

*From the California State Department of Real Estate:*

- I. A Guide for Residents Purchasing Their Mobilehome Park**
- II. Application Instructions for Mobilehome Park Resident Ownership Program**
- III. Operating Cost Manual for Homeowners Associations**
- IV. Budget Reserve Guidelines for Homeowner Associations**
- V. Consumer Warning: Underfunded Homeowners Association Budgets**
- VI. Living in a Common Interest Development (FAQs)**
- VII. Davis-Stirling Common Interest Development Act**

Compiled by the Senate Select Committee on Manufactured Home Communities  
March 2014

**I.**

**A Guide for Residents  
Purchasing Their Mobilehome  
Park**

**A Guide for Residents  
Purchasing Their  
Mobilehome Park**

***Answers To Residents' Questions***

**1998**

*(reprinted February 2004)*



---

This booklet was originally developed in 1986 by the California State University Real Estate and Land Use Institute under contract with the California Department of Real Estate. The Department of Real Estate revised this booklet in March 1998.

## PREFACE

Due to rental costs, many residents in mobilehome parks are pursuing the idea of forming a nonprofit corporation to purchase and own their park (in order to keep space rents affordable) or owning rather than renting the space their mobilehome occupies. You too might be considering this option. Or if others in your park have been investigating the possibility of purchasing the park, you may be feeling that you also must get involved. Converting a rental mobilehome park to resident ownership can be rewarding and beneficial to the residents. It is also a major undertaking likely to include problems for which solutions must be found.

This booklet describes generally the steps involved in resident purchase of a mobilehome park, points out some problems common to resident purchase and provides information which is designed to help you understand your role in the process. This booklet also offers some solutions to problems that may arise during the conversion process which may be useful to you as an individual and as a member of a resident organization.

This booklet does not attempt to present all of the possible problems you might encounter during the conversion process, nor is it a source of all possible solutions to the situations. It does, however, emphasize the need to obtain appropriate professional assistance when circumstances suggest that park residents, by themselves, will not be able to conduct some phase of the conversion.

## TABLE OF CONTENTS

<b>PART I</b>	
<b>BASIC INFORMATION ABOUT RENTAL PARK CONVERSIONS TO RESIDENT OWNERSHIP</b>	<b>1</b>
What is a park conversion?	1
What is a common interest development?	1
What is the role of the Department of Real Estate?	1
What is a public report and what is its purpose?	2
<i>Disclosures Regarding Tentative Prices</i>	2
<i>Nonprofit Corporation's Exemption</i>	2
Is subdivision of the park a necessary part of conversion?	3
What is the value in creating a nonprofit corporation?	3
<i>Legal Advice</i>	3
<i>Exemption from DOC and DRE Jurisdiction</i>	4
<b>PART II</b>	
<b>ISSUES FOR RESIDENTS THINKING ABOUT THE PURCHASE OF THEIR PARK</b>	<b>5</b>
Should I participate in the purchase of my park?	5
How do I assess my financial situation?	5
What happens if I feel I am financially unable to participate?	6
What other choices do I have?	7
What if the park owner is not interested in selling?	7
What have we learned from successful park conversions?	7

<b>PART III</b>	
<b>THE CONVERSION AND MANAGEMENT OF A PARK</b>	<b>9</b>
What is a park purchase committee and how is it formed?	9
What is the role of the park purchase committee?	10
<i>Effective Use of Resident Talent</i>	10
Should specialized assistance be used?	10
<i>Entering Into a Contract For Services</i>	11
<i>Resident Experts</i>	11
Is resident ownership feasible?	12
<i>Assessing Financial Feasibility</i>	12
<i>Appraisal of the Park</i>	14
What sources of financing are available?	14
<i>Conventional Lending Institutions</i>	14
<i>Seller Financing</i>	15
<i>Some Possible Loan Terms and Conditions</i>	15
<i>Public Financing</i>	16
How To Make An Offer To Purchase	17
<i>Dealing with the Owner</i>	17
<i>Enhancing Negotiations</i>	18
What are the principal factors impacting the length of time it takes to complete a conversion?	18
How do we manage the park after conversion?	19
<i>Professional Management</i>	19
<i>Resident Management</i>	19
<i>Combination</i>	20
Do I have long-term security in my purchase?	20
 <b>PART IV</b>	 <b>21</b>
If we decide to subdivide, what are our options?	21
<i>Condominium</i>	21
<i>Planned Development</i>	22
<i>Stock Cooperative</i>	22
Department of Real Estate Subdivision Offices	23

# **PART I**

## **BASIC INFORMATION ABOUT RENTAL PARK CONVERSIONS TO RESIDENT OWNERSHIP**

*Part I describes a park conversion, the jurisdiction of the Department of Real Estate and, generally, the arrangements suitable for owning and managing a mobilehome park after conversion.*

---

### **What is a park conversion?**

In this booklet, the term conversion refers to the various aspects of a mobilehome park purchase by the residents. Conversion can involve transformation of a park to a type of common interest development where residents obtain title to, or some right of exclusive use of, their mobilehome spaces.

---

### **What is a common interest development?**

In a common interest development, an individual owns or leases a separate lot, unit or interest together with an undivided interest or membership interest in the common area. The common area is usually governed and maintained by a homeowners' association of which each individual owner is a member. If a mobilehome park is sold or leased with the intention of creating separate interests for the residents, a common interest development will result. See Part IV for a discussion of common interest developments.

---

### **What is the role of the Department of Real Estate?**

The Department of Real Estate (DRE) regulates California real estate brokers and salespeople and the marketing and sale of subdivided real property in California. Basically, DRE's issuance of a final subdivision public report must precede the offering for sale or lease of lots or interests in a subdivision of five or more lots or interests. (Although the subdivider can advertise and accept refundable deposits for reservations pursuant to a preliminary subdivision public report.)

If a representation is made to residents that they will receive a lot or other separate real property interest in their mobilehome park as part of their participation in a park purchase program, a subdivision will be created.

---

**What is a public report and what is its purpose?**

A public report is a document which discloses to prospective purchasers significant aspects of a subdivision offering. Before DRE issues a public report, the subdivider must meet certain standards to safeguard buyers' purchase money, complete on-site and off-site improvements and, for a common interest development, produce governing instruments which address specific features of the project's operation and management.

***Disclosures Regarding Tentative Prices***

Prior to filing a notice of intention (to sell or lease subdivided lands), the subdivider of a mobilehome park that is proposed to be converted to resident ownership must, by written notice, disclose to the homeowners and residents of the park the tentative price of the subdivided interest proposed to be sold or leased.

The notice must indicate that the price is not binding and may change, without any liability on the part of the subdivider, due to unanticipated expenses: conditions imposed for approval of the conversion, increased financing costs, etc.

The subdivider must obtain a preliminary public report from DRE before distributing the tentative price disclosure notice.

***Nonprofit Corporation's Exemption***

Business and Professions Code Section 11010.8 exempts from the notice of intention/public report requirement a nonprofit corporation's purchase of a mobilehome park, provided:

1. The nonprofit corporation obtains a permit from the Department of Corporations.
2. All shareholders of the nonprofit corporation are residents of the mobilehome park.
3. A majority of the shareholders constitute a majority of the persons who own mobilehomes within the park.
4. A majority of the governing body of the nonprofit corporation own mobilehomes within the park.
5. All funds of mobilehome park tenants for purchase of the

mobilehome park are deposited in escrow until title to the park passes to the nonprofit corporation.

---

**Is subdivision of the park a necessary part of conversion?**

It is not necessary for park residents to subdivide a mobilehome park in order to own and assume control of it. Indeed, subdividing a park during conversion may result in untimely delays while the subdivider satisfies local, city or county requirements and completes the information and documentation required to obtain a public report.

Instead, park residents may use a two-step approach to conversion. First, the park is purchased as a single property by a resident organization which, in a majority of cases, is a nonprofit corporation created for this purpose. Participating residents become shareholders or members of this corporation. Later, the corporation subdivides the park, obtains a public report, and sells (or leases) the subdivided interests to the residents.

---

**What is the value in creating a nonprofit corporation?**

Park residents need a legal entity to purchase their park. A nonprofit mutual benefit corporation is well suited to this purpose.

In general, the nonprofit corporation makes an offer of participation to the residents. Residents who decide to participate become shareholders or members in the corporation. As residents purchase shares or memberships in the corporation, cash is accumulated for the downpayment required to purchase the park. The officers of the corporation, elected by the members and acting on their behalf, negotiate with the seller to purchase the park and solve problems relating to conversion. After conversion, the corporation may manage the park.

***Legal Advice***

Inasmuch as memberships in a nonprofit corporation are subject to the requirements of the Corporations Code, competent legal advice should be sought prior to formation of a corporation. Unless an exemption is available, a permit from the Department of Corporations (DOC) is generally a necessary prerequisite to issuance of memberships in a nonprofit corporation. It is also recommended that

incorporation of the residents' organization be handled by legal professionals. A standard corporation or a general or limited partnership are alternatives to a nonprofit corporation. Before committing to any type of organizational form, the residents should explore the advantages and disadvantages and obtain legal advice.

***Exemption from DOC and DRE Jurisdiction***

In order to preserve the stock of affordable housing, government financing and subsidies are sometimes used in conjunction with conventional financing to purchase a park with few amenities and generally low-income residents. Ownership of the park is by a nonprofit corporation which typically does not issue stock or memberships. The residents' organization should contact the DOC and DRE to determine if this arrangement is exempt from the jurisdiction of either or both of those agencies.

## PART II

### ISSUES FOR RESIDENTS THINKING ABOUT THE PURCHASE OF THEIR PARK

*This part discusses issues involved in purchasing a park and what may happen if you choose not to participate.*

---

#### **Should I participate in the purchase of my park?**

Many mobilehome park residents are living on fixed or limited incomes. Increases in rent for mobilehome spaces and related services have motivated many residents to join together to purchase and convert their parks to resident ownership.

While the cost of owning may at first be higher than renting, the gap is likely to close and turn positive in a relatively short period of time.

Impending eviction and park closure are also strong motivating factors for conversion. While it is true that state and local government agencies are committed to fostering an adequate supply of affordable housing, displacement is still a very real threat and a strong consideration in residents' decision to purchase and convert their parks.

No matter what the reason for conversion, *your* decision to participate should be based on *your* personal needs and financial situation, not part of a "group decision" made under pressure from fellow residents.

---

#### **How do I assess my financial situation?**

The most important question is, "Can I afford to participate in the purchase?"

Whether alone or with the help of a financial advisor, you should consider the following factors:

- **Your personal income sources and their stability.** Are increased costs of living causing you to withdraw from savings in order to meet monthly expenses? Has the investment capital which

generates your income decreased, resulting in a reduction of income? Have interest rates dropped, decreasing your income?

- **Trends in your nonhousing domestic expenditures.** Review checkbooks and payment records in order to estimate your costs for food, clothing, medical care, insurance, entertainment, and other expenses. Review your credit reports for negative information (e.g., late payments; too much debt).
- **The projected “bottom line” dollar amount for participation in the park purchase.** Compare your estimated housing cost after conversion to the portion of your monthly income available for housing. The commonly used affordability standard is 25 to 30 percent of monthly income for housing-related expenses. However, this may not be applicable to many retirees living in mobilehome parks. For example, residents who rely solely on Social Security are frequently paying as much as 40 to 50 percent of their income for housing.

---

### **What happens if I feel I am financially unable to participate?**

It is common in park conversions to include rental or lease arrangements for residents who cannot afford to participate in the purchase. These arrangements may be open-ended or for a specified term and space rental may be expected to increase over the term of the agreement. Typically, there can be no sale of the mobilehome in place during the term of the rental or lease arrangement and at termination the resident must become an owner or remove the mobilehome from the park.

If a rental or lease arrangement is not available and “involuntary displacement” is expected due to a conversion, various government agencies may require that an impact report be filed. However, the law does not presently require relocation benefits or relief measures for a displaced resident, except in some cases where public funds have been utilized in the conversion.

---

**What other choices do I have?**

If, after reviewing all the terms and conditions of the purchase/conversion, you are not interested in participating (and a rental or lease arrangement is not available), relocation to another park or to a lot will be necessary. This may be profitable because a mobilehome in a park which is to be converted frequently commands a higher price. Therefore, you should not be in a hurry to leave, as delaying your move as long as possible may give you more leverage in the sale of your mobilehome.

---

**What if the park owner is not interested in selling?**

If the owner is not interested in selling, the residents' organization may attempt to stabilize space rents by negotiating a lease for the entire mobilehome park. A lease may transfer management and control to the residents' organization without disturbing prior leasing or financing agreements entered into by the owner.

A subdivision will be created and the residents' organization will need a public report from the Department of Real Estate if:

- the resident organization intends to lease to residents five or more parcels or spaces;
- the term of the leases is more than five years; and
- the lease arrangement is a mandatory condition of tenancy within the park. Mandatory leasing arrangements should be discussed with the local planning agency prior to implementation for purposes of determining requirements under the Subdivision Map Act.

A residents' organization considering a park lease should seek legal advice if there is any uncertainty as to compliance with related laws.

---

**What have we learned from successful park conversions?**

A park conversion is a difficult process, requiring long-term group cooperation and aggressive resolution of problems.

Problems to be solved may include:

- an unanticipated and lengthy educational campaign necessary to explain the conversion and its financing to everyone's satisfaction;
- discussions and debates by dissenting groups of residents, taking necessary attention away from the group of residents interested in purchasing;
- some residents claiming support of the purchase in the beginning, but balking and refusing to participate in the end;
- disagreement by park residents over the form of ownership to which the park should be converted;
- inability of residents to agree on the selection and hiring of consultants necessary to complete the conversion process; and
- difficulty some residents may have in qualifying for loans to purchase their interests in the park.

Residents must be made aware of the magnitude and difficulty of the task their representatives must undertake in attempting to organize the park for purchase and management. Residents must recognize the energy required of these persons, the stresses and physical demands placed on them, and the possibility that replacements may be necessary.

Formal involvement of as many residents as possible should lead to a positive community atmosphere in which park residents look out for one another and assist in explaining different aspects of the conversion to fellow residents. This "grassroots" support will help the residents and representatives keep the long-term goal, ownership, always in sight.

## PART III

### THE CONVERSION AND MANAGEMENT OF A PARK

*Converting a rental park to resident ownership is a logical process. At some stages of the process, professional assistance may be necessary.*

The conversion process can generally be divided into three phases.

1. In the first phase, the park purchase committee is organized. The committee tests the level of resident interest and financial capability and considers the organizational structure most appropriate for ownership and management of the park.
2. The second phase is the actual purchase. After appraisal, an offer is made and accepted (perhaps after one or more counteroffers), and financing is arranged.
3. The final phase is conveyance of the park and commencement of resident operation and management.

---

#### **What is a park purchase committee and how is it formed?**

This committee of park residents is elected by residents or appointed by the residents' organization (if already formed) to study the possibility of a park purchase. While perhaps satisfying a need for representation, election may result in exclusion of many highly capable individuals who would have been chosen in an appointment process.

There are advantages and disadvantages to large and small committees. A professional hired to assist residents with the conversion process may prefer working with a small committee which makes decisions quickly. But a small committee may promote elitism and inhibit effective feedback of information to park residents. A large committee may mean a higher level of representation but its members may debate continuously over details, losing sight of the larger goals and objectives.

A committee of five to seven members should be sufficient.

---

**What is the role of the park purchase committee?**

At first, the committee acts as a clearinghouse for information on the proposed purchase and its effects on the individual residents and the park as a whole. The committee educates residents as to the feasibility of a purchase and the actual steps involved in converting the park. It also solicits residents' opinions and evaluates residents' enthusiasm for the park purchase.

Throughout the conversion process, the committee is responsible for consulting with various professionals (lawyers, local officials, bankers, appraisers, surveyors, engineers, and title officers) who are involved in different aspects of the conversion process. In some cases, the committee's role is expanded to that of supervising the agent of the residents in negotiations to purchase the park.

The park purchase committee can also serve as the governing and managing body after conversion. Committee work is good training for park management, because it familiarizes members with the park's operational needs.

***Effective Use of Resident Talent***

Certain members of the park purchase committee may be called upon to perform special tasks. It is very important that the committee match the special talents and personalities of committee members with the types of jobs to be performed. For example, a committee member supervising the park purchase negotiations should be knowledgeable and skilled in real estate. Likewise, members selected to meet with governmental agencies should be familiar with pertinent laws.

---

**Should specialized assistance be used?**

As park purchases by residents become more commonplace in California, professionals, including real estate brokers, are establishing themselves as specialists in park conversions. Some of the skills offered include:

- negotiating, and preparing legal documents related to the sale, financing and transfer of ownership of the property;
- performing financial analyses and assisting with the completion

of loan applications;

- complying with local government land use and planning requirements;
- conducting socioeconomic surveys of park residents;
- forming subdivisions, corporations or partnerships;
- creating the governing documents by which the owners' association will operate and manage the park; and
- surveying and engineering.
- Before hiring any specialist, the resident organization should make the appropriate inquiries and background checks.

### ***Entering Into a Contract For Services***

There are two general types of contracts a resident organization might enter into with a conversion specialist:

1. A **phased contract** is like a series of single contracts for the various activities necessary to complete the conversion. The specialist is paid at the completion of each phase of the contract. A phased contract usually allows either party to terminate the agreement upon completion of any phase.
2. A **through-to-completion contract** calls for a variety of services to be performed by the contractor. This "total package" contract is completed, and the contractor paid, when all the services contracted for have been performed. This type of contract may have complex and costly provisions for amendment or termination prior to completion, making it difficult to change contractors or add additional services to the contract.

### ***Resident Experts***

Park residents with backgrounds in business, finance, management, real estate and the law can often be called upon to provide skills necessary to the conversion. Using residents' skills can be both economical and a way of gaining resident support for the project. Potential leaders, officers and possibly future park managers can also be identified through use of resident expertise.

The potential drawback to relying heavily on volunteer services by resident experts is the lack of control over the quality and performance of the service. The park purchase committee must set standards of performance and be ready to terminate a volunteer for inadequacy just as readily as they would a paid contractor. This can be difficult because of the social environment of the park. A possible solution to the problem of using resident experts is for the park purchase committee to enter into a paid contract with the resident expert. (A resident, whether volunteer or paid contractor, who performs professional services for the park should be aware that he/she may assume considerable personal liability for his/her actions. Before entering into any arrangement with the park purchase committee, the resident should discuss the matter with his/her attorney and insurance agent.)

---

### **Is resident ownership feasible?**

Once the park purchase committee has determined that there is sufficient interest, the next step is collecting financial information on the residents' ability to participate and the need for any special financial arrangements.

#### ***Assessing Financial Feasibility***

The park purchase committee must gather financial data and compile a financial feasibility study which includes:

- improvements which must be made to the park and an estimate of cost for the work;
- maintenance costs for operating the park;
- financing available for the park purchase;
- approximate down payment necessary and whether or not it is affordable;
- approximate monthly payment necessary and whether or not it is affordable; and
- kinds of financial assistance needed for residents who could not otherwise participate in the purchase.

An important part of the financial feasibility study is the development of a tentative operating budget for the park. The tentative budget should be provided to residents as part of the feasibility survey and should include the following:

- amount of mortgage payments on the park (if applicable);
- required park repairs and improvements;
- park operating and management costs;
- reserve account required for future replacement of major park components; and
- inflationary factors for the various cost categories (to estimate future costs).

The Department of Real Estate's *Operating Cost Manual for Homeowner Associations* is a helpful tool for preparation of a homeowners' association budget.

The purchase agreement should require that the owner provide the park purchase committee with operating budgets (income/expense statements) and rent rolls for the preceding three years.

The feasibility study should also provide information on the cash flow the association can expect from the homeowners' association membership dues. This estimated cash flow must cover all the maintenance and operating expenses and any required park improvements or repairs. If revenue will not be sufficient, the conversion is not feasible.

Based on the operating budget and the estimated cash flow, the park purchase committee should also be able to determine the amount and type of financing required to purchase the park, and the amount of down payment or price of a share required of each resident.

The park purchase committee must carefully analyze all of the information obtained in the feasibility study. Usually, if the data indicates that there are problems which cast serious doubt on the success of the park purchase, the committee must abandon efforts to purchase the park. Whether or not the purchase effort proceeds, the

committee must communicate the contents of the feasibility study to the residents.

### ***Appraisal of the Park***

It is important to recognize that an appraisal is an opinion or estimate of value based on an analysis of relevant information about a property. The park purchase committee and the park owner may each obtain appraisals, and those appraisals may vary as to a value conclusion. While an appraisal will not necessarily give the residents bargaining power, it will serve as a starting point for negotiating a fair price and as a basis for making various other decisions concerning the purchase. Indeed, the park purchase committee may deem it prudent to insist on a contract provision specifying that the purchase is contingent on the (residents') appraised value equaling or exceeding the purchase price.

---

### **What sources of financing are available?**

Before drafting an offer to purchase, the committee should identify sources of loans for the different types of financing needed:

- short term - to pay costs associated with the conversion and, if necessary, the down payment on the purchase;
- long term - to finance the purchase of the park; and
- for individual residents to purchase shares in the resident corporation or individual spaces in the park.

### ***Conventional Lending Institutions***

There appears to be a growing awareness on the part of conventional lenders (insurance companies, mortgage bankers, savings and loans, etc.) of the financial needs of residents desiring ownership of their parks, so that park financing guidelines are being developed.

Residents who choose to subdivide their park should find a conventional lender who is willing to treat their mobilehome park subdivision as they would a conventional residential subdivision. On the other hand, residents choosing to take title to the park in the name

of a corporation may find that there are more financing opportunities open to them. The fact that title to the park is held by one corporation as opposed to many individuals can make the loan more secure from the lender's perspective.

### ***Seller Financing***

Seller financing is frequently used because of the large amount of money required and difficulty in obtaining conventional financing. Seller financing may include a lower interest rate and more favorable terms and conditions.

Clues as to the seller's financial position should be gained during the early stages of negotiations and seller financing should be pursued if there are indications that this would be agreeable.

### ***Some Possible Loan Terms and Conditions***

If the park purchase committee is considering financing for the park purchase, it must review and understand all the terms and conditions in order to explain the financing to the residents. Here are four provisions with which the committee should be familiar.

- A **balloon payment**. When installment payments do not pay off a loan, a significantly larger payment than the regular installment payment is required. This is usually a final payment for payoff.
- An **acceleration clause** gives the lender the right to demand full payment of a loan upon delinquency in loan payments, sale of the property, failure to maintain the property, or borrower's violation of some other term of the loan.
- A **subordination clause** provides that present or future liens take precedence over an earlier lien recorded against the property.
- A **blanket encumbrance** is a lien covering more than one parcel of real property. If the loan does not contain provisions so that individual parcels can be released upon purchase, it may be extremely difficult to convert the park to a subdivision.

### ***Public Financing***

Public financing may be available for the purchase of a mobilehome park and for loans to individual residents.

Many residents in mobilehome parks under conversion are in need of financial assistance to make down payments, finance the purchase of a space, or pay their share of conversion costs. Certain of these residents may qualify for government sponsored subsidies. The California Department of Housing and Community Development (HCD) provides technical and financial assistance for these mobilehome park residents. HCD coordinates financial subsidy programs for residents who have varying financial needs. HCD also makes referrals to other public agencies serving the needs of mobilehome park residents.

Two financing programs in which HCD is involved are the Mobilehome Park Resident Ownership Program (MPROP) and the Home Investment Partnerships Program (HOME).

The MPROP provides financial and technical assistance for a park conversion if there is at least one low-income (i.e., at or below 80% of the county median income) household involved and the converted project will meet the minimum standards of the Mobilehome Parks Act. At least 2/3 of the residents must participate in the park purchase and the resident organization, representing at least 2/3 of the households in the park, must, for the *conversion* and *blanket* loans described below, apply as co-applicant with a local public entity (city, county, housing authority, redevelopment agency, or community development commission). There are three types of MPROP loans:

- A **conversion loan** to the resident organization as interim financing covers costs such as acquisition of the park; loan origination fees and other financing costs; legal and professional fees; and rehabilitation expenses. Payments are interest-only, with repayment required upon completion of the conversion.
- A **blanket loan** to the resident organization is long-term (usually 30-year) financing for conversion costs (rent subsidies for residents whose income is at or below 80% of the county median; internal loans; etc.) attributable to low-income spaces.

- A 30-year **individual loan** will enable a low-income (i.e., at or below 80% of the county median income and unable to qualify for a conventional or other private sector mortgage) resident to purchase a lot or other individual interest in the park. Alternative repayment schedules can include interest-only payments or deferral of all principal and interest payments for the full term of the loan. The loan is also due upon sale, transfer, or non-occupancy of the lot by the owner/borrower.

Through the HOME program, HCD acts as a conduit for federal funds used by cities and counties to provide direct loans or grants to persons/families or blanket loans or grants to mobilehome park resident organizations. HOME funds must be used to help make affordable the housing costs of low-income persons/families.

Information on current mobilehome park programs may be obtained by contacting:

Department of Housing and Community Development  
P.O. Box 952054, MS - 390 - 5  
Sacramento, CA 94252-2054

The park purchase committee should also contact the local housing authority and redevelopment agency.

---

### **How To Make An Offer To Purchase**

After determining that the park purchase is feasible and of interest to the residents, the park purchase committee must put together an offer to purchase. A real estate broker or attorney will usually be engaged under contract to represent the park residents in the purchase negotiations. It is important that the representative be given specific written instructions in order to conduct the negotiations in the manner desired by the residents.

#### ***Dealing with the Owner***

After years of tenancy, residents' perceptions of the "landlord" may pose problems in dealing with the owner. Some other factors that may hinder attempts to approach an owner with an offer include:

- Residents see the park as their home; the owner sees it as an investment.

- An owner of a profitable park may have no interest in selling.
- The owner is firm in his price and will not bargain.
- Residents, out of touch with real estate values, may find it hard to equate the value of their space with the price they received for their home 15 or 20 years ago.

