Notice of a member's option to receive general notices by individual delivery, pursuant to subdivision (b) of Section 4045.
  - (5) Notice of a member's right to receive copies of meeting minutes, pursuant to subdivision (b) of Section 4950.
  - (6) The statement of assessment collection policies required by Section 5730.
  - (7) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.
  - (8) A statement describing the association's discipline policy, if any, including any schedule of penalties for violations of the governing documents pursuant to Section 5850.
  - (9) A summary of dispute resolution procedures, pursuant to Sections 5920 and 5965.
  - (10) A summary of any requirements for association approval of a physical change to property, pursuant to Section 4765.
  - (11) The mailing address for overnight payment of assessments, pursuant to Section 5655.
  - (12) Any other information that is required by law or the governing documents or that the board determines to be appropriate for inclusion.
- (b) The annual policy statement shall be made available to the members pursuant to Section 5320.

## FINANCE REVIEW

### **Civil Code §5500. Board Review of Finances Required.**

[Old: Civ. Code §1365.5(a)]

Unless the governing documents impose more stringent standards, the board shall do all of the following:

- (a) Review, on a monthly basis, a current reconciliation of the association's operating accounts.
- (b) Review, on a monthly basis, a current reconciliation of the association's reserve accounts.
- (c) Review, on a monthly basis, the current year's actual operating revenues and expenses compared to the current year's budget.

## SELECTED CIVIL CODE SECTIONS

- (d) Review, on a monthly basis, the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.
- (e) Review, on a monthly basis, an income and expense statement for the association's operating and reserve accounts.
- (f) Review, on a monthly basis, the check register, monthly general ledger, and delinquent assessment receivable reports.

### **Civil Code §5501. Meeting Financial Review Requirements.**

The review requirements of Section 5500 may be met when every individual member of the board, or a subcommittee of the board consisting of the treasurer and at least one other board member, reviews the documents and statements described in Section 5500 independent of a board meeting, so long as the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting.

## SELECTED CIVIL CODE SECTIONS

### RESERVE FUND

#### **Civil Code §5515. Temporary Transfer of Reserve Funds.**

[Old: Civ. Code §1365.5(c)(2)]

- (a) Notwithstanding Section 5510, the board may authorize the temporary transfer of moneys from a reserve fund to the association's general operating fund to meet short-term cashflow requirements or other expenses, if the board has provided notice of the intent to consider the transfer in a board meeting notice provided pursuant to Section 4920.
- (b) The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered.
- (c) If the board authorizes the transfer, the board shall issue a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund.
- (d) The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration.
- (e) The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 5605. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

#### **Civil Code §5550. Reserve Study Requirements.**

[Old: Civ. Code §1365.5(e)(1)-(5)]

- (a) At least once every three years, the board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association, excluding the association's reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.
- (b) The study required by this section shall at a minimum include:
  - (1) Identification of the major components that the association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years.
  - (2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.
  - (3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).
  - (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.
  - (5) A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired.

## SELECTED CIVIL CODE SECTIONS

### ASSESSMENTS

#### **Civil Code §5600. Duty to Levy Assessments; Fees to Defray Costs.**

- (a) Except as provided in Section 5605, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this act. [Old: Civ. Code §1366(a)]
- (b) An association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. [Old: Civ. Code §1366.1]

#### **Civil Code §5605. Assessment Approval Requirements.**

- (a) Annual increases in regular assessments for any fiscal year shall not be imposed unless the board has complied with paragraphs (1), (2), (4), (5), (6), (7), and (8) of subdivision (b) of Section 5300 with respect to that fiscal year, or has obtained the approval of a majority of a quorum of members, pursuant to Section 4070, at a member meeting or election. [Old: Civ. Code §1366(a)]
- (b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of a majority of a quorum of members, pursuant to Section 4070, at a member meeting or election. [Old: Civ. Code §1366(b)]
- (c) For the purposes of this section, "quorum" means more than 50 percent of the members. [Old: Civ. Code §1366(a)]

#### **Civil Code §5610. Emergency Assessment Requirements.**

Section 5605 does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following: [Old: Civ. Code §1366(b)]

- (a) An extraordinary expense required by an order of a court.
- (b) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.
- (c) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual budget report under Section 5300. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment. [Old: Civ. Code §1366(b)(1)-(3)]

#### **Civil Code §5615. Notice of Assessment Increase.**

[Old: Civ. Code §1366(d)]

The association shall provide individual notice pursuant to Section 4040 to the members of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due.

#### **Civil Code §5650. Debt of Owner; Late Charges and Interest.**

- (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with subdivision (b), shall be a debt of the owner of the separate interest at the time the assessment

## SELECTED CIVIL CODE SECTIONS

- or other sums are levied. [Old: Civ. Code §1367.1(a)]
- (b) Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due, unless the declaration provides a longer time period, in which case the longer time period shall apply. If an assessment is delinquent, the association may recover all of the following: [Old: Civ. Code §1366(e)]
- (1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.
  - (2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.
  - (3) Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorney's fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the assessment becomes due, unless the declaration specifies the recovery of interest at a rate of a lesser amount, in which case the lesser rate of interest shall apply.
- (c) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section. [Old: Civ. Code §1366(f)]

## DISPUTE RESOLUTION

### **Civil Code §5930. ADR Prerequisite to Litigation.**

[Old: Civ. Code §1369.520]

- (a) An association or a member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.
- (b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.
- (c) This section does not apply to a small claims action.
- (d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

### **Civil Code §5950. Certification of ADR Efforts.**

[Old: Civ. Code §1369.560]

- (a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions are satisfied:
  - (1) Alternative dispute resolution has been completed in compliance with this article.
  - (2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.
  - (3) Preliminary or temporary injunctive relief is necessary.
- (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

**SELECTED CIVIL CODE SECTIONS****Civil Code §5965. Annual ADR Notice.**

[Old: Civ. Code §1369.590]

- (a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of the member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.

- (b) The summary shall be included in the annual policy statement prepared pursuant to Section 5310.