Throughout negotiations, the park purchase committee and/or its representative must be prepared to react positively and make the best of what sometimes appears to be an unfavorable situation. For example, if the owner refuses to bargain on price, the committee may be able to obtain more favorable terms.

### ***Enhancing Negotiations***

The negotiating agent may find the following tactics useful:

- Presenting a well prepared and reasonable offer to the seller in order to assess the seller's priorities.
- Offering terms of sale to the seller which assure ease and speed of transfer of the property.
- Determining whether the owner will carry the financing, eliminating the need to approach other sources of capital.
- Attempting to negotiate a discounted purchase price with the seller in exchange for immediate participation by the residents. (However, although the possibility of a discount may stimulate resident interest in participation, the "immediate participation" aspect may put extreme pressure on residents struggling with the uncertainties of their personal finances.)

---

### **What are the principal factors impacting the length of time it takes to complete a conversion?**

The fastest way for park residents to gain ownership is purchase by a nonprofit corporation of which the residents are members or shareholders. Remember, this method of ownership does not necessarily include the formation of a subdivision. Subdividing, obtaining a public report, and conveying separate interests is a process independent of incorporation and can be undertaken after the corporation purchases the park.

If creation of a subdivision prior to transfer of title is a condition of the park purchase contract, the conversion process will usually take considerably longer. The condition and size of the park, as well as the percentage of residents required to participate are major factors in determining the time required to complete the subdivision process. The competency of consultants and professionals doing the conversion and local government agencies' familiarity with mobilehome park conversions also have a direct bearing on the time needed to complete the conversion process.

---

### **How do we manage the park after conversion?**

Resident owners must decide if they will employ professional management, manage the park themselves, or some combination of the two.

#### ***Professional Management***

Professional management companies generally provide a full range of services, from collection of homeowners' fees to disbursement of the funds to operate and maintain common areas in the park. Professional management is usually an expensive option. A management contract must provide for a level of management suitable to residents' needs and ability to pay.

Many lenders will require, prior to funding, approval authority over the management agent and contract. This is intended to ensure accountability and successful operation.

The management company is an employee of the residents' organization and should submit operating budgets to the residents' organization and, if required, to the lender. The final decision regarding major expenditures must rest with the residents' organization.

#### ***Resident Management***

Management by the residents can be an economically attractive option. It encourages residents to get involved and gives them an outlet to express interest and pride in the park. However, disputes can arise about the amount of work required from each resident and services can suffer from a lack of professional expertise.

### ***Combination***

A good compromise between professional and resident management is a professional onsite manager responsible to the homeowners' association for overall park operation, assisted by residents or park employees hired to perform certain jobs at the park.

---

### **Do I have long-term security in my purchase?**

If the park is converted to a common interest development and the purchaser continues to pay the mortgage payment, park assessments, and taxes on the individual interest, he/she is assured of remaining in the park.

If ownership of the park is through a corporation, the security of a purchaser's investment is greatly influenced by the financial performance of the corporation and its members. If the corporation is not able to make its payments on the purchase money loan, foreclosure of the entire mobilehome park is possible. To prevent foreclosure, a reserve fund may be established by the homeowners' association. All shareholders pay into this reserve account, in part to cover any nonpayment of dues by corporation members or shareholders.

Before entering into any contract to purchase, residents should be knowledgeable of exactly what they are purchasing and the possible risks involved. In parks where a subdivision is formed, purchasers must receive a copy of the public report before committing themselves to a purchase. As discussed earlier, a public report discloses consumer information and alerts prospective purchasers to significant aspects and possible risks involved in the purchase. In parks where a subdivision is not formed, prospective purchasers must gather sufficient information to make an informed decision, perhaps with the help of the park purchase committee.

## PART IV

---

### **If we decide to subdivide, what are our options?**

If residents decide that they wish to convert their park to a subdivision, a choice must be made as to what type of subdivision is most suitable to their needs. There are three main types of common interest developments to which a park might be converted: condominium, planned development, or stock cooperative.

#### ***Condominium***

A condominium consists of:

- a separate interest in space; and
- an undivided interest in common in real property (the common area).

The separate interest or the common area may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to the land except by easements for access and support. A condominium is especially adaptable to mobilehome park subdivisions because the separate interest may consist of a cubicle of air space without reference to a structure.

Typically, an owner's interest in a condominium is evidenced by a deed conveying both the separate air space and an undivided interest in the common area. The boundaries of the air space and common area are described on the recorded final map or condominium plan for the project. The owner may obtain title insurance on the interest.

As is the case in all common interest developments, an elected governing board manages the common area on behalf of all the owners. The declaration of restrictions requires that each owner be a member of the homeowners' association and that the association has the power to assess owners for their share of the operational costs of the common area. Generally, assessments are secured by the power to place a lien against an owner's interest.

Before agreeing to finance a condominium project or make individual loans secured by condominium interests, institutional lenders usually

require assurances that the lien securing assessments of the owners' association will be subordinated (junior) to the lender's deed of trust or mortgage. However, the lender must agree to be bound by the declaration of restrictions for the project.

### ***Planned Development***

A planned development consists of:

- parcels of land owned separately by residents;
- other parcels (common area) held in common by all residents or, more typically, deeded to an association of homeowners; and
- an association of owners with the power to assess residents for maintenance and repair of the common areas. The assessment may become a lien on the separately owned parcel of a nonpaying owner. The lien may be foreclosed upon and the property sold by the homeowners' association in a manner prescribed by law.

### ***Stock Cooperative***

In a stock cooperative, a corporation is formed to hold title to real property in fee simple or for a term of years. Each shareholder of the corporation receives an exclusive right to occupy a portion of the real property and a share of stock or a certificate of membership. The right of occupancy is transferable only with concurrent transfer of the membership or share of stock.

As a general rule, the Department of Real Estate will not issue a public report on a stock cooperative if a blanket loan covering the entire park is proposed, unless the lender agrees to subordinate the loan to the governing instruments of the project. The lender must also agree not to foreclose against nondelinquent members or shareholders of the stock cooperative even if the corporation holding title to the park is unable to make its payment to the lender.

Problems may be encountered in financing the purchase of a share in a stock cooperative because the loan may not qualify as a real property loan and different lending criteria may apply. Publicly assisted financing programs have helped to reduce this financing difficulty.

In the case of a housing assistance contract, special provisions can be made for a stock cooperative, subject to a regulatory agreement with the Secretary of Housing and Urban Development.

A Limited Equity Housing Cooperative (LEHC) is a nonprofit public benefit corporation, a form of stock cooperative, with a specific set of requirements. The articles of incorporation and bylaws governing an LEHC require the purchase and sale of a membership interest at no more than a specified "transfer value." This value is equal to the initial price of the membership plus an increase in value determined by the board of directors of the corporation, not to exceed ten percent per year. The intent in creating an LEHC is to maintain affordable housing by reducing speculative pressures on value and minimizing the cost of conversion. Certain exemptions from the public report requirement are available for this type of subdivision, provided a regulatory agreement is entered into with a specified federal or state agency.

*Note: Do not confuse a stock cooperative subdivision with ownership of the park by a nonprofit corporation formed for the purpose of holding title, as previously discussed.*

---

### **Department of Real Estate Subdivision Offices**

The Department of Real Estate maintains subdivision offices in Los Angeles and Sacramento. The offices process applications for public reports for projects in certain counties as indicated below.

#### **Los Angeles**

Subdivisions Office South  
320 West 4th Street, Suite 350  
Los Angeles, CA 90013-1105  
(213) 576-6983

#### **Sacramento**

Subdivisions Office North  
2201 Broadway  
P. O. Box 187005  
Sacramento, CA 95818-7005  
(916) 227-0813

#### **Counties**

Imperial, Los Angeles, Orange,  
Riverside, San Bernardino,  
San Diego, Santa Barbara,  
and Ventura.

#### **Counties**

All Other Counties

**RE 34 1998** (reprinted February 2004)

**II.**

**Application Instructions for  
Mobilehome Park Resident  
Ownership Program**

## PRELIMINARY PUBLIC REPORT APPLICATION INSTRUCTIONS (Mobilehome Park Resident Ownership Program)

RE 601 (Rev. 7/04)

### PACKET CONTENTS

RE 601A	Preliminary Public Report – Application Submittal
RE 601B	Preliminary Public Report – Application
RE 601C	Preliminary Public Report – Common Interest Subdivision
RE 612	Reservation Instrument
RE 612A	Reservation Deposit Handling Agreement
RE 646	Common Interest Development General Information

### GENERAL APPLICATION INFORMATION

This is an application for a preliminary public report for a mobilehome park conversion wherein the subdivider has or intends to apply for financing through the Mobilehome Park Resident Ownership Program (MPROP), Department of Housing of Community Development, as authorized by Chapter 11 of Part 2, Division 31 of the Health and Safety Code. This application does not constitute a notice of intention for a final public report.

A preliminary public report must be obtained before a subdivider may advertise or take reservations on subdivision interests, or solicit mobilehome park tenants as required per the MPROP application process. A final public report must be obtained before any subdivision interest may be sold or leased.

If all filing requirements are met a preliminary public report will normally be issued within 14 days after receipt of the application.

### HOW TO APPLY — WHAT TO SUBMIT

To obtain a preliminary public report, complete and submit the following forms to the appropriate Department of Real Estate Subdivision Office (refer to “Where to File Your Application” on page 2).

#### Application Submittal (Preliminary Public Report) (RE 601A)

Complete information under “Public Report Information.” Check the appropriate boxes in the “Items Submitted” column that correspond to each item enclosed.

All items with an asterisk (\*) *must* be submitted before your file will be accepted. Submit any additional documents that are applicable.

If any of the items are deficient, DRE will check the box in the “Deficient” column, add comments if necessary, and return the form for corrections to the single responsible party (SRP) shown on the application.

#### Preliminary Public Report Application (RE 601B)

Submit the original and one additional copy of page 1.

- a) Answer all questions in the application. If an item is not applicable, state NA.
- b) *Item #5 (Single Responsible Party)* - Only one individual may be listed as the single responsible party (SRP). This individual may be contacted to answer any questions and will receive the preliminary public report when issued. Do not request that correspondence or extra copies of the public report be sent to other parties. In addition, copies of all written communications to the SRP will be sent to the subdivider.

*Item #16 (Certification)* – The certification states that all representations made in the application, including all exhibits, are true, accurate and complete.

#### Filing Fee

Submit a certified check, money order or check payable to “Department of Real Estate” for the required filing fee.

**Note:** The check must be dated not more than 60 days before the application is received by DRE. *Do not send cash. Attach the fee to the photocopy of page 1 of RE 601B.*

Filing fees include the basic filing fee and preliminary public report fee, plus a lot/unit fee for each lot/unit to be covered by this preliminary public report. Refer to Subdivision Filing Fees (RE 605) to calculate the appropriate fee.

#### Typed Preliminary Public Report (RE 601C)

Submit the original and three copies (reproduced on pink paper).

**Note:** All preliminary public reports are printed on pink paper so that they are easily distinguishable from final public reports, which are printed on white paper.

The preliminary public report consists of the RE 601C and RE 646 for a common interest subdivision. Follow the instructions listed below to complete these forms.

- a. Complete RE 601C as outlined below:

- 1) Subdivision Information [*front page of RE 601C*]  
Enter the name of applicant, tract or map name and number, advertising name, and county *only*. DRE will complete the file number, issuance date, and expiration date fields.
- 2) Location and Size [*page 2, RE 601C*]  
This subdivision contains (#) lots, units, or spaces on (#) acres and is located at (*street address or cross streets*) within the city limits of (*city/town*) or approximately (#) miles from (*city/town*).

- 3) Reservation Money Handling [page 2 of RE 601C]  
Add the name and street address of the escrow depository. Do not use a post office box.
- 4) Type of Subdivision—Choose one of the following to indicate the type of subdivision (project):  
Condominium  
Limited Equity Housing Cooperative  
Planned Development  
Stock Cooperative
- 5) Interest To Be Conveyed (page 2) – Choose the appropriate phrase below, fill in the blanks and enter the phrase on page 2. (If none of the statements below is representative of your offering, rephrase the statement and explain the reasons in a cover letter.)
- a) Condominium  
*You will receive fee title to a specified unit and an undivided fractional interest as a tenant-in-common in the common area together with a membership in the \_\_\_\_\_ Association and rights to use the common area(s).*
- b) Stock Cooperative or Limited Equity Housing Cooperative  
*You will receive an exclusive right of occupancy and lease to a specified space together with membership (or shares) in the \_\_\_\_\_ Cooperative Corporation which owns the property.*
- c) Planned Development  
*You will receive fee title to a specified lot together with a membership in \_\_\_\_\_ Association and rights to use the common area(s).*

#### Address Labels

Prepare five, self-adhesive, self-addressed address labels for the SRP of this project and another five for the subdivider.

*Example:* Ms. Josephine Wayne  
Smith Title Company  
123 Main Street  
Anywhere, California 90000

#### WHERE TO FILE YOUR APPLICATION

There are two DRE Subdivision Regional Offices. Each office processes applications for subdivisions being developed in certain counties as shown below.

You must file your application in the appropriate office. Some applications may be transferred to the other Regional Office for processing. You will be advised if your file is transferred.

*The following counties are covered by the Southern office:*

Imperial	Los Angeles
Orange	Riverside
San Bernardino	San Diego
Santa Barbara	Ventura

**Subdivisions Office - South**  
320 W. 4th Street, Suite 350  
Los Angeles, CA 90013-1105  
Telephone: (213) 897-3908

*All Other Counties are covered by the Northern office:*

**Subdivisions Office - North**  
2201 Broadway, CA  
Mailing address: P.O. Box 187005  
Sacramento, CA 95818-7005  
Telephone: (916) 227-0813

#### PRELIMINARY PUBLIC REPORT ISSUANCE PROCEDURE

The Department will review your pre-typed preliminary public report, and if the documents meet DRE standard, the report will be returned to the SRP.

*You are required to duplicate the preliminary public report on pink paper and provide a copy to each party making a reservation.*

#### RECEIPT FOR PUBLIC REPORT (REQUIRED BY REGULATION 2795.1)

Each prospective purchaser must be given a copy of the public report for which a receipt must be completed and retained for three years. A Receipt for Public Report (RE 614E) shall be used by the owner/subdivider (or agent). (Refer to Figure A.) A copy of RE 614E will be provided when the public report is issued.

*The receipt is to be kept on file by the subdivider or his/her representative/agent for three years.*

*Regulation 2795.1(a)* states, "A receipt on the form specified herein shall be taken by or on behalf of the subdivider from each person executing a reservation agreement under authority of a preliminary public report and each person who has made a written offer to purchase or lease a subdivision interest under authority of a final subdivision public report."

Subsection (b) of Regulation 2795.1 provides that the receipt shall be retained for a period of three years from the date of the receipt and shall be available for inspection by DRE during regular business hours.

*Section 11018.1 of the Business and Professions Code* stipulates when and to whom the subdivider or subdivider's agent or salesperson must give copies of the public report.

- (a) A copy of the public report of the commissioner, when issued, shall be given to the prospective purchaser by the owner, subdivider or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision. The requirement of this section extends to lots or parcels offered by the subdivider after repossession. A receipt shall be taken from the prospective purchaser in a form and manner as set forth in regulations of the Real Estate Commissioner.

(b) A copy of the public report shall be given by the owner, subdivider or agent at any time, upon oral or written request, to any member of the public. A copy of the public report and a statement advising that a copy of the public report may be obtained from the owner, subdivider or agent at any time, upon oral or written request, shall be posted in a conspicuous place at any office where sales or leases or offers to sell or lease lots within the subdivision are regularly made.

**SUPPLEMENTAL ITEMS**

**Communications with the Department**

When corresponding with the Department's Subdivision Offices, always identify the DRE-assigned file number. This will assist DRE staff to quickly locate the file and to match the mail with the appropriate file for processing.

**Reference Material**

The Department has the following publications available for purchase. These may be helpful reference materials for public report applicants.

- Real Estate Law Book
- Real Estate Reference Book
- Subdivision Public Report Application Guide (SPRAG)
- Operating Cost Manual for Homeowners Associations

Please refer to Publications Request (RE 350) for ordering information.

**FIGURE "A"**

**RECEIPT FOR PUBLIC REPORT OR CALIFORNIA PERMIT**

The Laws and Regulations of the California Real Estate Commissioner require that you as a prospective purchaser or lessee be afforded an opportunity to read the public report or permit for this subdivision before you make any written offer to purchase or lease a subdivision interest or before any money or other consideration toward purchase or lease of a subdivision interest is accepted from you.

In the case of a preliminary or interim public report or permit you must be afforded an opportunity to read the public report or permit before a written reservation or any deposit in connection therewith is accepted from you.

In the case of a conditional public report or permit, delivery of legal title or other interest contracted for will not take place until issuance of a final public report or permit. Provision is made in the sales agreement and escrow instructions for the return to you of the entire sum of money paid or advanced by you if you are dissatisfied with the final public report or permit because of a material change. (See California Business and Professions Code §11012.)

**DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE PUBLIC REPORT AND HAVE READ IT.**

I read the Commissioner's Public Report or Permit on \_\_\_\_\_  
[File Number]  
\_\_\_\_\_  
[Tract Number or Name]

I understand the public report or permit is not a recommendation or endorsement of the subdivision, but is for information only.

The issue date of the public report or permit which I received and read is: \_\_\_\_\_.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Address

**PRELIMINARY PUBLIC REPORT APPLICATION SUBMITTAL**  
*(Mobilehome Park Resident Ownership Program)*

FILE NUMBER
-------------

RE 601A (Rev. 1/97)

**NOTES TO THE SUBDIVIDER**

- All items marked with an "\*" must always be submitted with the application.
- Documents must be submitted in the order listed below (tabbing not necessary). Submit the documents and check/money order to the appropriate subdivision office listed in the Preliminary Public Report – Application Instructions (RE 601).

**PUBLIC REPORT INFORMATION**

TRACT NAME AND/OR NUMBER

ADVERTISING NAME	AMOUNT OF ENCLOSED CHECK
CITY	COUNTY

Item Submitted	BRE Use Only Deficient	Name of Item Submitted
*		Preliminary Public Report – Application (RE 601B)
*		One additional copy of page 1 RE 601B with filing fee attached.
*		Typed preliminary public report (original and three pink copies of RE 601C)
*		Single responsible party & subdivider address labels - 5 preprinted, self-adhesive labels for each party
*		Preliminary report from title company (with BRE indemnity notes); <i>and</i> , if applicant does not currently hold title, also submit agreement or option to purchase, or certified escrow instructions.
*		Completed Reservation Instrument (RE 612) and Reservation Deposit Handling Agreement (RE 612A); RE 612A must be executed by applicant and escrow-holder
		Consent to Service of Process (RE 608's), if applicable
		Certificate of qualification from the California Secretary of State, if applicable
		Authorization to sign, if applicable
		Authorization of Agency, if applicable

**BRE USE ONLY**

COMMENTS: (USE REVERSE SIDE IF NECESSARY)

REVIEWED BY:	DATE
➤	

**PRELIMINARY PUBLIC REPORT APPLICATION**  
*(Mobilehome Park Resident Ownership Program)*

RE 601B (Rev. 9/99)

**APPLICATION USE**

This application shall only be used for mobilehome park conversions wherein the subdivider has or intends to apply for financing through the Mobilehome Park Resident Ownership Program (MPROP), Department of Housing and Community Development, as authorized by Chapter 11 of Part 2, Division 31 of the Health and Safety Code.

**1. GENERAL INFORMATION**

**A. TYPE OF SUBDIVISION: (CHECK ONE BOX)**

- CONDOMINIUM
- STOCK COOPERATIVE
- LIMITED EQUITY HOUSING COOPERATIVE (LEHC)
- PLANNED DEVELOPMENT
- OTHER:

**B. APPLICATION FOR: (CHECK ONE BOX)**

- ORIGINAL
- AMENDED FILE # \_\_\_\_\_
- RENEWAL FILE # \_\_\_\_\_

**2. SUBDIVISION IDENTIFICATION AND LOCATION**

NAME OF SUBDIVISION \_\_\_\_\_

TRACT NUMBER \_\_\_\_\_

ADVERTISING NAME \_\_\_\_\_

STREET ADDRESS (IF ANY) \_\_\_\_\_

CITY _____	COUNTY _____
IS SUBDIVISION LOCATED WITHIN CITY LIMITS? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, WHAT CITY? _____
IF NO, NEAREST TOWN/CITY? _____	MILES/DIRECTION FROM TOWN/CITY? _____
MASTER BRE FILE NO. (IF ANY) _____	MASTER FILE TRACT NUMBER _____

DEPUTY ASSIGNED TO MASTER FILE \_\_\_\_\_

**3. SIZE OF THIS FILING**

NUMBER OF RESIDENTIAL LOTS/UNITS/SPACES (Do not include common area lots) \_\_\_\_\_

LIST COMMON AREA LOT NUMBERS/LETTERS \_\_\_\_\_

LOTS/UNITS/SPACES TO BE <input type="checkbox"/> SOLD <input type="checkbox"/> LEASED	LOTS TO BE SOLD/LEASED <input type="checkbox"/> WITH HOUSING <input type="checkbox"/> VACANT <input type="checkbox"/> BOTH
NUMBER OF COMMON AREA LOTS _____	NUMBER OF ACRES IN THIS FILING (NOT SQUARE FEET) _____

**FOR BRE USE ONLY**

**DATE RECEIVED**

FILE NUMBER _____		
AMOUNT REQUIRED \$ _____		
AMOUNT RECEIVED \$ _____		
REFUND AMOUNT \$ _____		
AMOUNT TRANSFERRED \$ _____	FROM FILE # _____	FOR LOTS _____

**ACCOUNTING USE ONLY**

**4. SUBDIVIDER INFORMATION**

SUBDIVIDER NAME \_\_\_\_\_

ATTENTION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

STATE _____	ZIP CODE _____
TELEPHONE NUMBER _____	FAX NUMBER _____

**5. SINGLE RESPONSIBLE PARTY (SRP)**

SUBDIVIDER NAME \_\_\_\_\_

ATTENTION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

STATE _____	ZIP CODE _____
TELEPHONE NUMBER _____	FAX NUMBER _____

**WHEN PUBLIC REPORT IS READY:**

- MAIL TO SRP
- CALL SRP FOR PICK-UP

**6. OVERALL PROJECT PLAN**

- Single Phase
- Multiple Phase

- A. What type of project is this application for?.....
  - B. How many lots/units/spaces (*other than common area but including this filing*) are in the overall project to date?.....
  - C. How many acres are in the overall project to date, including this filing?.....
  - D. If you checked *multiple phase* above how many phases are in the project? .....
- This application is for which phase? (*1st, 3rd, etc.*) .....
- What is the total number of lots/units/spaces in the overall project? .....
- What is the approximate completion date for the overall project? .....

List the phase and common area lot numbers/letters for each prior phase.

Phase Number	Common Area Lot Numbers / Letters

**7. LEGAL INTEREST TO BE OFFERED**

- |  |  |
|--|--|
| <p>A. Unit, lot, or space</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Fee Interest</li> <li><input type="checkbox"/> Leasehold Interest for Term _____ Years</li> <li><input type="checkbox"/> Real Property Sales Contract</li> <li><input type="checkbox"/> Other (explain)</li> </ul> | <p>B. Common Area Interest</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conveyed to Owners Association</li> <li><input type="checkbox"/> Fractional Undivided Interest</li> <li><input type="checkbox"/> Other (explain)</li> </ul> |
|--|--|

**8. IMPROVEMENTS**

- A. Number of buildings containing residential units.....
- B. Estimated completion date of residential units.....
- C. Estimated completion date of common area and facilities included in this filing .....
- D. Describe the type of car storage (i.e., garage, carport, or open space) and number of each type to be individually owned, if any.

E. Describe the type of car storage (i.e., garage, carport, or open space) and number of each type to be included in the common area, if any.

---

---

**9. COMMON AREA IMPROVEMENTS (IF APPLICABLE)**

A. Indicate on the map and describe below the improvements (i.e., recreational facilities, landscaping, etc.) to the common area lots that will be completed as part of this filing.

---

---

---

B. Describe the common area lot improvements (i.e., recreational facilities, landscaping, etc.) that have previously been completed in this development, which will be available for the use of purchasers of lots/units in this filing.

---

---

---

**10. LOCATION OF SUBDIVISION SALES RECORDS**

NAME OF CUSTODIAN		TELEPHONE NUMBER	
STREET ADDRESS			
CITY	COUNTY	STATE	ZIP CODE

**11. RESERVATION DEPOSIT HANDLING**

Deposits received from persons in connection with the taking of reservations for lots/units/spaces under authority of a Preliminary Public Report will be immediately placed into the following neutral escrow depository along with a completed and executed Reservation Instrument (RE 612) and a completed and executed Reservation Deposit Handling Agreement (RE 612A).

Complete and enclose one sample copy of RE 612 and one sample copy of RE 612A, personally signed by the subdivider and the escrow holder.

NAME OF ESCROW DEPOSITORY		TELEPHONE NUMBER	
STREET ADDRESS (DO NOT LIST POST OFFICE BOX)			
CITY		STATE	ZIP CODE

---

## 12. PRELIMINARY REPORT

Submit a Preliminary Report from title company. If you do not currently hold title, also submit a copy of the Agreement, Option To Purchase, certified Escrow Instructions, or other evidence of a future interest in the property. Evidence of future vesting must include a "date certain"; the date by which vesting must occur. The Preliminary Report must include the two following certification paragraphs:

No known matters otherwise appropriate to be shown have been deleted from this report which is not a policy of title insurance, but a report to facilitate the issuance of a policy of title insurance.

For the purposes of policy issuance no items (or items \_\_\_\_\_) may be eliminated on the basis of indemnity agreement or other agreement satisfactory to the company as insurer.

## 13. NON-RESIDENT SUBDIVIDER

If subdivider is a non-resident, submit a completed Consent to Service of Process (RE 608's) for substituted service of process upon the California Secretary of State and a certificate of qualification from the California Secretary of State, if applicant is a nonresident corporation or limited liability company.

---

### CERTIFICATION

I declare under penalty of perjury that the representations and answers to questions in this application and in all documents submitted as a part of this application are true and complete to the best of my knowledge and belief.

In addition, I declare that I fully intend to make application for financing of this mobilehome park conversion through the Mobilehome Park Resident Ownership Program of the Department of Housing and Community Development.

SIGNATURE OF SUBDIVIDER ➤	DATE

EXECUTED AT: (STREET ADDRESS, CITY, COUNTY, STATE)

- 
- If the subdivider is a corporation, limited liability company (LLC), partnership, etc., the individual(s) signing the certification must stipulate the capacity (i.e., president, manager, general partner, etc.) of the signer, and an authorization to sign (i.e., corporate resolution, LLC statement, or partnership statement) must be submitted.
  - If an agent will be submitting documents to the Bureau of Real Estate on behalf of the subdivider, the subdivider must provide written authorization to that effect.
  - Certification signed outside the State of California must be acknowledged by a notary public.

**III.**  
**Operating Cost Manual for  
Homeowners Associations**

---

# OPERATING COST MANUAL

---

*for  
Homeowner Associations*

**California  
Department of Real Estate**



*Serving Californians Since 1917*

*Revised April 2007*

# OPERATING COST MANUAL

## *For Homeowner Associations*

### *Table of Contents*

	<i>Page</i>
<b>PART I</b>	
Foreword.....	1
Using the Manual.....	2
<b>PART II — OPERATING AND MAINTENANCE COST DATA</b>	
100's — Fixed Costs.....	6
200's — Operating Costs.....	8
<b>PART III — RESERVE COST DATA AND ADMINISTRATION</b>	
300's — Reserves.....	16
400's — Administration.....	19
500's — Contingency.....	22
<b>PART IV — SUMMARY AND WORKSHEET</b>	
Budget Submittal and Review Summary.....	23
Budget Worksheet [RE 623].....	26
<b>PART V — OPERATING COST MANUAL INDEX</b> .....	27

## Foreword

This is the thirteenth revision of this manual which was first published in 1975.

The manual is designed as a guideline to assist homeowners' associations, developers and management firms of common-interest subdivisions in budget preparation. The materials are applicable, at least in part, to the following common-interest subdivisions:

- Planned Developments (P.D.'s)
- Condominiums (Condos)
- Community Apartments (Com. Apts.)
- Stock Cooperatives (Stock Co-ops)
- Undivided Interest Subdivisions/TIC's (Tenancy in Common)

The cost data are considered to be reliable as of winter 2005. Costs incurred in maintaining and operating the common facilities in common-interest subdivisions are likely to be affected by inflation. Inflationary influences should therefore be considered in budget preparation for those budgets which are prepared far in advance of the operating period covered by the budget.

The data in this handbook has been collected by the Budget Review Section staff of the California Department of Real Estate from a variety of sources including homeowners' associations, professional management firms, service organizations, public utilities and manufacturers.

It has been assembled in a form to facilitate multi-purpose use by lay governing bodies of homeowners' associations, developers and professional management firms alike. As such, some parts of this manual may not apply to your situation and other resources should be solicited. **THIS MANUAL IS NOT INTENDED TO INSTRUCT HOMEOWNERS' ASSOCIATIONS IN ACCOUNTING PROCEDURES OR FORMAT.**

The Department will appreciate receiving suggestions for improvement of the manual. Please send to:

Department of Real Estate  
Budget Review Section  
P.O. Box 187005  
Sacramento, CA 95818-7005  
(916) 227-0813

Department of Real Estate  
Budget Review Section  
320 W. 4th Street, Suite 350  
Los Angeles, CA 90013-1105  
(213) 576-6980

Please include your telephone number on correspondence to facilitate follow-up communication by telephone.

## USING THE MANUAL

Items to be budgeted have been divided into the following five categories:

- 100 — Fixed Costs (*taxes, insurance, etc.*)
- 200 — Operating Costs (*utilities, goods and services*)
- 300 — Reserves (*for replacement and major maintenance*)
- 400 — Administration (*legal, accounting, etc.*)
- 500 — Contingency

Each of the first four major categories have been divided into subcategories or into component line item expenses to facilitate the inventory and budget preparation processes.

The costs that have been developed for condominium developments are those customarily associated with low-rise or garden-type condominiums. Extra care should be taken in using the format or content of this manual when developing budgets for high-rise and luxury buildings.

### **High-Rise Structures**

Typically, a high-rise condominium project will employ a full time staff of ten or more employees to perform maintenance and repair. Moreover, some of the building components may be under full service contracts so that the need for replacement of major components may not arise. All high-rise (over 70 feet) buildings are subject to certain safety codes, e.g., fire and elevator safety, which may require the installation of equipment at some specified future date. Funds for the purchase, installation and maintenance of such equipment should be included in the budget.

### **A limited list of the high-rise components not included in other sections of the Operating Cost Manual are:**

Central heating and air conditioning systems (HVAC) comprised of chillers, compressors, and boilers; cooling towers; gas-fired boilers equipped with heat exchangers; emergency diesel generators for emergency purposes; fire sprinkler system with storage tanks and diesel fuel pumps; master antenna systems; building security systems; closed circuit TV systems, electric door releases; intercom systems; house phones; music and paging systems; glass caulking; window washing/cleaning; compactor maintenance; local license inspection fees; exterior surface repair; etc.

### **Refer to Addendum "A" for a limited checklist that may be submitted with the budget for High-Rise or Mid-Rise projects.**

### **A limited list of the high-rise personnel and indirect expenses not included in the Operating Cost Manual are:**

Manager(s), engineer(s) and assistants, head janitor and assistants, security guards, valet(s), door attendants, PBX operators, concierge, front desk; relief, vacation, and bonuses; workers compensation, and payroll taxes.

Because of the complexity of budgets for high rise condominiums, a 10 percent contingency factor is not considered unreasonably high.

A common-interest subdivision may include a common facility which is not covered in this manual. In budgeting for such a facility, it is best that it be broken down into its component expenses. In the case of a stable, for example, consideration should be given to such component item expenses as electricity, water, custodial service and painting. It should be possible to use data in this manual to calculate the various component costs and to estimate the aggregate cost of maintaining and operating the facility. **EVEN THOUGH AN AMENITY OR COMPONENT MAY NOT BE INCLUDED IN THIS MANUAL, IT SHOULD BE INCLUDED IN THE BUDGET.**

To use this manual, persons responsible for budget preparation should first make a list of all expenses that the association is likely to incur. An analysis of the governing documents for the subdivision and the association is extremely important in the budget preparation process. The governing documents enumerate the duties of the homeowners' association and specify or suggest areas in which costs will be incurred.

The cost data in Part II of the manual is applicable for a majority of developments located in and around major population centers of California. Data provided is for Northern California and for Southern California, but a further breakdown into smaller geographical areas is only provided for certain expense items, e.g., landscape maintenance for the Palm Springs area. No cost data has been developed for special resort areas such as Lake Tahoe, where costs for goods and services are likely to be substantially higher than costs for comparable goods and services in metropolitan, urban and suburban areas.

Parts III and IV of this manual consist of reserve cost data and budget worksheets to assist in the compilation process.

To estimate certain expenses, e.g., carpeting and painting, it is necessary to have reliable data concerning dimensions of common areas and facilities. One of the first tasks of the governing body or management agent of an association is the preparation of a complete inventory of the areas and facilities to be maintained.

In preparing the inventory, it is best to start with a map, diagram or sketch delineating all of the common areas and facilities. For completed or existing projects the best source of information in completing the map and project inventory is a set of as-built plans covering the project common area. These plans are not only helpful in preparing the project inventory, but also in coping with certain practical problems of management such as turning off water in the event of a broken water line.

If construction plans for the common area of a planned development are not available, the recorded map of the subdivision can serve as a source of information in preparing the project inventory map. For a condominium project, it will usually be necessary for the budget preparer to obtain a copy of the condominium plan from the county recorder or subdivider, as well as:

- copy of the final or tentative map
- architectural elevations and plan views

- engineering plans
- landscape architectural drawings

Other possible sources of information to prepare the project inventory map include a land use map (usually available from the city or county planning department) and the county assessor's map. If all else fails, a reasonably accurate inventory can be taken through the process of measuring and counting areas and facilities in place.

The inventory of fixtures, furniture and other personal property of the association is usually best made in the beginning by a physical count and by measurement where appropriate. This is probably also the best method for inventorying some items of real property such as lighting fixtures.

**It is recommended that associations consider verification and, if necessary, correction of their major component inventory after project start-up. This may be necessary to comply with Civil Code Section 1365.**

### ***Variable Assessments***

Proration is a procedure to determine the amount to be assessed to each unit in the subdivision to meet budgeted expenses. Prorations may be either equal or variable. Equal proration involves the simple process of dividing the total costs of a budget item by the number of units in the subdivision. Variable prorations entail the use of a factor or factors that differ from one unit to the next, e.g., square footage of floor space. Equal assessments should be used wherever reasonably equitable, since variable proration can be a complicated and controversial process.

Variable prorations should be employed only when services are provided to units in unequal proportions. DRE regulations allow the use of variable assessments against units only if one unit will derive as much as 10 percent more than another unit in the value of common goods and services supplied by the association. Examples of services provided in unequal proportions directly to units are insurance, domestic water and gas, if applicable, and exterior and roof maintenance (the budget items for exterior and roof maintenance are ordinarily the reserves to carry out this maintenance when it is due).

Within a particular project, more than one proration factor may be applied. For example, consider a condominium project with central air conditioning, a swimming pool and valet parking services. It would not be unreasonable to allocate these expense items to each unit as follows:

1. Central air conditioning costs on the basis of the square footage of each unit.
2. Expenses attributable to the swimming pool equally for each unit.
3. Valet parking costs according to the number of parking spaces for each unit in proportion to total parking spaces for the project.

An example of how to determine whether proration is advisable is presented in **Figure "A"**:

Assume a budget for a 100-unit condominium project consisting of 50 two-bedroom units of 1,000 square feet of floor space each and 50 three-bedroom units with 1,200 square feet each.

There is a single master meter for domestic water supplied to the project. Electricity and gas are individually metered to each condominium unit.

Using the completed worksheet (see **Figure "B"**), variable assessments can be computed as follows:

$$\text{Highest Assessment} - \text{Lowest Assessment} \div \text{Lowest Assessment} = \% \text{ Differential } (\$93.46 - \$88.55 \div \$88.55 = 5.5\%)$$

The difference in the monthly assessments for the two floor plans is \$4.91. The assessment for a 1,200 square foot unit is only 5.5 percent greater than the assessment for a 1,000 square foot unit. A variable assessment is not considered appropriate since the difference in the level of services supplied to the two floor plans by the owners association is less than 10 percent, the minimum difference allowable for variable assessments under DRE regulations. In most instances, however, variable proration is not considered preferable to equal proration if differential in the level of services supplied by the association to the units is less than 20 percent. Variable assessments should be used when the differential exceeds 20 percent. After determining the percent of benefit derived from services provided by the association, an easy chart to follow would be:

Less than 10%	– equal assessments
From 10% to 20%	– variable or equal
Over 20%	– variable assessments

RE 623, Budget Worksheet, Page 14 has a blank proration schedule worksheet for your use. Your management documents must agree as to equal or variable assessments. Check the appropriate box on page 4 of the Budget Worksheet (RE 623).

### ***Management Documents***

It is recommended that the subdivider, attorney and budget preparer discuss the specific maintenance responsibilities of the association prior to preparing the Declaration of Restrictions and budget. In the past there have been problems in determining whether the individual unit/lot owner or the homeowners' association was responsible to maintain or repair items in the subdivision. The CC&R's should be clear enough to avoid confusion.

A general statement that the HOA is responsible to maintain common areas may be insufficient. There are subdivisions where the purchaser acquires title to a lot but the subdivider, in order to maintain the esthetic appeal to the subdivision, will require the association to maintain exterior paint or landscaping in front yards. Since these areas are owned in fee by the lot owner, the usual definition of common area would not be sufficient. In addition, areas designated as exclusive use common area have caused confusion in the past because of conflicting or confusing definitions in either the CC&R's or the Condominium Plan.

**FIGURE "A"**

**Budget**

<i>Description</i>	<b>Budget — Monthly Column</b>		<i>Variable Costs</i>
	<i>Monthly Costs</i>	<i>Equal Costs</i>	
Insurance	1,000.00		1,000.00
Electricity	600.00	600.00	
Gas (for pool)	200.00	200.00	
Water	400.00		400.00
Custodial	500.00	500.00	
Landscaping	2,500.00	2,500.00	
Refuse	300.00	300.00	
Streets	100.00	100.00	
Pool	100.00	100.00	
Misc. Maintenance	300.00	300.00	
Paint Reserve	600.00		600.00
Roof Reserve	700.00		700.00
Light Reserve	100.00	100.00	
Carpet Reserve	100.00	100.00	
Pool Reserve	100.00	100.00	
Furniture Reserve	100.00	100.00	
Paving Reserve	200.00	200.00	
Management	700.00	700.00	
Legal	100.00	100.00	
Accounting	100.00	100.00	
Contingency	300.00	300.00	
	<u>\$9,100.00</u>	<u>\$6,400.00</u>	<u>\$2,700.00</u>

**FIGURE "B"**

**PRORATION SCHEDULE WORKSHEET**

**Section I Variable Assessment Computation**

A. Variable Costs Description	Monthly Cost	
1. Insurance	\$ <u>1,000.00</u>	
2. Domestic Gas (if common)	\$ <u>0.00</u>	
3. Domestic Water (if common)	\$ <u>400.00</u>	
4. Paint	\$ <u>600.00</u>	
5. Roof	\$ <u>700.00</u>	
6. Hot Water Heater (if common)	\$ <u>0.00</u>	
7. Other	\$ <u>0.00</u>	
<b>Total Variable Cost</b>	<b>\$ <u>2,700.00</u></b>	
B. Total livable square footage of all units from condominium plan:		<u>110,000</u>
C. Variable Factor ( <i>variable monthly costs ÷ square footage = variable factor</i> ):		<u>.02455</u>

Multiply this factor by each unit size below in Section III.

**Section II Equal Assessment Computation**

A. Total Monthly Budget	\$ <u>9,100.00</u>
Less Variable Costs	\$ <u>2,700.00</u>
Total Monthly Equal Costs	\$ <u>6,400.00</u>
B. Monthly Base Assessment:	\$ <u>64.00</u>
<i>(total monthly cost ÷ number of units = monthly base assessment)</i>	

**Section III Assessment Schedule**

<i>Unit Size</i>	<i>x</i>	<i>Variable Factor</i>	<i>=</i>	<i>Variable Assessment</i>	<i>+</i>	<i>Base Assessment</i>	<i>=</i>	<i>Total Mth. Assessment</i>	<i>x</i>	<i>Unit Count</i>	<i>=</i>	<i>Total Mth. Budget *</i>
A. 1,000 s.f.	x	<u>.02455</u>	=	<u>\$24.55</u>	+	<u>\$64.00</u>	=	<u>\$88.55</u>	x	<u>50</u>	=	<u>\$4,427.50</u>
B. 1,200 s.f.	x	<u>.02455</u>	=	<u>\$29.46</u>	+	<u>\$64.00</u>	=	<u>\$93.46</u>	x	<u>50</u>	=	<u>\$4,673.00</u>
C. _____	x	_____	=	_____	+	_____	=	_____	x	_____	=	_____
D. _____	x	_____	=	_____	+	_____	=	_____	x	_____	=	_____

**VERIFICATION OF COMPUTATIONS**

Total Monthly Budget (Section III)	<u>\$9100.50</u>
Total Monthly Budget (Section IIA)	<u>\$9100.00</u>

\* Total Assessment x number of units of each type.

**Section IV Variable Assessments**

<i>Highest Assessment</i>	<i>-</i>	<i>Lowest Assessment</i>	<i>÷</i>	<i>Lowest Assessment</i>	<i>=</i>	<i>% Differential</i>
<u>\$93.46</u>	<i>-</i>	<u>\$88.55</u>	<i>÷</i>	<u>\$88.55</u>	<i>=</i>	<u>5.5 %</u>

<b>100's — FIXED COSTS</b>
----------------------------

**101. PROPERTY TAXES*****Stock Cooperatives***

Under Revenue and Taxation Code Section 2188.7, effective January 1, 1981, the governing body of a stock cooperative may request segregated taxes and separate tax bills upon satisfying certain conditions of the code. Because of the time involved, the budget for a stock cooperative or community apartment project should include the estimated annual property tax against all unsecured real property comprising the subdivision.

Under provisions of the Revenue and Taxation Code, if a unit in a stock cooperative or community apartment project is purchased or otherwise changes ownership, only that unit can be reappraised by the assessor. Because of these provisions, it is incumbent upon county assessors to separately assess the individual units in stock cooperative and community apartment projects. A single tax bill covering the entire property may be issued the first year.

***Planned Developments***

In planned developments, common area taxes are normally assessed on a pro rata basis to the individual dwelling units which make up the development in accordance with Section 2188.5 of the Revenue and Taxation Code. There is ordinarily no need for the association to budget for property taxes against common areas and facilities in a planned development. There are reports, however, that some county assessors may assess a portion of the value of common area and improvements to the association having title to the property as a means of assuring that the property does not escape a fair assessment. It is, therefore, strongly suggested that an owners' association consult with the county assessor on his proposed plan for assessment of the common areas and facilities before preparing the budget. Common area lots might also be assessed property taxes under provisions of Mello Roos Special Tax Districts.

***Condominiums***

In the case of a condominium development in which the owners' association holds title to recreational common area, it is possible that this property will be separately assessed to the association. Again, this is information that should be obtained from the county assessor before a budget is prepared.

Common area which is owned by owners of individual units as tenants in common must be assessed on a prorated basis to each owner of a condominium unit pursuant to Section 2188.3 of the Revenue and Taxation Code.

***Lien Date***

Real property is assessed in California on March 1 of each year (lien date). Under Section 75.12 of the Revenue and Taxation Code, property will be reassessed at the date the new construction is deemed complete. Availability for use and occupancy may affect this date if proper notice is given to the Assessor's Office. If the first sale of a unit in a subdivision has not been closed as of that date, the tax collector may bill the association or builder

for the entire subdivision. Shortly thereafter, the first or supplemental tax bill will be sent to the new owner.

**102. CORPORATION FRANCHISE**

Most associations can qualify for tax exempt status under state law if they are able to meet federal requirements for treatment as tax exempt organizations under Federal Income Tax Codes. If an exemption is granted by the Franchise Tax Board, an incorporated association will not have to pay the minimum state franchise tax (currently \$800.00 per annum). If granted, all associations — both incorporated and unincorporated — must annually file an informational tax return with the Franchise Tax Board. The annual fee is currently \$10.00 and the initial fee is \$25. As in the case of the federal law, an association must file a tax return and pay income tax to the state for its non-exempt income.

**103. INSURANCE**

The following information is not intended to cover all facets of insurance for common-interest subdivisions. There are a great many aspects which should be considered to give the association proper coverage. The purpose of this section is to alert governing bodies to the need of tailoring casualty insurance and commercial liability insurance to the needs of the owners and association collectively.

The minimum insurance coverage required to be carried by a common-interest subdivision association is usually specified in the governing documents for the development as well as governed by Civil Code 1365.9 and 1365.7. However, the governing body will have many factors to consider in determining the most adequate insurance coverages to obtain for the most reasonable cost. It may not be in the association's best interest to obtain only the minimum insurance as required in the Covenants, Conditions and Restrictions. All common interest developments should consider insurance covering commercial property, commercial liability, Directors and Officers Liability, Fidelity Insurance and Workman's Compensation insurance and earthquake insurance.

***Fire and Allied Coverage Insurance***

A Broad Form Endorsement is now generally considered to be the basic minimum casualty insurance coverage which governing instruments stipulate. The cause of loss covered under this type of policy include:

Fire losses covering; fire and lightning. Extended coverage endorsement losses covering; smoke damage, explosion, riot, civil commotion, falling aircraft, vehicle, hail and wind.

Policies may be written with a special form coverage endorsement more commonly referred to as "Risk of Direct Physical Loss." The "Risk of Direct Physical Loss" endorsement covers losses not specifically excluded in the policy form. Typical losses excluded are: wear and tear, earthquake, flood, earth movement, loss occasioned by an ordinance, war, and nuclear reaction. Typical property items excluded are: plumbing, heating, air conditioning, steam boilers, machinery, electrical appliances,

metal smoke stacks, limited glass, lawns and fences. Many of the losses specifically excluded may be added to the policy or other policies obtained covering specific losses. Examples of coverages which may be added to the policy for additional cost are losses due to: earthquake, boiler and machinery and glass breakage. A flood insurance policy can be purchased separately.

---

### **Flood Insurance**

If the development is located in a designated Flood Hazard Area, as determined by the U.S. Department of Housing and Urban Development, the lender will require flood insurance. Contact a local insurance agent or broker for further information.

---

### **Planned Development Coverage**

Fire, casualty and other insurance carried by the homeowners' association in a planned development is customarily limited to coverage attributable to destruction, damage and injuries which occur on the property owned by the association or by the owners in common. The individual owner in a planned development normally carries fire and liability insurance on the individually owned lot. In some cases, however, where the planned development involves clustered or townhouse-type residential structures, the association obtains a blanket policy covering all dwelling units. An advantage to the blanket policy is the lower premiums for equal coverage.

---

### **Condominium Insurance Coverage**

In a condominium development, there are two distinct ownership interests in real property to be insured. There is commonly owned property which normally comprises all of the real property except that which is enclosed by the interior surfaces of the cubicles of space. Within the cubicles of space are such items of insurable real property as built-in cooling systems.

Lenders financing the condominium development with attached units, as a whole, will insist upon a blanket insurance policy providing single coverage for all of the insurable real property within the development. An association must obtain coverage sufficient to satisfy the requirements of all lenders involved in rebuilding units in the project in case of a major loss. Failure to do so could result in the creating of problems between some unit owners and their mortgagees. Each individual owner should satisfy himself that the master policy adequately covers his insurable interest in the real property. If it does not, the individual owner may (if allowed by CC&R's) secure his own insurance for the real property as well as the personal property located within the cubicle of space that is individually owned.

---

### **Package Policies**

Package policies are available which usually offer more coverages at a lesser cost than coverages sold separately. Optional coverages are available to meet specific needs.

---

### **Clauses Affecting Fire and Other Hazard Coverages**

Some of the features of commercial property insurance policies with which governing bodies should be familiar in discussing coverage with the insurers or insurance agents include the following:

### **Suspension of Coverage**

Many standard policies include a condition under which insurance is suspended if the particular hazard insured against is increased by means within the control or knowledge of the insured. Governing bodies negotiating insurance policies should seek the deletion of this clause or at least modification.

### **Co-Insurance Clause**

Some policies include a co-insurance clause which will operate to limit the insurer's liability (with a corresponding reduction of policy premium) in the event of a loss if the improvements are insured at less than 80% of their current replacement value at the time of loss. A "co-insurance clause" places the responsibility of insuring the improvements at 80% or more upon the owners to avoid having a depreciated value given to the improvements in settlement of a loss. The effect of this clause is that if the amount of insurance falls below the required percentage of current replacement value the insured will co-insure replacement costs with significant out-of-pocket costs involved. In most cases a "co-insurance" clause can be deleted through a waiver of co-insurance with an "Agreed Amounts" endorsement. In this case the insurance company agrees to pay a "flat" amount of the actual loss up to the agreed amount limit per occurrence per year.

### **Commercial Liability Insurance**

Liability insurance in the past few years has become the single most important coverage available to any common-interest subdivision association. The possibility of financial loss from a liability claim is many times greater than a loss by fire.

The primary coverage under any commercial liability insurance is the protection against financial loss caused from being legally liable for the death or bodily injury of another and/or for damage to property of another. Liability coverages must be designed to conform to the unique features of each development to preclude any lapse in coverage which could financially peril the common-interest association. General liability policies do not cover all incidents which could result in financial loss. Care must be taken to determine what is covered and what additional coverages are needed to fully protect the individual association.

The commercial liability policy should be written to insure the association, its governing body and members of the association. It may also be advisable to include employees of the association as additional insureds.

---

### **Umbrella Commercial Liability Coverage**

This type of liability coverage is usually written above a base coverage amount. Then the so-called liability umbrella coverage may then be purchased in increments of \$1,000,000. Also available in umbrella policies are "first dollar defense" coverage which provides for payment of all cost incurred in legal defense even without being held legally liable. Refer to Civil Code 1365.9 regarding civil liability protection to owners.

---

### **Workers' Compensation**

Workers' Compensation is a form of liability insurance coverage that by California law must be maintained by any entity which falls within the statutory definition of "employer" to secure the payment of compensation to employees or their survivors in case of the injury or death of the employee attributable to his employment. **Because the definition of an "employee" is**

**extremely broad, it is recommended that an allowance for this be included in all budgets.**

### **Other Insurance**

Insurance can be purchased for protection against loss not ordinarily provided by fire or liability policies. These include a fidelity insurance for loss through the fraudulent or dishonest acts of employees and errors and omissions insurance to protect the association against loss resulting from the negligent acts, error, omission, or breach of duty by officers or directors of the association.

### **Costs**

The best estimate can be obtained from an insurance agent prior to premium renewal or before start-up of a new association. IT IS STRONGLY RECOMMENDED THAT A BID OR RELIABLE ESTIMATE BE OBTAINED FROM AN INSURANCE BROKER WHENEVER POSSIBLE. BEFORE CONTACTING AN AGENT IT IS IMPORTANT TO READ YOUR GOVERNING DOCUMENTS TO DETERMINE YOUR INSURANCE REQUIREMENTS. A proposal for insurance should be included as backup to the budgeted figure. Also, your lender may have additional requirements that should be considered.

Associations that have a deductible of \$1,500 to \$5,000, or more, should consider setting up a fund to cover small claims not normally covered by the policy and to cover the deductible expense.

**If your documents require additional coverage such as Directors and Officers or Fidelity Bond, Workmans Compensation, Earthquake, etc., this amount should be included with your proposal.**

*Note: Ordinarily the fidelity amount should include three months of operating income plus an amount equal to the accumulated balance of the reserve fund.*

The rate for your area should be determined by contacting several agents or insurance companies.

## **104. LOCAL LICENSE AND INSPECTION FEES**

Local governing bodies (city and county) require license and inspection fees on swimming pools and elevators. The dollar amount for these annual inspection and license fees vary from city to city. Elevator fees may run from \$300 - \$400/year and swimming pool inspection fees may run \$200/year. Check local agencies for actual amounts.

Business licenses may be required if homeowners' associations install vending machines or coin operated laundry machines.

## **105. ESTIMATED INCOME TAXES**

Under provisions of the Federal Tax Reform Act of 1976, a condominium or planned development association may elect to be treated as a tax exempt organization for federal income tax purposes for taxable years after 1973 if certain prescribed conditions are met. Among other conditions, the association must be organized and operated for "exempt function purposes," not less than 60 percent of its gross income for the taxable year must consist of dues or assessments from members who are owners

of dwelling units in the subdivision and at least 90 percent of the expenditures of the association for the taxable year must be for "exempt function purposes."

Exempt function purposes" is defined to mean the acquisition, construction, management and maintenance of property held by the association or property commonly owned by members of the association or governmental property which is used for the benefit of residents of the association.

If a homeowners' association qualifies as a tax exempt organization, net non-exempt function income is still subject to income tax. "Non-exempt function income" includes fees from non-members for use of the facilities of the association and amounts paid by members over and above regular dues and assessments for special use of facilities. The situation is now quite similar with respect to the payment of state income taxes.

The amount to be budgeted for federal and state income taxes will depend in large part upon the anticipated extent of income-producing, non-exempt functions of the association. The governing body of the association should seek advice from a CPA or good accountant with respect to obtaining tax-exempt status and in reporting non-exempt function income.

The required filing of the Statement By Domestic Nonprofit Corporation, Form 100, must be filed annually to the Secretary of State in the State of California. The filing fee must accompany the statement and designate the agent for service of process.

## **200's — OPERATING COSTS**

### **201. ELECTRICAL ENERGY**

Due to fluctuations in energy costs and the unpredictability of future rates, it would be of little assistance to budget preparers to show electrical power rates for even the major utilities in California. Therefore, it is recommended that the budget preparer obtain current rate information from the supplier of electrical power prior to completing the Electrical Energy Consumption Worksheet in Part IV.

The ways in which electrical energy is consumed within a subdivision development are too diverse to guess the costs of electrical power to the common areas without an inventory of electrical equipment, appliances, etc., including the consumption rate of the equipment and an estimate of the hours of use over a given period of time. The worksheet in Part IV of this manual is designed to assist the budget preparer in this inventory process.

#### **Hot Water**

If hot water, heated by electricity, is supplied by the homeowners' association to each dwelling unit (including laundry facilities), 540 KWH per month, per unit per 30 gallon water heater is a reasonable estimate of consumption.

#### **Air Conditioning**

One ton (1 ton = 12,000 BTU's) of refrigeration will serve approximately 400 to 600 square feet of floor area in a residential structure. Each ton of capacity requires approximately 1.4 KWH per hour of operation. The hours of operation of an air conditioning unit depend upon such factors as the outside temperature, insulation in the structure, exposure to the direct sun and other

factors. If you assume a 500 square foot recreation building is used eight hours a day, seven days per week, the cost can be calculated as follows:

$$\frac{8 \text{ hrs} \times 7 \text{ dys/wk} \times 52 \text{ wks} \times 1.4 \text{ KWH}}{500 \text{ SF}} = 8.15 \text{ KWH/SF/YR}$$

The factor shown on the electrical worksheet is estimated for 6 months of use per year.

### Pools and Spas

The electrical energy needed for swimming pools and spas is consumed by a water circulating pump in each unit plus a blower motor in the spa (or occasionally electric heaters). A rough estimate of energy consumption per month for each can be made if the horsepower of the motors can be determined. Circulation pumps generally operate 8 to 12 hours per day, 100% of the year due to health and sanitary reasons. Spa blowers operate when the unit is used. Twenty minutes per unit, per day is a reasonable estimate of time use for spa blowers on smaller projects. Large projects would use up to 12 hours maximum. (See electric worksheet.)

Pump Type	Typical Motor Sizes
Spa/pool pump	1 - 2 HP
Spa blower	1 1/2 - 2 HP
Solar Pump	1/12 - 1/4 HP
Sump Pump	1/4 - 1/2 HP

Larger spas and pools will require larger motors.

Hours of use for solar pumps would depend on the size, location (climate) and efficiency of the system. A closed system that is tied to the pool circulation pump, would run while the cleaning/circulating pump is operating.

### General Equipment Requirements

Size of Pool	Motor	Heater
Average Spa	1 HP + 1 1/2 to 2 HP Blower	250,000 BTU
15,000 gallon	1 HP	250,000 BTU
20,000 gallon	1 1/2 HP	325,000 BTU
40,000 gallon	2 HP	400,000 BTU
150,000 gallon	Varies	2 @ 400,000 BTU

### Other Pump and Motors

Hot water circulation pumps can range 1/12 to 1/4 HP.

Security gate motors can vary depending on size and weight of the gate and method of opening.

Normally, structures with subterranean parking should include a sump pump(s) as a line item in the budget. If an electrical ventilation system is installed, include on the electrical consumption worksheet.

## 202. GAS ENERGY

Due to increases in energy costs over the past few years and the unpredictability of future rates, it would be of little assistance to budget preparers to show gas rates for even the major utilities. Therefore it is recommended that the budget preparer obtain current rate information from the supplier of gas as far down the line as possible in the budget preparation process. The rate schedule for common-interest subdivisions should be used rather

than the rate schedule for single family residences.

Gas rates are usually "per therm". A therm or thermal unit is equivalent to approximately 100,000 BTU's. A cubic foot of natural gas presently contains approximately 1,050 BTU's.

Charges for natural gas can be approximated by multiplying the estimated consumption in therms by the rate for the area in which the subdivision is located. (See Gas Consumption Worksheet in Part IV.)

*Example:* Assume a heating unit with a 50,000 BTU/hour input rating which is to be operated 70 hours per month. (The BTU rating of equipment utilizing gas energy is shown on a metal plate on the equipment. If both an input and output rating are shown on the plate, the input rating should be used in all calculations.)

$$\frac{50,000 \text{ BTU's} \times 70 \text{ hrs}}{100,000} = 35 \text{ therms/month}$$

### Hot Water

Generally, the cost of supplying hot water to the individual dwelling units in any common-interest subdivision is billed to the owner or resident of the unit. The water heater itself is usually a part of the dwelling unit. In some cases, the owners' association must pay the costs associated with supplying hot water. In budgeting for hot water, the governing body of the association should consider the following facts:

- If water heated by natural gas is supplied by the association to each dwelling unit (including the laundry facilities with the unit), consumption should average approximately 20 therms per unit per month.
- A recreation room with a kitchen in a clubhouse facility consumes energy approximately equivalent to that consumed by one dwelling unit.
- If automatic washers and dryers are coin operated by the association, it is not ordinarily necessary to budget gas as an expense item because the income derived normally offsets the utility and maintenance costs.
- For associations that supply domestic hot water to units heated by propane, the following conversion factors may be helpful:

Approximately 800 cubic feet or 22 gallons of propane is necessary to supply one dwelling unit per month.

### Pool Heating

Consumption of gas for pool heating is subject to many variables. On the average, it costs seven times more to heat a pool in winter than during the summer. Outside temperature, wind and humidity can also affect the amount of gas consumed in any one month for heating pool water by as much as 50%. The human factor must also be taken into account. If the users of the pool insist upon a water temperature of more than 75 degrees, the cost of heating is significantly increased.

In calculating the monthly cost of pool heating, the following information should prove useful:

- 8.33 BTU's are required to heat one gallon of water one

degree Fahrenheit in one hour.

- 100,000 BTU's equals 1 thermal unit or therms.
- 40,000 gallon pools in Southern California rarely lose more than 8 degrees overnight.
- If propane gas is used for pool heating, it should be noted that 1 therm = 1.1 gallons and 1 gallon = 36.4 cubic feet. Also, 1 cubic foot = 2,500 BTU's. This information should allow you to compute the cost if you know the cost per gallon (see Gas Worksheet).

*Note:* The presumption is a recreation pool, with heating equipment, will be used all year or 100%. For very hot or cold climates where a heater will not or cannot be used all year, a 70% usage should suffice.

### **Space Heating**

The best guide in budgeting for an existing facility is to multiply the historical energy consumption times the current utility rate. If there is no history or if for any reason the history is not reliable, one can assume that the installed heating unit or units are of adequate capacity. To calculate the cost of heating, multiply the BTU input of the heater by the anticipated hours of operation per year and divide the product by 100,000 to determine the number of therms per annum. Then multiply the number of thermal units by the per therm cost of gas in your area. Add 15% for pump and blower operation.

The number of hours for which heat will have to be supplied to a structure will vary according to climatic conditions and construction features. In a moderate climate, 800 hours per year is a reasonable estimate based upon 4 hours per day, 200 days per year.

### **Solar Heating**

#### **Solar Pool and Spa Heating**

Solar systems for pools can greatly reduce or eliminate the need for expensive natural gas for pool heating, depending on the level of swimming comfort and the length of swimming season desired. Solar can also be used to heat hot tubs or spas in conjunction with conventional heaters and may reduce gas consumption by up to 25%.

“Active” solar pool heating includes collector panels, controls, and plumbing. The pool’s own filter pump serves to pump the water up to the collectors, where it is warmed, and back down to the pool. The collector area needed to provide 100% of pool heating needs is equivalent to the surface area of the pool; typically, systems are sized to provide 60-75% of the need. Price per square foot installed is in the range of \$12 – \$14. Homeowners’ association sized pool heating systems cost in the range of \$4,500 – \$8,500.

#### **Solar Water Heating**

Solar water heaters are generally sized so as to meet 70% of the demand for hot water on an annual basis. “Back-up” systems using electricity or natural gas supply the other 30%. In a condominium building, solar water heating is most economically installed as a central system with centralized back-up. In a townhouse-type development, individual systems for each unit are often used. Solar water heating systems may be integrated with solar pool heaters.

Solar water heating systems include glazed collectors, a storage tank, a pump, controls, and plumbing. The size of system required depends on the hot water needs of the residents. Common rules of thumb hold that hot water use is 20 gallons per person per day in multi-family housing; that 1/2 – 3/4 square foot of collector space is needed for every gallon of demand; and that 1 1/2 – 2 gallons of storage capacity must be provided for every square foot of collector space. Thus, a family of 4 using 20 gallons of water apiece will require 40–60 square feet of collector and between 50 and 120 gallons of storage space. On multi-family new home construction, the California Energy Commission estimates the cost per unit for solar water heating to be about \$1000. Townhouse-type construction with individual solar systems generally cost more.

The California Energy Commission estimates that the average family of four living in a multi-family housing structure will save 211 therms of gas a year with a solar water heater.

#### **Solar Space Heating**

Ideal installation can expect a maximum savings in energy consumption for space heating of 50%.

#### **Leasing Solar Equipment**

It has become more popular to lease solar equipment for hot water and pool heating. In many cases, the monthly savings in energy is enough to make the lease payment. In addition, users of a leased solar equipment may still be eligible for some tax credits. If your association leases equipment, the monthly payment amount should be included in the budget.

## **203. WATER**

Common-interest subdivisions use water for irrigation purposes for common areas, for supplying water for swimming pools, clubhouses, recreational facility showers, laundry rooms and dwelling units which are not individually metered.

Water rates vary appreciably from place to place and the rate for estimating association expenses should be obtained from the supplier of water to your subdivision. Rates are customarily quoted as cost per 100 cubic feet.

Irrigation of landscaping typically consumes four-acre feet of water per acre, per year. However, weather conditions and the type of soil can have a significant effect upon this average. Projects in the Palm Springs area generally use 8-12 acre feet per year. Water usage will vary greatly with sprinkler system design.

Domestic consumption assuming 2-1/2 occupants per unit can be estimated at between 200 and 250 gallons per day, per unit or about 33 cubic feet per unit, per day.

Some developments equipped with sprinkler systems or fire hydrants may be subject to a fire standby charge and should be included in the budget.

You may obtain the proper rate from your water district by contacting the customer service department of the water supplier to your subdivision. Also, a determination should be made whether or not any fees will be required. A worksheet for calculating water costs is included in Part IV of this manual.

---

### **Water Sub-Metering**

Water sub-metering is becoming more common. Common water expense must first be included under item 203 on the budget worksheet before it can be listed as a revenue offset under item 503 of the budget worksheet. Typical fees include:

\$2.00/unit/yr., plus \$60 per project for inspections by the Bureau of Weights & Measures.

Meter reading, \$4.00 to \$8.00/unit/mo. with a minimum of \$175 to \$250 per month. Small projects may be done by the management company.

Typical reserves for equipment include:

Sub-meters cost \$300 each. Replacement by new certified meters needs to be done every 10 years. Other equipment may include batteries and computerized reading equipment with signal repeaters.

---

### **204. SEWER**

The cost of sewer treatment is most commonly charged in one of three ways: 1) additional charge on individual property tax bill; 2) surcharge on water bill based on amount of water usage; or 3) flat fee per unit or lot.

If the project for which the budget is being prepared has separate water meters for domestic use and the sewer charge is on the water bill, this item should be marked with a zero and noted accordingly.

### **Septic Tanks**

Properly installed and operating septic tanks should last the life of the improvement being served. On an average of every three years, septic tanks must be pumped at a cost ranging from:

#### **Normal Maintenance and Operating Costs/Per/Year**

- Pumping septic tanks                      \$175.00/tank
- Emergency services                         \$25.00\* (unit/year)
- \* Associations that tend to have continual problems should raise this portion of the cost to \$25.00 to \$30.00 per year.

---

### **Storm Drains/Water Retention Basins**

Some projects may include storm drains or water retention basins. Proper maintenance and reserve costs should be allocated for these items, as well as the cost to replace the filters based on local agencies' maintenance and/or manufacturer's requirements.

---

### **205. CABLE TELEVISION/MASTER ANTENNA**

The range of the monthly contract rate for cable TV is from \$10 to \$25 per unit, depending upon the locality and the extent of the service offered. Check with your cable provider to determine the actual amount.

Some projects may be served by a master antenna system. These installations normally consist of a master antenna receiving certain signals and amplifying and conveying the signals by cable to the individual units. The cost of maintaining this system may be minimal if the antenna is mounted on the roof of a two or three story multiple family structure and serves only the units in the structure. In such cases, the maintenance cost normally ranges from \$0.75 to \$1.25 per unit, per month.

More extensive systems are provided in large projects and may require extensive underground cabling. Costs for this type of service generally run from \$2.50 to \$5 per unit, per month.

---

### **207. CUSTODIAL**

This category includes the cost of services for floor cleaning, carpet vacuuming and shampooing, window washing, furniture dusting, and similar janitorial work. For cleaning and maintenance of carpet, figure \$0.07 per square foot per month. For care of hardwood floors and tile, estimate \$0.17 per square foot per month. If the work is independently contracted for, the rate will be approximately \$18 to \$25 per hour. If the work is to be done by employees of the association, \$12 per hour, or two-thirds of the contract rate is a reasonable estimate of the expense.

The cleaning and maintenance of rest rooms and laundry rooms may be provided for under a blanket maintenance contract with an independent contractor. If not, the separate cost for this work should be budgeted at \$40 per cleaning for each two rest rooms and \$30 per month for each laundry room. Five to nine cleanings per month should be adequate to keep the rest rooms in presentable condition.

There are always economies of size, and large areas (over 3,000 square feet) will cost far less per square foot than small areas. ***In no event should custodial service be calculated at less than \$350 per month for any type of custodial cleaning.*** In small projects it might be more economical to have the landscape contractor do the custodial work.

All employers in the State of California are required to implement and maintain an effective written Injury and Illness Prevention Program (IIPP) (California Labor Code 6401). Should the association determine to hire its own employees rather than independent contractors for services such as janitorial, landscape maintenance, pool and spa maintenance, the association then becomes the employer and must comply with the IIPP requirements for employers in California.

---

### **207A. CUSTODIAL SUPPLIES**

An additional line item should be considered to cover the cost of custodial supplies. An average of \$50 - \$200 a month is a good preliminary amount until the association has some history of expenses in these areas.

---

### **208. LANDSCAPE MAINTENANCE**

With the exception of high-rise structures, landscaping costs often represent one of the largest single budgetary items in common-interest subdivisions. Proper budgeting requires careful consideration of the anticipated intensity of use of the landscaped area and the level of maintenance desired.

The costs represented in the tables are averages for the three areas listed. Urban areas in Northern California should use the costs shown next to Southern California. ***In any case, not less than \$125 per month should be used.***

#### **Golf Courses**

Normal maintenance, not including over-seeding or flower planting, averages approximately \$0.70/SF/YR\*. In addition

to a cost per square foot per year, the budget preparer should create a landscape maintenance budget that would consider the cost of staff, equipment, irrigation repair and other unique activities that are mandated for the maintenance of golf courses. It is recommended that bids be obtained in order to determine your cost more accurately. SF/YR = Square foot per year.

### **Classes A and B**

Areas consisting of 60% to 70% grass and 30% to 40% shrubs, trees and flower beds. (If planting areas are broken up into a large number of small plots, the rate is likely to be higher than for the maintenance of mass plantings.)

Statewide – \$0.40 to \$0.60/SF/YR

### **Class C**

Areas with 90% to 100% lawn sufficiently open to permit the use of a large riding mower.

Statewide – \$0.35 to \$0.60/SF/YR

### **Class D**

Gentle slopes with low maintenance ground cover.

Palm Springs – \$0.30 to \$0.40/SF/YR

Southern California – \$0.15 to \$0.25/SF/YR

Northern California – \$0.15 to \$0.25/SF/YR

Steep and/or show slopes.

Palm Springs – \$0.35 to \$0.45/SF/YR

Southern California – \$0.25 to \$0.35/SF/YR

Northern California – \$0.20 to \$0.30/SF/YR

### **Class E**

Unplanted or natural areas requiring weed abatement, fire breaks, rodent control (see Item 217), erosion/drainage control, trash pickup, etc. Small natural areas and fuel-modified zones or those requiring brush control should use the high end of the range. Large areas of open space can use a lower amount.

Small natural areas and irrigated fuel-modified zones

– \$0.06 to \$0.10/SF/YR

Large natural areas and non-irrigated fuel-modified zones

– \$0.02 to \$0.05/SF/YR

### **Class F**

Bridle paths – \$0.05/SF/YR

### **Class G**

Parkways – \$0.48 to \$0.50/SF/YR

### **Class H**

High-Rise or Mid-Rise projects with minimal landscaping:  
Pots/Planters – \$16.00 per pot/planter per month

### **Trees**

If trees exist on the property and require additional maintenance see Item 313.

## **Environmental Compliance**

Costs for maintaining environmentally sensitive areas such as wetlands, oak tree preservation, tide pools, etc., should be estimated by professionals specializing in this type of maintenance.

## **208A. LANDSCAPE SUPPLIES**

An additional line item should be considered to cover the cost of supplies, sprinkler repairs and landscape replacement. An amount of \$0.03/sf/year for irrigated areas is a good preliminary number until the association has some history of expenses in these areas.

## **209. REFUSE DISPOSAL**

This service may be supplied by a municipality or a service district. It is more frequently provided by an independent contractor. The service may provide for individual garbage can collection or for bin pickup. Normally, there is one bin for twelve units.

Where individual garbage can collection service is provided, it is unusual for the association to bear the costs of refuse collection except that provided to the recreational common area of the development.

It is best to contact the local agency or vendor in your area to get an accurate cost estimate of pickup charges. Include the name and telephone number on Page 3 of RE 623 if applicable. Costs have averaged \$15 per unit per month.

Individual cities may impose special requirements for recycling, etc., this should also be considered when determining the cost of this service.

## **210. ELEVATORS**

The most commonly used elevators are either overhead traction or hydraulic lift. The costs for service contracts are as follows:

### **Overhead Traction Type**

Full service contract – \$4,500 - \$5,500/YR

### **Hydraulic Lift Type**

Full service contract – \$2,500 - \$3,000/YR

### **High Speed Elevator**

High speed overhead elevators are usually found only in high rise buildings. They are ordinarily serviced under a long-term service contract provided by the manufacturer. Maintenance costs payable by the association will be contained in the contract. If these elevators are not maintained by an independent contractor under service contract, information necessary to budget for the maintenance should be obtained from the manufacturer or its representative. The cost averages \$7,200 per year per elevator.

Include an additional \$200 per year per elevator for interior maintenance or refurbishment.

---

## 211. PRIVATE STREETS, DRIVEWAYS AND PARKING AREAS

### *Sweeping*

Sweeping is normally done once a month. The present contract rate is approximately \$50.00 per acre of street surface area per sweeping with a minimum charge of \$100.00. Occasionally the cleaning of streets, driveways and parking areas are included in the maintenance contract for landscaping. Sometimes costs are based on a per unit or per lot cost rather than on an acreage basis.

Maintenance costs will vary due to such factors as soil condition, road base, weather conditions and quality of construction.

Subterranean garages should be swept once a week and washed to remove oil and grease stains at least once a month. In budgeting for this work, use a figure of \$1 per space per month, or one-half cent per square foot of garage area per month. If this service is included in the landscape maintenance contract, there is no need to budget separately for it.

---

## 212. HEATING AND AIR CONDITIONING MAINTENANCE

In all planned developments and in most cluster, garden and low-rise condominium structures, heating and air conditioning equipment for dwelling units is individually owned by the owner of the dwelling unit. The individual owner has sole responsibility for the costs of operating, repairing and replacing the heater and air conditioner, which supplies the dwelling unit. Sometimes air conditioning units are located within the interior of a condominium unit, but the cooling coil may be connected by tubing and electrical wiring to a condensing unit on the roof within the common area. The CC&R's usually provide that the maintenance and replacement of the condensing unit is the responsibility of the unit owner even though it is located within the common area.

It is not uncommon for a condominium owners' association to own central heating and/or air conditioning equipment which supplies dwelling units within the development. In planned developments, the association owns and maintains heating and air conditioning equipment for the clubhouse, dressing rooms, and other structural improvements of the common area.

Simple wall heaters and floor furnaces usually only require regular periodic cleaning. This generally can and will be handled by the building custodian in a recreation building and by the individual owner in a dwelling.

Forced air heating units require filter cleaning or changing and occasional lubrication. These costs can generally be handled under miscellaneous repairs.

Combined heating and cooling units require a regular servicing and an allowance of \$20.00 per month should be considered for average recreation rooms. Larger installations may be on a separate service contract and a budget allowance should be provided to adequately cover the contract price.

---

## 213. SWIMMING POOLS AND SPAS

### *Weekly Service*

Cost for professional pool service varies with size and location. The average charge for a pool is \$45.00 per call. If a spa is included, the charge is \$60.00 per call. Average winter service can be taken care of with 1 or 2 calls a week. Summer service can be done with 2 or 3 calls per week. However, heavy use in large projects or those with many young people, will require more frequent care than the average.

Multiple pools in one location can reduce the average costs per pool as much as 40%.

Prices shown include chemicals.

Pool only	\$200.00/month
Spa only	\$125.00/month
Pool and spa	\$325.00/month

*Note:* The costs represented are averages only. It is highly recommended that an estimate be obtained from local maintenance companies.

For larger pools in excess of 500 square feet, \$0.50 per square foot per month should be used to estimate the monthly service cost.

---

## 213A. POOL AND SPA SUPPLIES

An additional line item should be considered to cover the cost of supplies. It is recommended to allocate 5% of the monthly contract amount.

---

## 214. TENNIS COURTS

### *Maintenance and Operation (Asphalt or Concrete)*

- Sweeping  
(1 hr per wk at \$6 per hr) \$25.00/month
- Refuse pickup  
(10 min per day at \$6 per hr) \$30.00/month
- Total \$55.00/month
- Night lighting energy cost - use worksheet.

Sweeping and refuse pickup may be included in the landscaping contract.

---

## 215. ACCESS CONTROL

There are any number of systems and devices that can be employed to enhance the control of access to the property. These include:

- Individual key systems with magnetic locks providing entry to individual dwelling units. This may be used in conjunction with an intercom, telephone or closed circuit television setup. Operational and maintenance costs may be carried by individual owners or the association.
- Motorized gate maintenance costs are estimated as follows:

<i>Type of Gate</i>	<i>Maintenance (per month per gate)</i>
---------------------	---

Arm type	\$70.00
Sliding gate	\$70.00
Overhead gate	\$70.00
Swinging gate	\$90.00

- A patrol service on a contract basis. If motorized, figure \$18.00 to \$30.00 per hour. For a foot patrol, slightly less.
- Attended guard gates. If 24-hour per day service is provided by contract to the association, it will require 4.5 people on a 40-hour workweek basis with all the normal employee benefits. At a monthly rate of \$4,000 per person, the annual cost per guard gate would amount to \$216,000. In some developments, cost reductions for automobile entry gates are being realized through the use of closed circuit television. If an automobile is assigned to a guard gate, add \$4,000 per automobile to the annual budget.

### **Intercoms and Telephone Entry Systems**

Intercoms would normally require \$1.00 per unit, per month to cover maintenance and service calls, with \$25.00 per month as a minimum. Costs for telephone entry systems average \$45.00 per location per month per directory location. If you have rented telephone entry equipment, the monthly cost may be higher. Contact your telephone company for an estimate. If a TV system is included, the servicing could be higher and a reserve for the equipment should be provided.

If your project includes a major recreation facility, it is recommended that consideration for a telephone be budgeted at each center at an estimated cost of \$45/telephone/month.

## **216. RESERVE STUDY**

Subject to certain limitations, California Civil Code Section 1365.5(e) requires the governing body of a common-interest development to cause a study of the reserve account requirements of the subdivision, every three years. It is recommended that a subdivision within the first year of its operation initiate the beginning of the three year requirement and have the Reserve Study performed. It is also recommended that as subsequent phases become annexed into the subdivision, the reserve study be amended to reflect the new reserve components recently annexed.

**Our Operating Budget Guidelines are intended for use during the first year of operation of a common-interest subdivision. It is recommended that the governing body of the association transition the use of the DRE budget to that of an operating budget, reflecting current actual costs as they exist.**

Reserve study costs generally fall within \$1000-\$7,500 or \$350-\$2500 per year. Depending upon the size of the community and amenities included it may go higher. Updates can be as minimal as \$500.00 per study. Larger communities with multiple and complex components require a more detailed study.

## **217. MISCELLANEOUS MAINTENANCE**

### **Minor Repairs**

For miscellaneous maintenance of common facilities and dwelling units for new construction, include the following on a per unit per month basis:

- With association maintained exteriors \$3.00
- Without association maintained exteriors \$1.00
- Condominium conversions with exterior maintenance \$5.00
- High rise projects (over six stories) \$10.00

### **Pest Control**

For those projects requiring pest control services the average cost is ordinarily \$2.00 per unit per month.

In accordance with Civil Code Section 1364(b)(1) a community apartment, condominium project, or stock cooperative, as defined in Section 1351, is responsible for the repair and maintenance of the common area occasioned by the presence of wood destroying organisms unless the CC&R's indicate otherwise.

The required reserve for termite extermination has been removed from this manual. This reserve item can now be considered optional. When and where an infestation occurs and how severe the infestation will be is difficult to predict. Annual inspections are needed to discover any infestation in its early stages before it becomes a serious problem. For all potential pest problems, frequent pest control inspections are necessary. **The average cost for pest control service is ordinarily \$2.00 per unit per month or \$30.00 per month whichever is the higher cost.**

It is suggested that if an infestation does occur, obtain at least three bids from extermination companies. If a reserve has not been established, a special assessment may be needed at that time to pay for the extermination expenses. In addition to pests, larger planned developments with detached units may have a problem with rodents. Slope areas can incur considerable damage from rodents. Allowing \$75 to \$150/acre/mo. of irrigated landscaping for rodent control is reasonable.

### **Lakes and Waterways**

Maintenance, operation and reserve costs for water works projects are directly related to the initial engineering of the system. A poorly designed system will be less energy efficient and therefore more costly to maintain and operate.

The average cost to maintain small lakes and waterways range from \$0.20 to \$0.25/SF/YR with waterways at the high end of the range. The cost to maintain large lakes (10-13 acres) ranges from \$0.72 to \$0.84/SF/YR. Add to this cost \$25.00 per pump per month for pump maintenance.

Operating and reserve estimates for larger lakes should be determined by a geotechnical engineering study of the entire system and/or a consultant specializing in lake environments.

### **Snow Removal**

Snow removal costs should be based on an average year's snowfall. When snow removal is to be contracted, estimates or bids should be obtained from local contractors. Average cost is approximately \$.20/SF/YR.

If the association is to use its own equipment and employees, the full hourly rate of employees is to be multiplied by the necessary hours of work involved. The costs of operating any equipment should be added. Reserves must be established to replace tools and equipment.

---

**Community Network**

Many developers and builders are installing high speed cable systems in their homes with the idea of providing community intranet or a website. Costs associated with this technology can run from \$8,000 per year to \$200,000 per year depending on the level of sophistication of the system and the site.

The fee to the service provider will run about \$35 to \$75 per unit per month depending on the level and number of services provided. Actual contracts should be used to support the cost used in the budget whenever possible.

Allow \$300 to \$500 per month for a regularly updated Association website. This should include Internet service (ISP) and technical support.

---

**Maintenance Manual Inspections**

Many projects are provided with a maintenance manual which details the requirements for maintenance, repair and replacement of the common area improvements. Language for implementation of the manual is spelled out in the CC&R's and includes multiple inspections, including an annual inspection. Most of the inspections can be or will be performed by the vendors providing the services to the association or the property manager. The independent annual inspection is typically provided by an inspection expert or the maintenance manual company and will cost from \$500 to \$3,000 per year, depending on the size and complexity of the project.

---

**218. FIRE SPRINKLERS, FIRE ALARMS AND FIRE EXTINGUISHERS**

The State Fire Code requires any structure over 5000 square feet or over three stories to have fire sprinklers. Typical fees for maintenance include:

- Off-site monitoring runs from \$30 to \$45 per location per month. Each location requires a separate alarm panel with two phone lines. Each phone line normally costs from \$38 to \$50 per month.
- Annual inspections of the sprinkler system cost from \$125 to \$200 per building. A five year re-certification of the system, which includes inspecting all of the sprinkler heads, costs from \$300 to \$400 per building.
- Fire alarm systems should be inspected quarterly and usually runs about \$45. A typical fire alarm panel costs around \$3,000 and should usually last 15 to 20 years before having to be replaced.
- Fire extinguishers need to be inspected, re-charged, and re-certified annually at a cost of \$15 to \$20 per extinguisher.

**300 — RESERVES**

The reserve section of this manual only includes components or costs for items most frequently found in common-interest subdivisions. Reserve items for your budget may not be limited to those found in this manual. Your budget should be tailored to fit your project and include necessary reserves for all appropriate items.

Different components wear out at different rates. A deck chair may be unusable after two years while the roof may last for twenty years. Good property management practices call for a fixed amount to be allocated each year to insure that the association will have sufficient funds on hand when a predictable major expense must be paid. Even if every existing owner believes that he or she will sell before the roof must be replaced, the existence of a reserve fund for replacement may increase the marketability and value of units to knowledgeable purchasers.

An important policy issue for the Board is the decision to use current costs, or estimated future costs. Use of an inflation rate will generally result in higher estimates of future costs.

If the Board uses current costs, it is essential that the association Board review the reserve costs annually based upon updated current replacement costs plus currently required or anticipated expenditures. The annual cost for each component would be calculated by dividing the unfunded replacement cost by the remaining useful life. THIS APPROACH IS VALID ONLY IF REPEATED EACH YEAR.

If the Board chooses to use an inflation rate, it would apply an average annual long-term cost inflation rate to all components from the time of the study until the year of replacement (based on recent average component cost data). TO KEEP THIS PLAN CURRENT, IT IS IMPORTANT TO ANNUALLY REVIEW AND UPDATE PROJECTED EXPENDITURES, INFLATION FACTORS AND OTHER ASSUMPTIONS.

There are a number of ways to select an inflation rate for estimating component costs in future years. Examples of reliable sources of information for inflation factors in California are the following:

- The Federal Bureau of Labor Statistics
- Published information from construction cost estimating companies such as R.S. Means Company, Inc.
- The California State Allocation Board

In the pages that follow under this subject, there are precalculated reserve factors for several components. The reserve worksheet in Part IV provides space for use of either these precalculated factors or factors obtained from other sources. Some building components are generally expected to last the lifetime of the structure (electrical, plumbing, etc.). Normally no reserve is established for these items.

The reserve factors in this manual are based upon new building components and equipment. Therefore, these reserve factors need to be adjusted to be used for an existing development or for the

conversion of an existing structure. For existing structures you would normally divide the cost of replacing the component by its remaining useful life.

The best estimate of a component's useful life can normally be obtained from a contractor or expert in the particular field. The average lives of some of the larger building components are listed in the reserve section.

Replacement costs are difficult to estimate. However, with some effort it should be possible to arrive at a reliable estimate of replacement costs by studying appropriate building trade publications or by discussions with the customer service departments of major suppliers of building components.

**301. PAINTING****Average Costs**

Painting reserves are estimated by measuring the perimeter of each structure and multiplying that amount by the height using 10' per story. This is adequate for the normal one to three story structure. No discount or additions are considered for the openings (doors and windows). Frequency of painting will vary with the surface as well as the exposure. The basis used in this manual assumes a ten year cycle on stucco and five years on trim with an overall average for most structures of seven years. Each association will develop a greater or lesser amount for this reserve as experience will dictate. The estimate based on this manual is considered to be an adequate minimum for most developments. The total estimated painting cost per square foot is \$1.12/SF or \$.16/SF/YR for stucco and \$.20/SF/YR for wood trim. The square footage estimate for calculating interior painting should be added to the exterior area when making the calculations. Costs will vary depending upon the amount of preparation work needed or building structure. For example, scaffolding for multi-story buildings (over two stories).

All areas to be painted should be included in your calculations. Commonly overlooked items are: gates, mailboxes, utility closets and doors, garage areas and courtyards.

**Wood Siding**

For associations with exterior walls of wood siding or Masonite, an adjustment should be made to the average cost indicated above. After computing the surface area of the wood siding, a factor of \$0.20/SF/YR should be used to compute the reserve cost. If both stucco with normal trim and wood siding make up the exterior walls, they should be listed separately on the reserve worksheet.

**Decks, Porches, Etc.**

Associations without wood siding which have wood decks, porches, covered or latticed patios should also adjust their paint reserve. The factor used for wood siding would normally apply in this situation. Since this type of work is more labor intensive, similar items requiring stain instead of paint should also use the higher factor, if applicable.

### 302. ROOFING

The following are the recommended reserves for the various types of roofing. In Palm Springs, add 20% for added costs to satisfy environmental requirements.

Roof Type	New Cost/SF/YR	Average Life *
Concrete tile	\$0.07	35 yrs.
Built-up paper/rock roofs	\$0.20	14 yrs.
Composition shingles	\$0.13	20 yrs.
Wood shake	\$0.20	24 yrs.
Wood shingles	\$0.20	22 yrs.
Fiberglass shingles	\$0.15	20 yrs.

\* Life will vary with the quality of workmanship, material used and weather conditions.

If the old roof must be removed, there will be additional costs which must be included when determining the total replacement cost.

**Note: Projects over 10 years old are required to have a roof certification completed by a licensed roofing contractor. The certification should indicate the estimated remaining life of the roof and the cost to replace. A copy of the certification must be included with the Duplicate Budget Package (DBP).**

### 303. WATER HEATERS

The estimated reserve includes the retail cost of the heater and professional installation including disposal of old unit. Estimated life is based on a nine to twelve year average replacement cycle.

Capacity	Cost/Year
40 gallon capacity	\$90
70-80 gallon capacity	\$150
100 gallon, quick recovery	\$300
Boiler (20 year life)	\$300

Tankless Water Heaters      Replacement cost/Useful life

#### Circulating Pumps — Quick Recovery/Boilers

Line Size	Cost/Year	Average Life
1"	\$45	7 years
2"	\$65	7 years
3"	\$105	7 years

#### Solar Heating

The California Energy Commission estimates that the collector will last at least 20 years, the tank 15 years, pumps and controls 10 years, and the plumbing 20 years. Replacement reserves estimated at 6.5% of the installed cost per year should be adequate. Maintenance is 0.5% of installed cost per year. The pump (usually 1/20 - 1/40 hp) will run 8-10 hours a day and consume approximately 350 kilowatt hours of electricity a year.

### 304. ELECTRIC LIGHTING FIXTURES

The reserve for this item is for replacement of the fixture itself. It is assumed that bulb replacement costs are a minor repair item.

Exterior fixtures being exposed to the elements have a shorter estimated life. The following amount is considered minimum.

Exterior fixture	\$9.00/year/fixture
Street Lights	\$100.00/year/light

### 305. FLOOR COVERINGS

Floor Type	New Cost/SF/YR	Average Life
Carpeting	\$0.43	7 years
Linoleum	\$0.26	14 years
Hardwood (refinishing only)	\$0.20	12 years
Vinyl Tile/Sheet	\$0.36	15 years
Waterproofing (deck/patio/terrace)	\$0.42	5 years

### 306. ELEVATORS

An elevator replacement reserve is not required since the elevator usually lasts as long as the structure itself. There is need, however, for a major component reserve as well as a budget item for a monthly service contract. The cost of periodic servicing of the overhead traction elevator is higher than that for the hydraulic lift type. The mechanism to operate the hydraulic lift elevator is much more extensive and complicated.

Hydraulic	\$1,050.00/year (see note)
Traction	Full service only — no reserve

**Note:** Less than a full service contract on a hydraulic type elevator will require a reserve as shown above. Less than full service is normally referred to as "oil and grease contract service."

### 307. STREET AND DRIVEWAYS

#### Asphalt — Intermittent Care

Budgeting should consider the long term care of streets, driveways and parking areas. A full cycle of maintenance should be provided that includes all applicable items shown below.

Seal coat	Slurry coat
Culverts	Provision for storm damage
Sign replacement	Striping
Reoiling	Patching
Regraveling (gravel roads)	Berming

Asphalt surfaces should be resealed every five years. They will probably also need intermittent care such as striping and patching. The reserve based on a cost of \$0.10 per square foot per year can be used to defray these costs in moderate climates. Where there are special problems such as severe weather or unusual physical conditions as in Northern California, the cost could double.

#### Oil and Chip

"Oil and Chip" surfaces normally have a life of 3 or 4 years and would require \$0.08 per square foot per year reserve.

### Cost Summary

Surface Type	SF Cost Per Year
Asphalt surfaces (blacktop) (moderate climates)	\$0.10
Oil and Chip surfaces	\$0.08
Concrete repairs	\$0.02

Large areas may cost less on a cost/square foot basis. It may be advisable to get a bid if you fall into this category.

### 308. HEATING AND AIR CONDITIONING

Type	Average Cost Per Year	Average Life
Forced air furnace (for average recreation room)	\$100	20 years
Forced air furnace with A/C (for avg. recreation room)	\$200	20 years
Heat Pump (used with central unit)	\$150	—
Thru wall A/C units	\$85	9 years
Floor or wall furnaces	\$50	13 years
Central Heat, A/C for units	Cost ÷ 20 year life	

The best method of setting up reserve costs for these items is to determine the cost of the equipment installed, and divide by the life indicated.

### 309. SWIMMING POOLS AND SPAS

Pool and spa costs will vary for large custom pools or spas as well as very small pools and spas. Costs should be adjusted accordingly. For standard sizes, average costs are:

Item	Average Cost Per Year	Average Life
Pool Re-plaster	\$500	12 years
Pool Heater	\$200	10 years
Pool Filter	\$125	10 years
Spa Re-plaster	\$200	7 years
Spa Heater	\$200	8 years
Spa Filter	\$125	10 years
Pool/Spa Pumps	\$120	5 years

### Solar Heating

Reserve requirements will vary with the type of collector panel used as well as with the price. Most pool systems use "unglazed" collectors which are cheaper than those used for water heating. Unglazed collectors vary, also: those made of metal will last longer than plastic. The California Energy Commission has not made public its figures on the useful life of this equipment. Depending on how the system is used, there may be a small increase in electricity used to run the filter pump. Replacement reserves amounting to 6.5% of the installed cost per year should be adequate.

### 310. TENNIS COURTS

Item	Cost Per Year
Net replacement (3 yrs)	\$150
Wind screen (full court; 5 yrs)	\$300
Asphalt resurfacing (4-7 yrs)	\$450
Concrete resurfacing (5 yrs)	\$500
Light fixtures	\$100
Elastometric caulking (4-7 yrs)	\$100

### 311. FURNISHINGS AND EQUIPMENT

Item	Cost
Furnishings	Cost ÷ 5 years
Appliances/equipment	Cost ÷ 12 years

### 312. WALLS AND FENCES — REPLACEMENT/REPAIR

Item	Cost Per Year
Chain Link (repair/replace- ment; 17 year life)	\$0.65 linear foot
Concrete block (repair)	\$0.20 linear foot
Concrete block (paint)	\$0.10 square foot/side
Tubular fence (paint)	\$0.30 square foot/side
Tubular fence (repair/replace- ment; 15 year life)	\$2.00 square foot
Wood (repair/replacement; 10 yr life)	\$1.50 linear foot
Wood (paint/stain) (Compute with wood siding, if any. See Item 301 in manual.)	\$0.20 square foot/side
Wrought Iron (paint) (Compute costs separately from paint worksheet.)	\$0.50 square foot/side
Wrought Iron (repair/ replacement; 20 year life)	\$3.00 linear foot
View Panels	\$1.00 linear foot

### 313. MISCELLANEOUS

Item	Cost Per Year
Sump pumps (12 year life)	\$60
Sewer lifts (pumps; 10 yr life)	\$200
Garage ventilation systems (each parking level)	\$300
Solar systems (Also see Gas & Pools)	Total Cost ÷ 10-15 yr life
Racquetball courts	\$240
Lakes/waterways	Provide engineer's report for construction cost, yearly maintenance and reserve costs.
Motorized gates	
Gate (repair/replacement; 15 year life - large double gates, \$450/yr)	\$250
Gate operator (all types - 5 yr life)	\$155
Total Per Gate	\$405

Wallpaper (10 year life)	\$0.19	square foot
Tree Trimming (mature trees)	\$95	per tree
Landscape reserve	\$0.01	square foot

### **Reserve cost for septic tank**

Use 6% of the total cost for leach field excavation, gravel, paper, straw and other backfilled materials, leach field pipe, distribution boxes, and valves. This cost is approximately \$75 per living unit per year.

### **Emergency Power Systems**

Most mid-rise and high-rise projects are equipped with emergency lighting equipment. Costs typically include inspection and maintenance of the generator(s), if any, and replacement of the battery pack for each emergency lighting unit. The battery packs typically cost about \$150 each and have a nine year life.

## **314. FOUNTAINS**

Fountains will cost anywhere from \$1,975 to \$35,000 depending on size, water flow and spray design. Fountain pumps typically last five to six years while the fountain itself will have a life of approximately 20 years.

## **400's — ADMINISTRATION**

### **401. MANAGEMENT**

The management function of a community association is administrative in nature. The Board of Directors is the principal policy making body for the association. Their role is to govern by establishing policies, operational standards, procedures, fiscal policies and eventually the association's operation budget. *Implementing policy governance means the Board does not get involved in the day-to-day operations of the association.* The role of the community management professional is to implement the policies and procedures established by the board.

There are various approaches to association management; including the use of unpaid volunteers, hiring association paid staff or utilizing a third party management firm, each of which has its pluses and minuses. Whatever the level of management services selected for the association, clearly defined tasks and responsibilities will contribute to the overall successful management of the association.

Although the governing body of the association may be willing and capable of managing the physical plant of the association, it may be unwilling or unable to manage the fiscal responsibilities mandated by the governing documents and compliance with existing law. This service may be provided by a management company or financial institution which will provide fiscal billing for members and in some instances, pay the bills incurred by the association. A higher level of service than provided by a financial institution may be required to assist the governing body in sound fiscal control management.

The hiring of professional management, whether they be a direct employee of the association or a management firm, is a critical administrative task. Community association management has become a highly technical profession requiring a trained practi-

tioner educated in the state-specific laws in managing California community associations.

As laws continue to be added each year requiring additional compliance of the duties and responsibilities of the board of directors, the association may be well-served to hire skilled professionals in the management of a community association.

The best approach to use when hiring a professional management firm is to clearly articulate prescribed desired and undesired results from management. If this does not occur, it will be impossible and unfair to evaluate the results. It is important to evaluate results and not procedures.

### **Professional management company**

The higher level of fiscal management, or financial service, can usually be obtained through a professional management company. The customary financial service provided by a management firm may include, but is not limited to: collection of assessments, payment of bills, preparation of comprehensive financial reports which includes; a balance sheet, an income vs. expense statement, receipts and disbursement journal, check register, and delinquency reports. Delinquency follow-up reports and current members listing are other types of reports which can be generated.

### **Fiscal billing and collection**

An association electing to contract with a management firm that offers minimal fiscal services, or fiscal billing and collection activities (other than delinquency collection), should budget an amount of \$10/unit/month or \$350, whichever is greater.

### **Financial service**

An association electing to contract with a management firm that offers a higher level of fiscal service, or financial service including billing, collection, payment of invoices, preparation of financial statements and fiscal compliance to California Civil Codes should budget \$13/unit/month or \$850 per month, whichever is greater.

### **Third party common-interest specialist**

The association may wish to contract for management by a third party professional management company specializing in common-interest subdivisions. Not all associations require the same level of management services and not all management companies provide the same level of services.

The cost of professional management is not minimized based on the size of a common interest subdivision. Duties performed are defined in the contract between the board of directors and the managing agent. Functions identified in the contract are driven by the number of hours it requires to perform the required services and not the size of the subdivision. The basis for this approach is legal and statutory as current laws do not differentiate between size or type of common interest subdivisions, or the types of amenities contained within, or whether the subdivision is attached or detached.

When budgeting for professional management in the common interest subdivision, many factors must be considered to facilitate the overall success of the community association. A proposed contract from any service provider that is not sufficient to meet the needs of the community and its future growth, will most

likely not meet the requirements of Civil Code Section 1365. This may jeopardize the fiscal health of the community and the owners and create potential liability to the governing body.

### **Administration and compliance program**

The administration and compliance program encompasses all financial activities of a routine basis for any given fiscal year. They include day-to-day communication and problem solving with unit owners on common area issues and communication with subcontractors performing services for the association. Also included is record keeping for the association, the paper documentation required by law for compliance with state, federal and local regulations and requirements, as well as the attendance at the Board of Directors meetings and the annual meeting of the association members.

Many new compliance requirements for common interest developments are added each year through legislation. Most new requirements will require additional budgeting costs to Cost Manual line items such as legal, accounting, insurance, management, and education. It is advisable to identify any new laws added each year and budget for any cost required for implementation.

An association that elects to contract for an administrative and compliance program which includes financial services, administrative duties and compliance with state and federal laws and regulations should budget \$17/unit/month or \$1,900/month, whichever is greater.

### **Full service management**

Full service management to the association typically includes the aforementioned administrative services, financial services, support of physical services such as customer service and maintenance requests, plus other administrative services such as recordkeeping, communications with owners, and coordination of meetings. The base management fee should provide for a defined number of personnel hours per month for the management firm to assist the client association. This should include an hourly fee for every hour spent in excess of the defined monthly hours. This fee is exclusive of reimbursable association operating expenses, costs, escrow transactions, collection charges and implementation of new legislative requirements.

An association that elects to contract for a full service management program, as well as defined management services including the creation and implementation for maintenance of physical components, should budget based on project type.

Some associations may choose to employ a full-time association manager and other staff to perform similar functions "on-site" for the day-to-day operations. The salary for the manager or any employee will depend on a number of factors, including experience and training. An employee manager is referred to as the general manager and the contract should be negotiated by the board of directors in advance of the annual budget. This arrangement is typically found in communities with 300 or more units. Annual salaries for general managers can range from \$50,000–\$160,000, based on experience and the type of community they will manage.

General managers for high rise and large scale or master planned

communities will typically command higher salaries due to the skill set necessary. High rise communities, depending on the complexity and needs of the infrastructure, should consider budgeting for a chief engineer or plant facilitator. Chief engineers are usually certified in two or more trades. Careful consideration should be given to all staffing requirements for these types of communities.

If an association wants to have an "on-site" manager but does not wish to become the employer, it should contract with a managing agent who will hire the general manager to be placed on-site. An association electing to implement this employee program should budget for the salary requirements plus an additional 35%–40% for payroll costs and benefits, exclusive of the basic services included in the base management fee.

As developments increase in size, the work to be performed intensifies as the number of members that have access to management increases with each unit added. Additionally, as the association ages, the cost to perform services (administration) intensifies as the reactive mode of operation is more time consuming and costly to perform.

### **Summary**

Whatever form of financial, administrative or management program is budgeted for the association, the following cost guidelines have been developed from actual industry practices:

- *Small associations*  
with less than 12 units self managed  
\$10 per unit per month or  
\$100 per month whichever is greater
- *Fiscal billing and collection activities (other than delinquency collection)*  
\$10 per unit per month or  
\$350 per month, whichever is greater
- *Financial service*  
including billing, collection, payment of invoices, preparation of financial statements and fiscal compliance to California Civil Codes  
\$13 per unit per month or  
\$850 per month, whichever is greater
- *Administrative and compliance program*  
which includes financial services, administrative duties and compliance to regulations and California Civil Codes  
\$17 per unit per month or  
\$1,900 per month, whichever is greater
- *Full service management program*  
which includes financial services, administrative program, as well as defined management activities involving the creation and implementation of plans for the maintenance of physical amenities — larger associations  
\$20–\$30 per unit per month or  
\$4,000 per month, whichever is greater
- *Full-service management program by full-time association employee*  
large associations  
\$4,200 or more (depending on size) a month per manager plus 35% for payroll costs and benefits

- *Full-service management by product type*  
Attached units: Base fee of \$2,500/mo or \$15-\$20/unit/month whichever is greater.

Mid-Rise Condominiums (30-60 feet high): Base fee of \$3,500/month or \$25-\$35/unit/month, whichever is greater.

High-Rise Condominiums (over 70 feet): Base fee of \$4,500/month or \$35-\$50 unit/month, whichever is greater.

Detached Units

Master Planned Communities: Base fee of \$2,500/month or \$15-\$20/unit/month, whichever is greater.

Planned Developments: Base fee of \$2,500 or \$15-\$20/unit/month, whichever is greater.

Some mid-rise projects can be as labor intensive as a high-rise project and conversely, some high-rise projects may be less labor intensive. Costs will depend on the complexity and level of service provided.

If on-site staff is added, additional budget line items should be factored in for personnel costs. These costs are not included in the base management fee. Any employee hired by the association or provided through the management company will cost the rate of the salary commensurate with current market conditions plus 35-40% for payroll costs and benefits.

Other typical services required but not included in the above programs include but are not limited to:

- Coordination of alternative dispute resolutions litigation
- Minute taking and preparation of meetings of the association
- Collection of delinquent accounts
- Property inspections
- Rules enforcement/proceedings
- Architectural processing and monitoring
- Attendance at association meetings beyond one per month
- Transfer of owner documentation
- Securing proposals for subcontractors work (particularly with reserve items)

These services are typically charged on an hourly basis to the association which may cost \$55 or more per hour depending on the complexity of the program. Amounts that are less than or exceptionally higher than what is covered under this section must be submitted with the appropriate substantiating documentation.

---

#### **402. LEGAL SERVICES**

The association may require counseling services of an attorney for any number of reasons. It is considered advisable to budget during the early years of an associations' existence for these counseling services. The figure of \$1,500 per year or \$50 per unit per year, whichever is the larger amount, should be sufficient.

If the association becomes involved in litigation which requires the payment of a substantial amount for attorneys fees and costs, and such expenses can be anticipated for a budget year, the regular assessment should be increased to defray these costs. In those cases where the expense is an unexpected one, the money may have to be raised by a special assessment.

---

#### **403. ACCOUNTING**

Civil Code Section 1365(b) requires that the CC&R's or Bylaws of a common-interest subdivision provide for the preparation and distribution of an annual operating statement and a balance sheet of the association to members within 120 days after the close of the fiscal year. In any fiscal year in which the gross income to the association exceeds \$75,000, these fiscal year financial statements must be the result of an external review by an independent public accountant. Even where an external review is not required, an expense will be incurred by the association unless a member of the association with accounting expertise is willing to donate his services.

According to Civil Code 1365 the Board of Directors is required to give annual financial statements to all members. These statements include, but are not limited to, an annual proforma operating budget. See Civil Code 1365 for details concerning other requirements.

The cost of an uncertified audit or review may begin at \$1,200. This should cover an association of 15 units or less with complete, well-kept records. As the number of units increase, so will the cost. Therefore, we recommend budgeting \$1,200 per year or \$15 per unit per year whichever is greater. The minimum cost for a certified audit ranges from \$1,800-\$4,500 depending on the size of the community.

It is a good practice to obtain quotations from several accountants as the basis for the budgetary estimate for the annual review or certified audit and preparation of Federal and State tax returns.

---

#### **404. EDUCATION**

Due to the sophistication required in running a homeowners' association, it is incumbent that board members and officers be familiar with the laws, regulations, codes, governing documents, etc. that impact their fiduciary duties and responsibilities. Courses and seminars are available through various industry groups such as the Building Industry Association (BIA), Community Associations Institute (CAI), California Association of Community Managers (CACM), Executive Council of Homeowners (ECHO), etc. There are also courses available at community colleges, adult education programs, etc.

Since board members change and courses are not always available when needed, the cost for education should be continuous. The recommended minimum is \$3.00 per unit per month or \$50.00 per month whichever is greater, but no more than \$5,000 per year. This is based on the assumption that not all board members will attend courses at the same time, or even the same course. Another way for the boards to keep abreast of current changes in the laws, etc. is to purchase reference material and/or industry periodicals.

In addition to this manual, the Department of Real Estate (DRE) publishes another manual titled *Reserve Study Guidelines for Homeowners' Association Budgets*. Also, two other good sources for real estate law and regulations are the *Real Estate Law Book*, published by the DRE and the *Condominium Blue Book* published by Branden E. Bickel, B&B Publications.

---

#### **405. MISCELLANEOUS**

This category encompasses the purchase and repair of supplies and equipment for the conduct of the associations business and the cost of renting business office, storage and meeting space if such space is not available within the subdivision common area. If office and storage space within the common area is non-existent or inadequate, it may be necessary to rent such space from a resident within the subdivision or in a nearby community. Additional expenses could include newsletters and/or correspondence.

Frequently the common area does not include a meeting room large enough for regular or special meetings of the members of the association. Such rooms are generally available at no cost or at a nominal cost in churches, schools or other public buildings.

It is recommended to budget \$4.00 to \$5.00/per unit per month for this category.

---

### **500's — CONTINGENCY**

---

#### **501. NEW CONSTRUCTION**

It is seldom possible to anticipate every expense that will be incurred by an association during an operating year. In the case of new construction, a contingency equal to 3% of an annual budget is recommended for unforeseen operating and reserve items. If the subdivision is over 4 years old, use 5%.

---

#### **502. CONVERSIONS**

Where a condominium development is created out of the conversion of an existing apartment house or complex, a contingency reserve of 5% of the total budget should normally be adequate.

For high-rise buildings (over 70 feet) a 10% contingency is reasonable.

---

#### **503. REVENUE OFFSETS**

Normally, revenue derived through leasing, renting, laundry, etc. will just cover anticipated costs for repair, replacement, utilities, cleaning, etc. For leased equipment, replacement or repair may be done by the leasing company and only utilities or minor maintenance may be covered by the revenue received.

Another source of revenue for existing associations may be interest income. Interest income may be considered non-exempt income in some cases and be taxable.

Existing associations with a strong history (2 years or more) of a revenue source may, if the amount is significant, use the revenue as an offset against total expenses. If so, all related expense items

noted earlier should also be included in the budget. Attach supporting financial records and calculations used in determining the amount shown in the budget.

<b>BUDGET SUBMITTAL AND REVIEW SUMMARY FOR THOSE REQUIRED TO FILE WITH THE DEPARTMENT</b>
---

Regardless of the type of common-interest subdivision you are involved with, completing a Duplicate Budget Package (DBP) for Department review is very important. The information necessary for compliance can be found in the application packets RE 624 (Common-Interest), RE 635 (Amendment/Renewal), and RE 658 (Stock Cooperative or LEHC) or in the Subdivision Public Report Application Guide (SPRAG). The instructions and guide are available at the subdivision office in Sacramento or Los Angeles.

The general procedures given here will apply to the majority of the projects reviewed by the Department. Completing the budget form (RE 623), including computing various costs, is explained in the remainder of the manual. Other required forms or documents are listed in Parts I and II of the application packets. You may wish to contact the Department's Budget Review Section for additional information.

#### **Plans and Maps**

As part of the submittal, a plot or site plan is required. This plan should show the layout of the buildings, streets, recreation facilities, walls and entry structures, if applicable. Also, the plan should be a scale drawing. Large, especially phased, projects may require a separate plot or site plan for each phase. A map showing the phasing plan for the entire project must also be submitted.

The tract map and/or condominium plans should also show legible dimensions and be a scale drawing. All of these are necessary for verification of area calculations and location of the common facilities. A legible and adequately detailed vicinity map is required.

#### **Phase Projects**

When submitting DBP's for phased projects, only provide budgets for those phases that are projected to be completed within three years. If the subdivider is no longer in control, see Existing Homeowner Associations Section below for procedures. Also, an estimated assessment for the built-out project should be submitted. Budgets are considered acceptable for 24 months from the date the appraiser completes the review. Changes in the offering budget or non-issuance of a Public Report before 24 months expire may be cause for a second review of the budget.

#### **Existing Homeowner Associations**

When submitting a DBP for review of an existing homeowner association, the same procedures would be followed unless the subdivider is no longer in control. Normally, the subdivider would be considered in control of the association if he controls more than 25% of the Class B votes or 50% of the voting power if only one class is in existence. If the subdivider is not in control, the submittal for review should include the following:

- The association's most recent audited financial statements for the past two years or from start-up, whichever is less. Also, a year-to-date statement. (Current year only.)

- A copy of the current or latest reserve study as required by Civil Code Section 1365.5(e).
- The Assessment and Reserve Funding Disclosure form required by Civil Code Section 1365.2.5.
- A copy of the association's current budget. If the HOA has approved the budget for the next fiscal year also include and indicate the commencement date for the fiscal year.
- A statement from the association showing the dollar amount of past due delinquencies. In particular, the statement should indicate assessments due, if any, from the subdivider.
- A copy of the following information as required to be distributed to the membership under Civil Code Section 1365 (A comprehensive reserve study should cover the items listed below):
  - The amount of the total cash reserves of the association currently available for replacement or major repair of common facilities and for contingencies.
  - An estimate of the current replacement costs of, and the estimated remaining life of, and the methods of funding used to defray the future repair, replacement or additions to, those major components of the common areas and facilities which the Association is obligated to maintain.
  - A general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions of major component of the common areas and facilities for which the association is responsible.

After the above documents have been reviewed, it may be necessary to request additional information if a clear picture of the financial status of the association is not presented. If the existing association has operating deficiencies and/or under-funded reserves, a special note will be included in the Public Report.

#### **Conversions**

For submittal on buildings converted to, or previously built as, condominiums or stock cooperatives, TIC's, an RE 639 and Reserve Study (Civil Code 1365.5 (e)) must be completed and included with the DBP. It is important to note the date of the past or future renovations when completing the form. Reserve amounts in the budget may change depending upon the remaining life of the building components and equipment. The costs shown for reserve estimating in this manual are for new building components and equipment. Also, shown in the reserve section is the expected useful life of each item.

#### **Reserve Studies (Study)**

The Department of Real Estate understands that data provided in a reserve study may not always be a perfect fit with the format provided in the DRE's budget form. In addition, the Department will normally accept the data from a competent reserve study, except where errors are found. Aside from this, the information used from the study should match that included in the DRE budget form.

---

### **Bonds for Completion**

When using a bond as security for completion of on-site construction work, RE 611 must be completed and submitted for review and acceptance by the Department. Hard cost and/or in-house estimates must include an additional 20% in the total cost to complete. Items that are subcontracted and are verifiable by executed contracts normally need not include the 20%. Also, an annual inflation factor should be added, prorated on a monthly basis, for the months left until completion.

Although not specifically required, if the completion bond includes the living units, building plans may be requested if the required maps/plans are inadequate for cost verification.

### **Worksheets**

As noted earlier, this manual contains forms and worksheets to assist you in preparing a budget. It is important that all worksheets and forms are completely filled in (if applicable) prior to submittal to the Department of Real Estate.

### **Cost Centers**

The "cost center" term, as used for budget purposes, identifies an area of a project used by only some of the owners within a homeowners' association. Typically, this may be a guard gate or recreational facility utilized only by a portion of the association membership. It would be unreasonable in these cases to require all members of the association to contribute to the maintenance of a facility only benefiting a portion of the project.

Generally, the cost per unit or lot per month in a cost center budget should not exceed 50% of the regular or base assessment on a unit or lot per month basis. If this occurs, it may be appropriate to consider the use of a sub-association to deal with the additional maintenance costs attributable to a particular group of owners within the project.

### **Range of Assessments**

*Defined:* Range of Assessments is a method or procedure used for setting up an assessment/budgeting program for large projects with multiple builders. The estimated range is established for the project through review of the proposed assessment program from start-up to built-out. The range is useful for projects with multiple product types and is limited to no more than a 100% differential from the lowest (best case) to highest (worst case) assessment in the project; possibly less, depending on the impact to the association and members. The minimum size of a project for use of this procedure is 200 lots/units, unless it falls within the definition of a Master Planned Community.

A Range of Assessments can be "stepped," usually down, as the assessments decline towards built-out. The number of "steps" or ranges established for a project would normally be limited to two and consist of no less than 10 phases each. Any exceptions to these criteria would be considered on a case by case basis.

For use of this procedure a preliminary review and approval should be completed prior to filing with the Department. Contact the Budget Review Section for more information.

Once approved for use by the Managing Deputy Commissioner of the Budget Review Section, the budgets are reviewed by staff for accuracy, quality and to make sure they meet our minimum cost manual guidelines.

---

### **Level Assessment Procedure**

*Defined:* The Level Assessment procedure is a method or procedure used for setting up an assessment/budgeting program for large projects with one or more Subdividers. Generally, the level assessment selected falls within a range of the actual assessments, which are both above and below the level amount. Also, the level amount can be "stepped," usually down, as the assessments decline towards built-out.

The estimated level assessment or assessments are established for the project through review of the proposed assessment program generally from start-up to built-out. The established level assessment amount cannot be more than 15% above or below the actual estimated assessment for any given phase. Any "step" in the level assessment must include a minimum of 3 phases. The minimum size of a project for use of the procedure is 100 lots/units with 10 or more phases.

By definition, there will be phases where the established level amount is less than the estimated actual expenses or budget. For that reason and in order for this procedure to be viable, some surplus funding of the operating account is necessary in the initial phases of the project. During the life of the Level Assessment Procedure, the cumulative operating surplus, combined with actual assessments, should not drop below 3 months of funding, or 10% of the current monthly budget, whichever is higher. Any exceptions to these criteria would be considered on a case by case basis.

For use of this procedure a preliminary review and approval should be completed prior to filing with the Department. Contact the Budget Review Section for more information.

Once approved for use by the Managing Deputy Commissioner of the Budget Review Section, the budgets are reviewed by staff for accuracy, quality and to make sure they meet our minimum cost manual guidelines.

### **Fixed Assessment Procedure**

*Defined:* The Fixed Assessment Procedure is a method or procedure used for setting up an assessment/budgeting program for larger Planned Developments that have consistent and/or minimal common areas in each phase. The procedure is used to fix the total per lot/unit per month assessment in a phased project at the same amount for all phases.

Using this technique calls for adjusting the contingency line item on the budget up or down so that the bottom line of each budget for every phase has the same total per lot/unit per month. No pre-approval or extra data is needed for reviewing or using this procedure. The only conditions for use are: that any adjustments made to the actual contingency amount have to be minimal, no more than 7% of the budget; no negative contingencies in the budget; and, that this procedure cannot be combined with the range or level assessment procedure.

### **Large Increment Assessment Procedure**

*Defined:* The Large Increment Assessment Procedure is a method of structuring an assessment program for very large projects, normally Master Planned Communities, with multiple builders and front-loaded amenities. Use of this procedure requires that the number of lots/units per increment (similar to a phase) not

be less than 300 and that the minimum size of the overall project not be less than 1200 lots/units.

Each subsequent increment, including construction of the infrastructure, must be contiguous to the first or previous increment annexed to the project. Also, this procedure requires the use of a Deficit Subsidy Agreement which requires the Developer to subsidize any excess of expenses over revenue. Builders are required to only pay assessments on un-sold lots/units that are subject to a Final Public Report.

For use of this procedure, it is recommended that a preliminary review and approval be completed prior to filing with the Department. The minimum documents required for review include: the incremental budgets, including HOA Common Facilities (RE 624A) forms completed for the first three years of the project, plus built-out; a phasing map which depicts all of the increments; a draft deficit subsidy agreement; and a current marketing study. The marketing study should be prepared by a third-party professional not related to the Developer and must include the projected sales absorption rates from start-up to build-out.

Once the procedure is approved by the Managing Deputy Commissioner of the Budget Review Section and the filing for a Final Public Report is received, the budgets will be reviewed by staff for accuracy, quality and to make sure they meet DRE minimum cost manual guidelines.

**Ratio Utility Billing System (RUBS)**

Using a RUBS for allocating various commonly metered utility expenses (typically water) based on unit size so they can be excluded from the association budget is not acceptable under DRE guidelines. Liability for these common expenses still lies with the homeowners' association and must be included in the budget. When applicable, allocation of common utilities based on unit size can be done by using the Proration Schedule Worksheet part of the Budget Worksheet (RE 623) included in this manual.

Note: Specific management and budget guidelines are available and must be adhered to in order to utilize these procedures.

**BUDGET WORKSHEET**  
**RE 623**  
  
*The 15 page worksheet  
that follows is for your use.*



## BUDGET WORKSHEET

RE 623 (Rev. 4/07)

### GENERAL INFORMATION

This budget is a good faith estimate from plans prior to construction and/or completion (for new projects) or from a combination of plans and/or site inspections (for existing projects). For existing projects, there may have been historical data as support for some line items, but changes to the project may make historical data not applicable or reliable. This budget was prepared for the purpose of obtaining a public report.

The association must adopt a budget in accordance with the California Civil Code. If that budget is less than 10% or greater than 20% from this budget, you should contact the Department of Real Estate. The association may increase or decrease its budget. It is typical for costs to increase as the project ages. The association should conduct a reserve study after its first year of operation to adjust the reserve funding plan for any changes which may have taken place during construction.

DRE FILE NUMBER (IF KNOWN)	MASTER DRE FILE #	DEPUTY ASSIGNED FILE (IF KNOWN)
----------------------------	-------------------	---------------------------------

### SUBDIVISION IDENTIFICATION AND LOCATION

NAME AND/OR TRACT NUMBER
NAME TO BE USED IN ADVERTISING (IF DIFFERENT THAN NAME OR TRACT NUMBER)

STREET ADDRESS (IF ANY)	CITY	COUNTY
MAIN ACCESS ROAD(S)	NEAREST TOWN/CITY	MILES/DIRECTION FROM TOWN/CITY

### TYPE OF SUBDIVISION

- |   |   |
|---|---|
| <input type="checkbox"/> Condominium                        | <input type="checkbox"/> Planned Development Land Project |
| <input type="checkbox"/> Condominium Conversion             | <input type="checkbox"/> Planned Development Mobile Home  |
| <input type="checkbox"/> Stock Cooperative                  | <input type="checkbox"/> Community Apartment              |
| <input type="checkbox"/> Stock Cooperative Conversion       | <input type="checkbox"/> Out-of-State                     |
| <input type="checkbox"/> Limited Equity Housing Corporation | <input type="checkbox"/> Undivided Interest               |
| <input type="checkbox"/> Planned Development                | <input type="checkbox"/> Undivided Interest Land Project  |

NUMBER OF LOTS/UNITS	PHASE #	TOTAL # IN PROJECT	PREVIOUS DRE FILE #	# OF ACRES
----------------------	---------	--------------------	---------------------	------------

### BUDGET PREPARER

NAME	ATTENTION	TELEPHONE NUMBER (     )
ADDRESS	CITY	ZIP CODE

### Certification

*I declare under penalty of perjury that the representations and answers to questions in this document and all documents submitted as a part of the homeowners budget are true and complete to the best of my knowledge and belief.*

SIGNATURE OF BUDGET PREPARER ➤	DATE
-----------------------------------	------

IMPROVEMENTS WORKSHEET

❖ If this phase will have any line items shown on pages 3, 4 and 5 hereof exempted from payment of assessments under Regulation 2792.16(c), asterisk those items on pages 3, 4 and 5 and list any partially deferred costs on a separate sheet showing calculations and attach. All exempted improvements must be covered by reasonable arrangements for completion. Include Planned Construction Statement (RE 611A) for review.

- 1. Number of buildings containing residential units .....
2. Estimated completion date for the residential units included in this phase .....
3. Estimated completion date for the common area and facilities included in this phase .....
4. Type of residential building for this project (i.e., high-rise, cluster, garden, etc.).....
5. Type of construction for these buildings (i.e., steel, concrete, wood frame, etc.) .....
6. Type of roof (i.e., shake, etc.).....
7. Type of paving used in the project. ....
8. Type of exterior wall for residential buildings .....
9. Number of residential units per building.....
10. Number of floors per building.....
11. Number of bedrooms per unit. ....
12. Square footage of units (list number and size of each unit type).....
13. Type of parking facilities and number of spaces (i.e., detached garage, tuck-under, subterranean, carport, open, etc.). ....

Complete 14 and 15 for Phased Condominium Projects Only

- 14. Have you submitted budgets for all phases to be completed within the next three calendar years and a built-out budget?..... [ ] Yes [ ] No
15. If this condominium project involves phasing with a single lot, submit a budget for each phase plus a budget which will be used if future phases are not completed. (Commonly referred to as a worst case budget.)

**BUDGET SUMMARY**

PHASE NUMBER	DATE OF BUDGET	DRE FILE NUMBER
NUMBER OF UNITS	TRACT NUMBER/NAME OF PROJECT	

		<i>Per Unit Per Month</i>	<i>Total Monthly</i>	<i>Total Annual</i>
<b>100 FIXED COSTS</b>	101. Property Taxes			
	102. Corporation Franchise Taxes			
	103. Insurance (attach proposal)			
	104. Local License & Inspection Fees			
	105. Estimated Income Taxes			
		<b>100 - SUB TOTAL</b>		
<b>200 OPERATING COSTS</b>	201. Electricity (attach work sheet)			
	Lighting: Leased			
	202. Gas (attach work sheet)			
	203. Water (attach work sheet)			
	204. Sewer/Septic Tanks/Storm Drains/ Water Retention Basins (include if not in 203)			
	205. Cable TV/Master Antenna			
	207. Custodial Area:			
	<i>Number of Restrooms:</i>			
	207a. Custodial Supplies			
	208. Landscape Area: <i>(See page 15.)</i>			
	208a. Landscape Supplies			
	209. Refuse Disposal			
	<i>Vender Name:</i>			
	<i>Telephone Number:</i>			
	210. Elevators			
	<i>Number:</i> <i>Type:</i>			
211. Private Streets, Driveways, Parking Areas				
<i>Area:</i>				
212. Heating & Air Conditioning Maintenance				
<i>Area:</i>				
213. Swimming Pool				
<i>Number:</i> <i>Size:</i> <i>Mths. heated:</i>				
Spa				
<i>Number:</i> <i>Size:</i>				
213a. Swimming Pool/Spa Supplies				
214. Tennis Court				
<i>Number:</i>				

		Per Unit Per Month	Total Monthly	Total Annual
200 OPERATING COSTS	215. Access Control <i>Guard hours per day:</i> <i>No. of motorized gates:                      Type:</i> <i>No. of Intercoms/Telephone Entry:</i>			
	216. Reserve Study			
	217. Miscellaneous			
	Minor Repairs			
	Pest Control			
	Snow Removal			
	Lakes/Waterways			
	Community Network			
	218. Fire Sprinklers, Fire Alarms & Fire Extinguishers			
<b>200 - Sub Total</b>				
300 RESERVE	301-313 (attach reserve work sheet)			
	<b>300 - Sub Total</b>			
400 ADMINISTRATION	401. Management ①			
	402. Legal Services			
	403. Accounting			
	404. Education			
	405. Miscellaneous, office expense			
	<b>400 - Sub Total</b>			
<b>TOTAL (100-400)</b>				
500 CONTINGENCY	501. New Construction 3%			
	502. Conversions 5%			
	503. Revenue Offsets (attach documentation)	(            )	(            )	(            )
<b>TOTAL BUDGET</b>				

❖ DRE regulations allow the use of variable assessments against units only if one unit will derive as much as 10 percent more than another unit in the value of common goods and services supplied by the association.

After determining the percent of benefit derived from services provided (page 14) by the association, an easy chart to follow would be:

Less than 10%.....	equal assessments
from 10% to 20%.....	variable or equal
Over 20%.....	variable assessments

The budget and management documents indicate (check appropriate box):

equal assessments

variable assessments

❖ The inventory and quantities used in the preparation of this budget are normally derived from plans completed prior to construction and may vary slightly from actual field conditions. The calculated budget is a good faith estimate of the projected costs and should be deemed reliable for no more than one year. The Board of Directors should conduct an annual review of the Association's actual costs and revise the budget accordingly.

① Depending upon the level of service selected by the Association, the amount shown may be insufficient to cover the cost and may be higher.

**RESERVES WORKSHEET**

DRE FILE NUMBER \_\_\_\_\_ TRACT NUMBER \_\_\_\_\_

<i>Item</i>	(1) <b>●</b> Sq. Ft. or Number	(2) <b>●</b> Unit Cost HOA Manual	(3) <b>●</b> Replacement Cost	(4) <b>●</b> Remaining Life	Yearly Reserve Columns 1x2 or 3+4	Cost Per Unit Per Month
Paint						
Wood Siding (paint/stain)						
Roof - Type:						
Roof - Type:						
Water Heaters						
Exterior Lights						
Hard Floors - Type:						
Carpets						
Elevators						
Streets & Drives						
Heating & Cooling						
Pool Re-plaster						
Pool Heater						
Pool Filter						
Spa Re-plaster						
Spa Heater						
Spa Filter						
Pool/Spa Pumps - No:						
Tennis Courts - No:						
Furnishing/Equipment						
Fences (paint/stain)						
Fences (repair/replace) - Type:						
Walls (paint)						
Walls (repair/replace)						
Wrought Iron Fencing (paint)						
Wrought Iron (repair/replace)						
Pumps/Motors - Type:						
Motorized Gates						
Wood Decking						
Septic Tanks						
Fountains						
Storm Drain Filters						
Other						

**●** Use either Columns 1 and 2 or 3 and 4, but not both for a particular item.

**TOTAL RESERVE**

**Note:** For space purposes, we have included only the components most frequently found in common-interest subdivisions. Reserve items should not be limited to the list above, but be tailored to your particular project.

**GENERAL PROJECT INVENTORY**

- ❖ Complete schedules 1 through 6 below, then transfer the totals to Site Summary area.
- ❖ Frequently several buildings will be repeated in a subdivision. These may be combined on one line. Wherever additional space is required attach computations on a separate sheet.

SITE SUMMARY – TOTAL SUBDIVISION AREA			
_____	acres x 43,560 =	_____	Total square feet.
1. Building(s) footprint	_____	_____	sq. ft.
2. Garages or carports	_____	_____	sq. ft.
3. Recreational facilities	_____	_____	sq. ft.
4. Paved surfaces	_____	_____	sq. ft.
5. Restricted common areas	_____	_____	sq. ft.
6. Other: (attach description)	_____	_____	sq. ft.
Sub Total (1-6)	_____	_____	sq. ft.
		Total Square Ft. (from above)	_____ sq. ft.
		Subtract Sub Total (1-6)	_____ sq. ft.
		<b>Remainder = landscape area</b>	_____ sq. ft.

**INDIVIDUAL SUMMARY SCHEDULES**

1. Buildings Containing Units

<i>Length</i>	x	<i>Width</i>	=	<i>Area of Each Bldg.</i>	x	<i>No. of Buildings</i>	=	<i>Total Area Square Feet</i>
_____	x	_____	=	_____	x	_____	=	_____
_____	x	_____	=	_____	x	_____	=	_____
_____	x	_____	=	_____	x	_____	=	_____
_____	x	_____	=	_____	x	_____	=	_____

*Total for Summary Item 1 above*

2. Multiple Detached Garages and Carports

_____	x	_____	=	_____	x	_____	=	_____
_____	x	_____	=	_____	x	_____	=	_____
_____	x	_____	=	_____	x	_____	=	_____

*Total for Summary Item 2 above*

3. Recreational Facilities

Total Area

a. Recreation Room, Clubhouse, Lanai, or other  
(length x width = total sq. ft.)

\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_ sq. ft.

b. Pools

Number: \_\_\_\_\_  
Size: \_\_\_\_\_ sq. ft.

c. Spas

Number: \_\_\_\_\_  
Size: \_\_\_\_\_ sq. ft.

d. Tennis Courts

Number: \_\_\_\_\_  
Size: \_\_\_\_\_  
Surface Type: \_\_\_\_\_ sq. ft.

e. Other: (describe)

\_\_\_\_\_ sq. ft.

**Total for Summary Item 3 above** \_\_\_\_\_ sq. ft.

4. Paved Areas (streets, parking, walkways, etc.)

(length x width = square foot area)

Paving Material (concrete, asphalt, etc.)

\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_ \_\_\_\_\_

**Total for Summary Item 4 above** \_\_\_\_\_ sq. ft.

5. Restricted Common Areas Use (patio, etc.)

Describe and attach calculations

\_\_\_\_\_  
\_\_\_\_\_

**Total for Summary Item 5 above** \_\_\_\_\_ sq. ft.

6. Other – Describe and attach calculations

\_\_\_\_\_  
\_\_\_\_\_

**Total for Summary Item 6 above** \_\_\_\_\_ sq. ft.



**PAINTING WORKSHEET**

**EXTERIOR**

Exterior painting area is determined by measuring the structure to find the perimeter (total distance around) and multiplying that by 10 for each story. Use a separate line for each story if the configuration of the building changes from story to story (for wood siding see Item 301 in the Cost Manual).

- Buildings (include garages, recreation buildings)

Type of Surface	Perimeter	x	10 ft.	x	No. of Stories	x	No. of Bldg. (if identical)	=	Total Area
_____	_____	x	10 ft.	x	_____	x	_____	=	_____
_____	_____	x	10 ft.	x	_____	x	_____	=	_____
_____	_____	x	10 ft.	x	_____	x	_____	=	_____
_____	_____	x	10 ft.	x	_____	x	_____	=	_____

**Total building paint area** \_\_\_\_\_

- Walls

Linear Feet	x	Height	x	2	=	Total Area
_____	x	_____	x	2	=	_____
_____	x	_____	x	2	=	_____
_____	x	_____	x	2	=	_____

**Total wall paint area** \_\_\_\_\_

**Total exterior paint area** \_\_\_\_\_

**INTERIOR**

Interior painting reserve is determined by measuring the room perimeter and multiplying by 8' and adding ceiling area.

Room/Type	Walls	x	8 ft.	=	Wall Area	+	Ceiling	=	Total Area
Descrip.	Perimeter						(Length x Width)		
_____:	_____	x	8 ft.	=	_____	+	_____ x _____	=	_____
_____:	_____	x	8 ft.	=	_____	+	_____ x _____	=	_____
_____:	_____	x	8 ft.	=	_____	+	_____ x _____	=	_____
_____:	_____	x	8 ft.	=	_____	+	_____ x _____	=	_____
_____:	_____	x	8 ft.	=	_____	+	_____ x _____	=	_____
_____:	_____	x	8 ft.	=	_____	+	_____ x _____	=	_____

**Total interior paint area** \_\_\_\_\_

**TOTAL EXTERIOR AND INTERIOR** \_\_\_\_\_

**FENCES**

Fence requiring paint or stain (see Item 312 in manual for wood and wrought iron)

Compute separately using higher cost—put on separate line on page 5 of the Reserve Worksheet.

Linear Feet	x	Height	x	2	=	Total Area
_____	x	_____	x	2	=	_____
_____	x	_____	x	2	=	_____
_____	x	_____	x	2	=	_____

**Total fence area** \_\_\_\_\_

- Always multiply by 2 to cover the area for both sides of the wall or fence. If the wall or fence will be painted or stained on one side only, adjust your calculation and make appropriate notation on the worksheet.

**ELECTRICAL ENERGY CONSUMPTION WORKSHEET**

A. Lights (see Note ①) **KWH per month**  
*(number of lights x average watt per light x average number hours in use per day x .03 = KWH per month)*

1. Interior Lights (hallways, lobbies, garage, stairwells, etc.)

\_\_\_\_\_ x \_\_\_\_\_ x \_\_\_\_\_ x .03 = \_\_\_\_\_

2. Garage Lights

\_\_\_\_\_ x \_\_\_\_\_ x \_\_\_\_\_ x .03 = \_\_\_\_\_

3. Outdoor and walkway lights

\_\_\_\_\_ x \_\_\_\_\_ x \_\_\_\_\_ x .03 = \_\_\_\_\_

4. Street Lights

\_\_\_\_\_ x \_\_\_\_\_ x \_\_\_\_\_ x .03 = \_\_\_\_\_

B. Elevators *(number of cabs x number of floor stops per cab x 167 KWH = KWH per month)*

\_\_\_\_\_ x \_\_\_\_\_ x 167 KWH = \_\_\_\_\_

C. Tennis Court Lights *(number of courts x 1000 KWH = KWH per month)*

\_\_\_\_\_ x 1000 KWH = \_\_\_\_\_

D. Electric Heating  
*(0.25 KWH x sq. ft. heated = KWH per month for warm climates)*  
*(0.65 KWH x sq. ft. heated = KWH per month for cold climates)*

\_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

E. Hot Water Heating *(320 KWH x number of 40 gallon tanks = KWH per month)*

320 KWH x \_\_\_\_\_ = \_\_\_\_\_

F. Air Conditioning *(number of sq. ft. cooled x .34 KWH = KWH per month)*

\_\_\_\_\_ x .34 KWH = \_\_\_\_\_

G. Electrical Motors *(see Notes ② and ③)*  
*(horsepower x watts x hours of use per day x .03 x % of year in use = KWH per month)*

Motor #1	_____	x	_____	x	_____	x	.03	x	_____	=	_____
Motor #2	_____	x	_____	x	_____	x	.03	x	_____	=	_____
Motor #3	_____	x	_____	x	_____	x	.03	x	_____	=	_____
Motor #4	_____	x	_____	x	_____	x	.03	x	_____	=	_____

H. Pool/Spa Heating  
*(Number of heaters x KWH rating x hours of daily use x 30 days = KWH per month)*

\_\_\_\_\_ x \_\_\_\_\_ x \_\_\_\_\_ x 30 days = \_\_\_\_\_

**TOTAL KWH PER MONTH** \_\_\_\_\_

I. Total Monthly Cost  
(total KWH per month x rate per KWH = total cost)

- \_\_\_\_\_ x \$ \_\_\_\_\_ = \$ \_\_\_\_\_
- Monthly common meter charge \$ \_\_\_\_\_
- Total Monthly Cost** \$ \_\_\_\_\_

Utility Company Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**Notes**

- ❶ Do not include leased lights. Instead use lease agreement with rate schedule with budget work sheet. Put monthly charge into Item 201 leased lights. Use a minimum of 10 hours per day average usage for exterior lighting.
- ❷ Motors are found in swimming pool pumping systems, circulating hot water systems, ventilation systems in subterranean garages, security gates, interior hallways, and interior stairwells and also in private water systems and fountains. (Hours of use for pool pumps – see Item 201 in the Cost Manual.)
- ❸ Normally 1,000 watts per horsepower should be used. Check plate on motor or manufacturer’s specifications. If wattage is not listed, it can be calculated by multiplying amps x volts.

### GAS CONSUMPTION WORKSHEET

1. Water Heaters **Therms**  
*(number of dwelling units on association meters + laundry rooms + outdoor showers + recreation rooms = number units x 20 Therms = Therms per month)*  
 \_\_\_\_\_ + \_\_\_\_\_ + \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_ x 20 Therms = \_\_\_\_\_

2. Pool (see Note ❶)  
*(BTU rating x hours of daily use x .0003 x % of year in use = Therms)*  
 Pool #1 \_\_\_\_\_ x \_\_\_\_\_ x .0003 x \_\_\_\_\_% = \_\_\_\_\_  
 Pool #2 \_\_\_\_\_ x \_\_\_\_\_ x .0003 x \_\_\_\_\_% = \_\_\_\_\_

3. Spa  
*(Number of spas (by size) x therm range = Therms used)*  
 \_\_\_\_\_ (8' diameter) x 300 Therms = \_\_\_\_\_  
 \_\_\_\_\_ (10' diameter) x 350 Therms = \_\_\_\_\_  
 \_\_\_\_\_ (12' diameter) x 400 Therms = \_\_\_\_\_

4. Central Heating  
*(BTU rating x average hours of daily use x .0003 = Therms used)*  
 \_\_\_\_\_ x \_\_\_\_\_ x .0003 = \_\_\_\_\_

5. Other  
*(number of gas barbecues, fireplaces, etc.) x 5 = Therms*  
 \_\_\_\_\_ x 5 = \_\_\_\_\_

**Total Therms** \_\_\_\_\_

*(therms x rate = monthly charge)*

\_\_\_\_\_ x \_\_\_\_\_ = \$ \_\_\_\_\_  
 \_\_\_\_\_ x \_\_\_\_\_ = \$ \_\_\_\_\_  
 \_\_\_\_\_ x \_\_\_\_\_ = \$ \_\_\_\_\_

**Meter Charge** \$ \_\_\_\_\_

**Total Monthly Cost** \$ \_\_\_\_\_

Utility Company Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

- ❶ The presumption is a recreation pool with heating equipment will be used all year or 100%. For very hot or cold climates where a heater will not or cannot be used all year, a 70% usage should suffice. Less than 70% usage will require a Special Note in the Subdivision Public Report.

**WATER AND SEWER WORKSHEET**

A. Domestic (use only if units are billed through association)  
 (number of units [include rec. rooms] x rate/100 CF x 10 = Water Cost)

\_\_\_\_\_ x \_\_\_\_\_ x 10 = \$ \_\_\_\_\_

B. Irrigation (see Note ❶)  
 (landscape area x rate/100 cf. x .0033 = Water Cost)

\_\_\_\_\_ x \_\_\_\_\_ x .0033 = \_\_\_\_\_

C. Sewers (see Note ❷)  
 (Charge per unit per month x number units = Sewer Cost)

\$ \_\_\_\_\_ x \_\_\_\_\_ = \$ \_\_\_\_\_

or alternate calculation (% of A and B, etc.)

\_\_\_\_\_ (A) x \_\_\_\_\_ % = \$ \_\_\_\_\_

D. Meter Charge

Line size: \_\_\_\_\_ (2", 3" etc.) Charge per month: \$ \_\_\_\_\_

**MONTHLY WATER COST:** \$ \_\_\_\_\_

Utility Company Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**Notes**

- ❶ Average usage is four-acre feet of water per acre of landscaping per year. This formula is based on four-acre feet of usage. Some areas like the low desert will require 8 to 12-acre feet of water per acre of landscaping per year and the "B" figure should be adjusted accordingly. (Example: 4 x figure for B = 12-acre feet.)
- ❷ If some other method of billing is used for the sewage charge and/or this will not be a common expense, provide a letter from the sanitation district and or water company (whichever applicable) which so states.

**PRORATION SCHEDULE WORKSHEET**

**Section I Variable Assessment Computation**

A. Variable Costs Description	Monthly Cost
1. Insurance	\$ _____
2. Domestic Gas (if common)	\$ _____
3. Domestic Water (if common)	\$ _____
4. Paint	\$ _____
5. Roof	\$ _____
6. Hot Water Heater (if common)	\$ _____
7. Other	\$ _____
<b>Total Variable Cost</b>	<b>\$ _____</b>

B. Total livable square footage of all units from condominium plan: \_\_\_\_\_

C. Variable Factor (*variable monthly costs ÷ square footage = variable factor*): \_\_\_\_\_  
 Multiply this factor by each unit size below in Section III.

**Section II Equal Assessment Computation**

A. Total Monthly Budget	\$ _____
Less Variable Costs	\$ _____
Total Monthly Equal Costs	\$ _____

B. Monthly Base Assessment: \$ \_\_\_\_\_  
 (*total monthly cost ÷ number of units = monthly base assessment*)

**Section III Assessment Schedule**

<i>Unit Size</i>	<i>x</i>	<i>Variable Factor</i>	<i>=</i>	<i>Variable Assessment</i>	<i>+</i>	<i>Base Assessment</i>	<i>=</i>	<i>Total Mth. Assessment</i>	<i>x</i>	<i>Unit Count</i>	<i>=</i>	<i>Total Mth. Budget *</i>
A. _____	x	_____	=	_____	+	_____	=	_____	x	_____	=	_____
B. _____	x	_____	=	_____	+	_____	=	_____	x	_____	=	_____
C. _____	x	_____	=	_____	+	_____	=	_____	x	_____	=	_____
D. _____	x	_____	=	_____	+	_____	=	_____	x	_____	=	_____

**VERIFICATION OF COMPUTATIONS**

Total Monthly Budget (Section III) \_\_\_\_\_

Total Monthly Budget (Section IIA) \_\_\_\_\_

\* Total Assessment x number of units of each type.

**Section IV Variable Assessments**

<i>Highest Assessment</i>	-	<i>Lowest Assessment</i>	÷	<i>Lowest Assessment</i>	=	<i>% Differential</i>
_____	-	_____	÷	_____	=	_____ %

**SUPPLEMENTAL WORKSHEET**

**LANDSCAPE**

A. Complete chart and transfer "total landscape cost per year" to line #208 on page 3 (cumulative per phase).

Type	Percent	Area	Annual Cost per S.F.	Total Cost per type
Ground cover				
Lawn				
Open space maintained				
Open space non-maintained				
Landscape repairs/supplies				
Other				
<b>Total</b>	100%			
<b>TOTAL LANDSCAPE COST PER YEAR</b>				

B. Please provide information regarding water requirements of drought resistant plants/areas, if any. Indicate as a percentage of normal or standard watering requirements and provide source of information.

---



---



---

**ROOF**

A. If there is only one type of roof, with a constant slope factor across all roof surfaces, the following chart may not need to be completed. When this chart is completed, transfer total to roof line item on page 5.

Building	Type of Roof	Width of Overhang	Quantity (incl. overhang)	X Pitch Multiplier	= Adjusted S.F.	X Annual Cost per S.F.	= Total Annual Cost
				X	=	X	=
				X	=	X	=
				X	=	X	=
				X	=	X	=
				X	=	X	=
				X	=	X	=
<b>TOTAL ROOF COST PER YEAR</b>							

B. If a mansard will be/is constructed please provide the measurements and type of material to be used.

---



---

**PART V**

**OPERATING COST MANUAL INDEX**

<i>Subject</i>	<i>F.O.A. Item #</i>	<i>Reserves Item #</i>
Access Control		
Gate/Gate Operator .....	—	313
General Information .....	215	—
Accounting Fees .....	403	—
Ad Valorem Taxes .....	101	—
Air Conditioning .....	212	308
Appliances .....	—	311
Asphalt Paving .....	—	307
Attorney's Fees .....	402	—
Audit Fees .....	403	—
Boilers .....	202	303
Bookkeeping .....	403	—
Budget Submittal (pg. 20) .....	—	—
Built-Up Paper (Rock) Roofs .....	—	302
Cable Television .....	205	—
Carpet Care .....	207	—
Carpeting .....	—	305
Casualty Insurance .....	103	—
Chain Link Fencing .....	—	312
Cleaning .....	207	—
Community Network .....	217	—
Composition Shingle Roof .....	—	302
Composition Tile/Linoleum Flooring .....	—	305
Concrete Block Fences .....	—	312
Concrete Paving .....	—	307
Contingencies .....	500	—
Custodial .....	207	—
Custodial Supplies .....	207A	—
Driveways		
Maintenance .....	211	—
Repair .....	—	307
Education .....	404	—
Electric Lighting Fixtures .....	—	304
Electricity		
General .....	201	—
Elevators .....	210	306
Fences .....	—	312
Fiberglass Shingles .....	—	302
Fire Insurance .....	103	—
Flat Roof .....	—	302
Floor Covering .....	207	305
Fountains .....	—	314
Franchise Taxes .....	102	—
Furnaces .....	212	308
Furnishings .....	—	311
Fire Sprinklers, Fire Alarms and Fire Extinguishers .....	218	—
Fountains .....	—	314

F.O.A. = Fixed, Operating and Administration

<i>Subject</i>	<i>F.O.A. Item #</i>	<i>Reserves Item #</i>
Garages		
Cleaning .....	207	—
Ventilation .....	—	313
Garbage Disposal .....	209	—
Gardening .....	208	—
Gas (General)		
Swimming Pool Heating .....	202	—
Gates, Motorized .....	—	313
Guards .....	215	—
Hardwood Flooring .....	—	305
Heat Pump .....	—	308
Heating		
Domestic Water .....	202	—
Rooms .....	212	—
Solar .....	202	—
Swimming Pools .....	202	—
Water .....	—	303
Heaters		
Gas .....	—	308
Solar .....	—	309
High-rise Buildings (pg. 2)		
Income Taxes .....	105	—
Insurance .....	103	—
Intercoms .....	215	—
Janitorial .....	207	—
Lakes and Waterways .....	217	313
Landscape		
Maintenance .....	208	—
Supplies .....	208A	—
Water .....	203	—
Laundry Room Cleaning .....	207	—
Legal Fees .....	402	—
Liability Insurance .....	103	—
License Fees .....	104	—
Lighting .....	—	304
Linoleum Floors .....	—	305
Management .....	401	—
Minor Repairs .....	217	—
Miscellaneous		
Maintenance .....	217	—
Management .....	405	—
Painting .....	—	301
Parking Areas .....	211	—
Patrol Service .....	215	—
Pest Control .....	217	—
Pool Heating .....	202	—
Private Streets .....	211	307
Propane Gas .....	202	—
Property Tax .....	101	—
Publications .....	404	—
Pumps		

<i>Subject</i>	<i>F.O.A. Item #</i>	<i>Reserves Item #</i>
Heat .....	—	308
Sewer Lifts .....	—	313
Sump .....	—	313
Racquetball Courts.....	—	313
Recycling .....	209	—
Refrigerated Cooling.....	201	—
Refuse Disposal .....	209	—
Reserve Study .....	216	—
Restroom Cleaning.....	207	—
Revenue Offsets .....	503	—
Road Maintenance .....	211	—
Roofing.....	—	302
Rug Care .....	207	—
Septic Tanks .....	204	313
Sewer Lifts.....	—	313
Snow Removal.....	217	—
Solar		
Heating .....	202	309
System.....	—	313
Storm Drains/Water Retention Basins .....	204	—
Streets		
Maintenance .....	211	—
Streets and Driveways.....	—	307
Sump Pumps .....	—	313
Swimming Pools/Spas .....	213	309
Pool and Spa Supplies.....	213A	—
Tankless Water Heaters .....	—	303
Taxes		
Franchise .....	102	—
Income.....	105	—
Property.....	101	—
Telephone Entry Systems.....	215	—
Television (Cable TV).....	205	—
Tennis Courts .....	214	310
Termite Extermination .....	217	—
Tile Roofs.....	—	302
Trash Disposal.....	209	—
Tree Trimming .....	—	313
Utilities		
Electricity .....	201	—
Natural Gas .....	202	—
Propane Gas .....	202	—
Water .....	203	—
Variable Assessments (pg. 3)		
Vinyl Flooring.....	207	305
Waterproofing (Decks/Terraces) .....	—	305
Wood		
Siding (Paint) .....	—	301
Shingle Roofs.....	—	302
Shake Roof.....	—	302
Workers Compensation .....	103	—

## **IV.**

# **Budget Reserve Guidelines for Homeowner Associations**

State of California  
Department of Real Estate

# RESERVE STUDY GUIDELINES

## for Homeowner Association Budgets

August 2010



---

This independent research report was developed under contract for the California Department of Real Estate by Eva Eagle, Ph.D., and Susan Stoddard, Ph.D., AICP, Institute for the Study of Family, Work and Community and David H. Levy, M.B.A., C.P.A. Janet Andrews, MBA, was responsible for the original design, layout, and typography. The Department of Real Estate revised this publication in August 2010. It includes updates by Roy Helsing PRA, RS to insure it aligns with current California Law and the guidelines of the Association of Professional Reserve Preparers (APRA) and the Community Associations Institute (CAI).” The report does not necessarily reflect the position of the Administration of the State of California.

NOTE: Before a homeowners’ association decides to prepare its own Reserve Study, it should consider seeking professional advice on that issue. There are issues concerning volunteer board member indemnification, reliance on expert advice, and other factors that should be considered in that decision. The goal of this manual is to help the reader better understand Reserve Studies. It is not the intent of this manual to define the “standard of care” for Reserve Studies or to interpret the California Civil Code.

Department of Real Estate ▪ Publications ▪ 2201 Broadway ▪ Sacramento, CA 95818 ▪ Web site: [www.dre.ca.gov](http://www.dre.ca.gov)

# Table of Contents

<b>Preface</b> .....	<b>iv</b>
<b>1. Introduction</b> .....	<b>1</b>
Importance of Reserve Studies .....	1
Content of Reserve Studies .....	1
<b>2. How Do Reserves Fit into the Overall Financial Plan?</b> .....	<b>8</b>
<b>3. What Are the Steps in Doing a Reserve Study?</b> .....	<b>9</b>
Resolve to Have a Reserve Study .....	11
Identify the Work Products .....	12
Develop a Work Plan .....	12
Conduct the Component and Funding Studies .....	13
Accept, Disclose, and Implement the Results .....	13
<b>4. What Are the Steps in Conducting a Physical Analysis?</b> .....	<b>13</b>
Criteria for Components .....	14
Developing a Component List .....	15
Specifying the Quantity of Each Component .....	15
Determining the Useful and Remaining Life of Each Component .....	16
Determining the Cost of Replacement .....	18
Using Component Data to Develop the Funding Analysis .....	18
Documenting Maintenance Assumptions .....	18
<b>5. What is Involved in Developing a Funding Analysis?</b> .....	<b>20</b>
Determining the Funding Goal for Replacement Reserves .....	20
Desired Balance .....	23
Estimating Association Reserve Fund Income .....	24
Projecting Expenditures and Reserve Funding Needs .....	25
Estimating Interest Earnings of Reserve Account Over Funding Analysis Period .....	26
Statement of Limitations and Assumptions .....	27
Updating .....	27
<b>6. How Do Boards Hire Qualified Professionals to Perform Reserve Studies?</b> .....	<b>31</b>
Physical Analysis Products for Consultants .....	31
Funding Analysis Products for Consultants .....	31
Information the Board Should Provide .....	32
<b>7. What Are the Red Flags that Signal Potential Problems?</b> .....	<b>35</b>
Study Data .....	35
Replacement Funds .....	35

## **List of Exhibits**

1.1	California Civil Code Sections 1365 and 1365.5 .....	3
3.1	Steps in Providing for Adequate Reserves .....	11
4.1	Steps in the Physical Analysis Process .....	14
4.2	Determining the Replacement Schedule .....	17
4.3	Physical Analysis Checklist .....	19
5.1	Steps in the Funding Analysis Process .....	21
5.2	Calculating the Reserve Deficit .....	23
5.3	Determining the Future Cost of Replacement .....	26
5.4	Funding Study, Estimated Cash Requirements by Year .....	28
5.4	Funding Study, Major Component Liability by Year (continued) .....	29
5.5	Funding Study Checklist .....	30
6.1	Interview Guide for Physical Analysis Preparers .....	33
6.2	Interview Guide for Funding Analysis Preparers .....	34
 <b>Appendix A - Major Common Area Components Usually Included .....</b>		<b>36</b>
<b>Appendix B - Major Common Area Components Frequently Overlooked .....</b>		<b>37</b>
<b>Appendix C - Sources for Inflation Rate Estimates.....</b>		<b>38</b>

## Preface

California's Common Interest Development Act requires that associations prepare and distribute financial information, including a plan for funding future replacement of major components (roofs, exterior paint, and so on). "Reserve Study Guidelines for Homeowners' Association Budgets" has been developed to assist boards of directors of California common interest developments (CIDs) to better understand the preparation of the reserve study portion of the association's annual *pro forma* operating budget, as this document is defined in California Civil Code Section 1365, and to assist buyers in understanding the financial implications of an association's replacement reserve funding. The term "reserves" as used in this context refers to the funds set aside to cover these replacement costs. The board of directors must make decisions about the funding goals of the association. These guidelines should enable readers to answer the following questions:

- How do reserves fit into the overall financial plan?
- What are the steps in doing a reserve study?
- What are the steps in conducting a Physical Analysis of common area major components?
- What is involved in developing a Funding Analysis?
- How do boards hire qualified professionals to perform reserve studies?
- What are the "red flags" that signal potential problems?

These guidelines were developed with the assistance of numerous industry professionals, association board members and managers and the Department of Real Estate. The approach described in these pages has been developed from examples of current reserve studies, and from the comments and suggestions of industry leaders. In following the suggestions presented here, a board should consult with the association's own attorney, accountant, or other advisors, as necessary.

## 1. Introduction

Common interest developments (CIDs) are defined by shared property and restrictions in the deed on use of the property. A CID is governed by a mandatory association which administers the property and enforces its restrictions. The association is responsible for repairing, replacing, or maintaining the common areas. The owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest. (California Civil Code Section 1364)

### **Importance of Reserve Studies**

A reserve study provides a current estimate of the costs of repairing and replacing major common area components (such as roofs or pavement) over the long term. Ideally, all major repair and replacement costs will be covered by funds set aside by the association as reserves, so that funds are there when needed. This requires:



- examination of the association's repair and replacement obligations;
- determination of costs and timing of replacement; and
- determination of the availability of necessary (reserve) cash resources.

Because the board has a fiduciary duty to manage association funds and property, a replacement reserve budget is very important. Not only does this information supplement the annual pro forma operating budget in providing owners with financial information; the reserve study is also an important management information tool as the association strives to balance and optimize long-term property values and costs for the membership.

For buyers, understanding the reserve study is an important part of evaluating the value of a CID property. For association members, reserve planning helps assure property values by protecting against declining property values due to deferred maintenance and inability to keep up with the aging of components.

A good reserve study shows owners and potential buyers a more accurate and complete picture of the association's financial strength and market value. The reserve study should disclose to buyers, lenders, and others the manner in which management of the association (i.e., the board and outside management, if any) is making provisions for non-annual maintenance requirements. Preparing a reserve study calls for explicit association decisions on how to provide for long-term funding, and on the extent to which the association will set aside funds on a regular basis for non-annual maintenance requirements. A good reserve study may also function as a maintenance planning tool for the association.

### **Content of Reserve Studies**

California's Common Interest Development Act sets forth California's legal requirements for reserve study information to be included in the annual association budget. California Civil Code Section 1365 requires that homeowner associations prepare and distribute certain financial information, including a pro forma operating budget, 30-90 days prior to the start of the association's next fiscal year.

Thus, the pro forma operating budget must contain, at a minimum, the following items:

- estimated revenue and expenses on the accrual basis of accounting;
- identification of total cash reserves currently set aside;
- estimated remaining life of major components;
- estimated current replacement cost of major components;
- If applicable, the amount of any construction defect related award or settlement and the disposition of such funds;
- The total cash reserves expressed as a percentage of the current replacement cost, and the current deficiency in reserve funding on a per-unit basis;
- identification of methods of funding for future repair, replacement or additions to major components (including notification of any deferred repairs or replacements, anticipated special assessments, or certain outstanding loans to the association); and
- statement of methods used to develop estimates and funding plan.

The Civil Code requires a specific form to be used in disclosing the above items pursuant to Civil Code Section 1365.2.5.

Since the time when these requirements were established, a number of California CIDs have assembled data and produced reports in response to the law. Many CIDs, however, still have not developed required component information or funding plans. This is particularly true in smaller, self-managed associations. Even in larger associations with extensive professional support, there is often conflicting advice on what is required.

The law calls for disclosure of specific information from the "reserve study." The law does not specify the funding goal to be achieved by an association, nor does it dictate the exact form of the reserve study. While a study alone, containing the elements prescribed by Civil Code Section 1365.5, is sufficient to constitute legal compliance, an association will be stronger financially if regular assessments are collected to help assure funding of replacement requirements as they occur.

This report is the result of a project that gathered information on current reserve study practices in California, including interviews with board members and industry professionals concerning their experiences with, opinions on, and appropriate responses to the reserve study provisions of Section 1365.5. This document sets forth several decision points necessary for the board to respond to the reserve study requirements. By following the procedures set forth in this document, it should be possible for reserve studies to be produced that include the information called for in Section 1365.5 and that comply with good business practice in the management of association property.

The texts of Civil Code Sections 1365 and 1365.5 are included next as Exhibit 1.1.

## Exhibit 1.1 - California Civil Code Sections 1365 and 1365.5

### Section 1365

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

- (a) A pro forma operating budget, which shall include all of the following:
  - (1) The estimated revenue and expenses on an accrual basis.
  - (2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, based only on assets held in cash or cash equivalents, which shall be printed in boldface type and include all of the following:
    - (A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
    - (B) As of the end of the fiscal year for which the study is prepared:
      - (i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.
      - (ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.
      - (iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). Instead of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.
    - (C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).
    - (D) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of clause (ii) of subparagraph (B) from the amount determined for purposes of clause (i) of subparagraph (B) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.
  - (3) A statement as to all of the following:
    - (A) Whether the board of directors of the association 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.

- (B) Whether the board of directors of the association, consistent with the reserve funding plan adopted pursuant to subdivision (e) of Section 1365.5, 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.

- (C) The mechanism or mechanisms by which the board of directors 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.

- (D) 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.

- (4) 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 report shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (b) of Section 1365.2.5, 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.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

Notwithstanding a contrary provision in the governing documents, a copy of the operating budget shall be annually distributed not less than 30 days nor more than 90 days prior to the beginning of the association's fiscal year.

- (b) Commencing January 1, 2009, a summary of the reserve funding plan adopted by the board of directors of the association, as specified in paragraph (4) of subdivision (e) of Section 1365.5. 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.
- (c) 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 within 120 days after the close of each fiscal year.
- (d) Instead of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all

of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

- (e) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members not less than 30 days nor more than 90 days immediately preceding the beginning of the association's fiscal year.
- (f)
  - (1) A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies, which shall be distributed not less than 30 days nor more than 90 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:
    - (A) The name of the insurer.
    - (B) The type of insurance.
    - (C) The policy limits of the insurance.
    - (D) The amount of deductibles, if any.
  - (2) The association shall, as soon as reasonably practicable, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.
  - (3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) 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 to all of its members.
  - (4) The summary distributed pursuant to paragraph (1) 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 subdivision (f) of Section 1365 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."

1365.5. (a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

- (1) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.
  - (2) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.
  - (3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.
  - (4) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.
  - (5) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.
- (b) The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of moneys from the association's reserve accounts.
- (c) (1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components that the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.
- (2) However, 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 notice of meeting, which shall be provided as specified in Section 1363.05. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. 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. 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. 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 1366. 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.

- (d) When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.
- (e) At least once every three years, the board of directors 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.

The study required by this subdivision 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. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plan shall be adopted by the board of directors at an open meeting before the membership of the association as described in Section 1363.05. If the board of directors determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in Section 1366.

- (f) As used in this section, "reserve accounts" means both of the following:
- (1) Moneys that the association's board of directors has identified for use to defray the future repair or replacement of, or additions to, those major components that the association is obligated to maintain.
  - (2) The funds received, and not yet expended or disposed of, from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from funds described in paragraph (1).
- (g) As used in this section, "reserve account requirements" means the estimated funds that the association's board of directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components that the association is obligated to maintain.
- (h) This section does not apply to an association that does not have a "common area" as defined in Section 1351.

## **2. How Do Reserves Fit into the Overall Financial Plan?**

The reserves are an important part of the association's annual pro forma operating budget. The replacement reserves relate to association budgeting in two important ways:

- The pro forma operating budget will include planned replacement reserve funding and the accrual-basis expense for the year.
- The reserve estimates depend on assumptions about the association's maintenance program, and maintenance expense is a part of the operations budget.

It is important that association members understand the difference between operations and replacement reserve activities. Boards should establish policy to distinguish between reserve expenses (funded from the replacement reserve account) and operating expenses (funded through the non-reserve operating budget).

In common interest developments, the following division of maintenance and replacement responsibility is typical, although actual items included in each category will vary according to each association's physical plan and governing documents:

- individual responsibility for maintenance;
- association responsibility for day-to-day maintenance of common area;
- association responsibility for non-annual maintenance and replacement of common area;  
and
- association responsibility for improvements.

Individual homeowners are usually responsible for maintenance of their own units. Certainly, this includes maintenance of interiors of the homes themselves. The carpeting, interior paint, kitchen counters, etc. are typically the separate responsibility of the unit owner. In addition, the owner may

have explicit maintenance responsibility for exclusive use common area (such as private yards, decks, front doors, etc.), or for some exterior features of the unit (such as siding, roofs, etc.).

Individual and association maintenance and replacement responsibilities can interrelate. For instance, individuals in their private units are responsible for periodic replacement of the caulking around the bathtub. Failure to replace caulking may result in moisture intrusion into walls and subflooring, and could eventually cause damage to the common area structure of the building, or another unit.



The association usually maintains the common area, which typically includes landscaping, recreation facilities, parking areas, drainage gutters, outdoor lighting, and other public or "common" property. Day-to-day maintenance for these items is the responsibility of the association, and provision for this maintenance is frequently the largest category of expense in the operating budget. Individual owners, while not directly responsible for day-to-day maintenance, do have responsibility for obeying rules and regulations pertaining to the use and protection of common area property. Unfortunately, some owners do not realize their community responsibilities or the fact that damage to common area property can result in direct costs to all homeowners through assessments.

The association is responsible for the long-term maintenance and replacement of common area components as they end their useful lives. Usually, this type of replacement can be planned well in advance, based on industry information about the expected life of the various components and periodic physical inspection of wear.

Association improvements can be considered a special category of expense. If there is an addition to the common area, not planned in the original development, the association may elect to fund and make the addition. Improvements are typically onetime additions; once a part of the common area, the improvements require both day-to-day maintenance and provision for repair and replacement.

Clear distinctions must be made between the private property of individual owners in CID projects and the common areas for which the association is responsible. Ideally, association governing documents are very explicit in distinguishing that which is private property from that which is common area property maintained by the association. However, sometimes the status of component is not identified, or is identified erroneously. We have seen association governing documents that specify responsibility for components that are not in the complex (e.g., interior hallways) or that fail to define the responsibility for other important components. If the governing instruments don't allocate these responsibilities clearly, the association may wish to consider amending the documents.

### **3. What Are the Steps in Doing a Reserve Study?**

A Reserve Study is made up of two parts: the Physical Analysis, and the Financial Analysis.

1. The Physical Analysis provides information about the physical status and repair/replacement cost of the area components the association is obligated to maintain. The Physical Analysis is comprised of the Component Inventory, Condition Evaluation, Age Adjustment [based on useful life (total) and remaining life of the components] and the Costs to Replace. The Component Inventory should remain relatively "stable" from year to year, while the

Condition Evaluation, Age Adjustment and Cost to Replace and Valuation will clearly change from year to year.

2. The Financial Analysis is the analysis of the association's Reserve income and expenses. The Financial Analysis is made up of a finding of the client's current Reserve Fund strength (measured in cash or as a Percent Funded) and a recommendation for an appropriate Reserve contribution rate (Funding Plan).

Many CID homeowners or home buyers assume that their reserve requirements have been adequately established because developers prepare a reserve budget worksheet as part of the project approval process. This worksheet is filed with the California Department of Real Estate (DRE) along with other information in order to obtain a Final Subdivision Public Report that allows the developer to begin selling homes in the project. The reserves worksheet is used to estimate the monthly reserve contribution in the association's first-year budget. Developer estimates may have been prepared one, two, or more years before the project is actually constructed. As a result, they may be dated by the time the first unit is sold, unless they have been subsequently adjusted for changes in replacement costs. More seriously, since the information was assembled at the planning stage, the reserve worksheet may not reflect the association's true liability for the project as actually constructed.

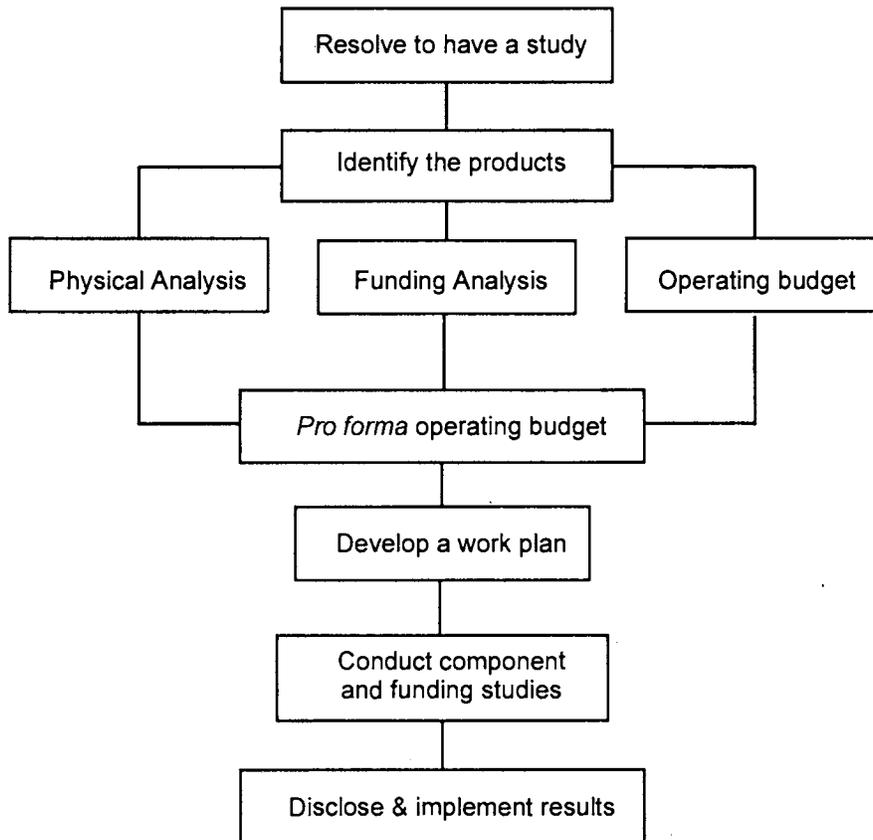
Another possible shortcoming is that the standard preprinted reserves worksheet contains only certain major components (e.g., roofing, painting, paving, etc.).

Consequently, some components may not be listed even though the association must repair and/or replace them. In addition, the estimated life shown for components may not reflect local conditions, and the costs shown may not be based on actual local prices. When associations compare the reserve worksheet to their reserve responsibilities, they may find that the worksheet needs modification.

Consequently, a new association should conduct its own reserve study before the project is more than a few years old. Exhibit 3.1 shows the major decisions an association board should make to produce reserve information.



### Exhibit 3.1 – Steps in Providing for Adequate Reserves



#### **Resolve to Have a Reserve Study**



The board should pass a resolution that a reserve study shall be performed and that the association is committed to taking the necessary steps. Older associations that have been operating without a reserve study, or funding plan, should initiate this process as soon as possible. New associations should have a Reserve Study done in a timely manner and certainly by the end of the first year of any significant construction, as initial budgets may not include a physical analysis of the new construction. The California Civil Code requires the Board of Directors of existing associations that have completed a study to review the study annually and consider and implement any necessary adjustments as a result of that review. For new associations it may not be possible to make that analysis without including a Physical Analysis and ensuring the Component Inventory is consistent with what was actually built. Additionally, the Civil Code requires that a Physical Analysis be conducted at least every three years. With ongoing construction, it may well be necessary to do such analysis annually in order to adjust for changes during construction. The Board of Directors should carefully consider these factors for new homeowners associations.

### **Identify the Work Products**

The board should identify the reserve study products needed and who is to produce them. A Physical Analysis, a Financial Analysis, and the text and exhibits to be included in the reserve study portion of the annual pro forma operating budget will cover the statutory requirements and also provide sufficient detail for long-term association financial planning. As discussed in Chapter 5, the pro forma operating budget must also disclose to homeowners and potential homeowners other important information about reserve funding and obligations.

An association board may contract for the preparation of Physical Analysis, Funding Analysis, and operating budget by professionals, or it may decide to produce one or more of these products by itself. Another option is for the board to perform part of the work and hire a professional to do the rest. Chapter 6 will discuss the option of hiring professionals for some or all of the reserve study tasks.

### **Develop a Work Plan**

Before conducting a reserve study, an association board should develop a work plan, specifying the nature of the tasks to be performed. The work plan should establish:

- the types of components to be included or excluded
- the timeframe for funding common area components
- the budget available for conducting the study

**Choosing which components to include.** Components can be excluded from the reserve study only if individual homeowners, not the association, are responsible for their replacement. In any association, there may be "exclusive use common areas" that individual homeowners usually maintain. Defined by California statute as common area items used exclusively by individual units (e.g., decks and patios), these areas are usually identified in the association governing documents known as the Covenants, Conditions, and Restrictions (CC&Rs). The CC&Rs should also make clear the maintenance responsibility of the association and homeowners for these items.

With the guidance of their CC&Rs, the board should make a separate list of exclusive use common area components and decide who should bear the responsibility for maintaining these items. If the association has responsibility for maintaining these items, they should be included in the list of major components and be given a line item in the reserve budget.

Whatever the board decides, the documentation of the reserves and the assumptions that are an integral part of the study should include appropriate disclosure of such specifications. Any information distributed to homeowners, or prospective homeowners, should disclose which of these items were included and which excluded.

**Timeframe.** Professionals do not always agree on the appropriate timeframe for a reserve study. The California Civil Code requires, as a minimum, all components with a useful remaining life of less than 30 years be included in the study. However, pursuant to Civil Code Section 1365.2.5, any components with a remaining useful life of more than 30 years that are not included must be reported in the reserve study report and the Assessment and Reserve Funding Disclosure Summary. It should be noted that a component with a long useful remaining life, that may have been excluded in earlier studies, could be included in a later study if its useful remaining life drops to within the time

parameters of a later study. A good rule of thumb is to forecast for a time period that will include the replacement year of the component with the longest estimated useful life. Professionals generally recommend that the study include all components that will fail before the building itself. "Life-of-the building" components (such as the building foundation and structure) are generally omitted from the reserve study budget. However, if there is reason to expect the item to wear out before the building does and if, due to the age of the units, the item may wear out within the time span of the reserve study, then that item (e.g., the electrical or plumbing system in a condominium) should be included as a reserve study component.

Obviously, the ability to estimate accurately is best in the near term. Estimates of costs that are 20 to 40 years away are at best an educated guess. However, a reserve study is incomplete and may be misleading unless it covers the life of the longest-lived component. Since studies should be reviewed annually as a part of the association's regular budget cycle, estimates can be updated as necessary.

**Budget available for conducting the study.** The third consideration will be the amount of money available to conduct the initial study. All associations required to perform a reserve study under the California Civil Code should, on an annual basis, adequately fund their budget to enable them to either conduct a study or hire outside professionals to complete the study, if need be, and/or pay for study updates at least once every three years.

### **Conduct the Component and Funding Studies**

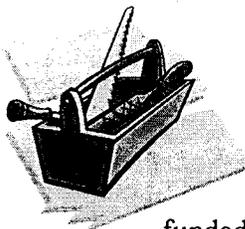
The board should identify some documents, including the CC&Rs, the most accurate existing drawings of the development, and the maintenance history of major common area components. If "as-built" drawings exist, these are the best source of information about the nature of the major components. The maintenance history obtained should include the actual dollar cost figures of that maintenance. If the association does not already do so, it may wish to create a "permanent" maintenance history file for each major component. Chapters 4 and 5 describe the conduct of the component and funding studies in detail.

### **Accept, Disclose, and Implement the Results**

The board reviews and accepts the reserve study and incorporates a summary of the long-term funding plan, and certain other information, in the pro forma operating budget, as provided in Civil Code Section 1365.

## **4. What Are the Steps in Conducting a Physical Analysis?**

The goals of a Physical Analysis are to:

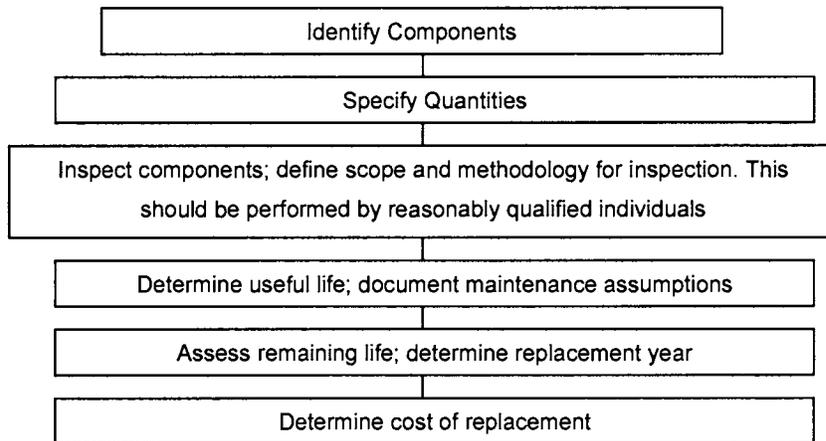


- estimate useful and remaining life of major components; and
- estimate current replacement cost of major components.

The Physical Analysis lists and estimates replacement costs and timing for replacement of the major components whose repair or replacement is to be funded through association reserves. The study determines when such repairs or replacements will be needed and what they will cost. The major steps in conducting a Physical Analysis are shown in Exhibit 4.1.

There are a number of firms that perform these studies for community associations. This explanation of how to perform a Physical Analysis will help associations to contract for this service and to interpret the study results. For associations who cannot, or do not wish to, hire a Reserve Study preparer, this explanation will provide guidelines for board members who decide to perform their own Physical Analysis. (See Chapter 6 for additional discussion on hiring professionals.) Boards of Directors should consider the fact that they could lose the personal indemnity that comes from relying on professional advice if they choose to undertake their own study. Because of this, you should consider seeking legal advice before proceeding.

**Exhibit 4.1 – Steps in the Physical Analysis Process**



**Exhibit 4.1 – Steps in the Physical Analysis Process**

For each association, the exact list of major common area components is unique. Although lists from other associations or industry publications (including this one) may serve as a general guide, they are rarely usable without modifications and additions. **An inaccurate or incomplete list of components can materially distort the association’s long-term funding plan.**

**Criteria for Components**

The board should establish criteria for determining common area major components. Many professionals suggest that items be placed on the list of components for the reserve budget if they meet all of the following criteria:

- the item is the responsibility of the association to maintain or replace, rather than the responsibility of the individual homeowners;
- the item costs over a certain amount to replace (amount to be determined by the board);<sup>1</sup>
- the estimated useful life of the item is greater than one year; and the estimated useful life of the item is less than thirty years at the time of the study.

---

<sup>1</sup> One possible guideline is to include items that cost 1% or more of the total annual association budget. Another possible guideline is to include items that cost over \$500 or over \$1000 to replace, including groups of related items (e.g., all gates in the development) that cost over \$1000 to replace. The dollar amount or percentage to use as the guideline should be discussed and adopted by the board. Items costing less than this amount may be included in the annual operating budget rather than funded through the reserve budget.

### ***Developing a Component List***

Unfortunately, there is often no one document with a comprehensive list of components for a development. As a result, it is not easy to identify components accurately, although it is essential that the association develop an accurate list of all items for whose repair or replacement it must budget.

The exact list of components to include depends upon the physical characteristics of the project as well as upon the legal division of responsibility among the homeowner, the association, and the local government. Appendix A provides a list of items that might be listed as components for association reserves. This list is not exhaustive of all possible items, but does include many of those that would commonly be found.

The association's "CC&Rs" and condominium plans generally describe the common areas of the development and so can help to provide a list of components. Most CC&Rs describe what is a part of each "unit" and what is outside the unit. In a true condominium, the unit owned by the individual homeowner consists only of the air space within the common walls, although owners are generally responsible for the paint and non-structural fixtures inside, and are generally also responsible for external doors, door hardware, windows, patios, balconies, and similar items (see Civil Code Sections 1351 and 1634). However, in planned developments (PDs), the owners are usually responsible for some portion of the maintenance on the exterior and structure of their individual units as well. The CC&Rs usually specify the division between individual and association responsibility, and will serve as a guide to the components to be included in the reserve study.

The developer's reserve budget should list components that the builder identified while planning the project. Such items as streets, roofs, exterior paint, and recreation areas are usually included in the developer's original reserve budget.

Many an association has found that, despite its existence, an item such as a sidewalk or set of balconies has not been mentioned in either the CC&Rs or the developer budget. A site analysis by knowledgeable persons should result in a comprehensive list of reserve items for which the association is, or might be, responsible. (For a list of items that are often overlooked in the CC&Rs and the developer budget, see Appendix B.)

Local governments and utility companies can often help define common area components by stating where their responsibility ends and that of the association begins. For example, the developer budget and the CC&Rs may be unclear about whether the sidewalks along the edge of a development belong to the association or the city. If the former, these sidewalks are components which, at some point in time, should be included in the reserve budget; if the latter, the association need not budget for their repair or replacement.

### ***Specifying the Quantity of Each Component***

Although existing maps and construction drawings of the development may serve as a guide to component quantities, a detailed site and building analysis is the best way to obtain an accurate count of these items. For some components (e.g., streets, roofs, fences) the square or linear footage must be measured in order to describe the quantity, while for other items (e.g., utility room doors) it may be sufficient to know the number required. "As-built" drawings are an excellent source of information for these quantities, but in their absence the items should be accurately measured.<sup>2</sup>

---

<sup>2</sup> The drawings filed when the development was begun represent builder plans rather than the development as actually built. As such, they are useful but should be verified by physical inspection.

For components that are actually made up of a number of items, the nature and quantity of the constituent parts should be stated (e.g., the metal flashing for a shake roof as well as the square footage of shingles). It is common to neglect the “extra” pieces that are in fact necessary to the construction of such essential items as roofs, siding, and irrigation systems.

Once the number and constituent parts of each component are detailed, it is necessary to give some consideration to the quality and specifications of those parts. (Is the asphalt two inches thick or four inches? Is it a two-ply roof? What grade paint was used?) An accurate description of the materials is essential to proper reserves.<sup>3</sup> If significant in dollar amount, quantities of the same type of component existing in very different conditions should be noted separately (e.g., the square footage of siding with western or southern exposure as compared to the square footage with eastern or northern exposure).

### ***Determining the Useful and Remaining Life of Each Component***

“Useful life” is typically defined as the number of years the component is expected to serve its intended purpose if given regular and proper maintenance. If the association fails to provide proper maintenance, such as dealing effectively with the presence of wood-destroying pests or organisms as provided in Civil Code Section 1364, then it may become difficult to anticipate the “useful life” of components.

One estimate of useful life is the material manufacturer’s warranty. This estimate presumes (usually in writing, in the fine print of the warranty) that the product was actually installed with the purported quality of materials and according to the manufacturer’s specifications. (Some associations have found that their alleged “twenty-year roofs” were in fact installed with other materials or with inferior workmanship, making the effective useful life shorter.) When no knowledgeable inspection is made of the materials and installation, the manufacturer’s warranty may not be an accurate description of the useful life of the component.

The Department of Real Estate publishes an *Operating Cost Manual for Homeowner Associations* which includes the average useful life for a number of major components. Some commercially available manuals also have estimates of useful life.<sup>4</sup> Published data may not be consistent with the location, exposure, or type of a particular component. The estimated life of a street as predicted from national data may well be lower than that of a street in the comparatively mild climate of California, but the estimated life of exterior paint as predicted from national averages may be higher than that of paint on buildings in windy or coastal areas. Similarly, paint on western or southern exposures weathers faster in sunny climates, reducing the useful life of a paint job in California and particularly reducing it for certain walls. In using published estimates, it is necessary to consider how the specific case in question may differ from the average case considered by the manual’s author.

Useful life estimates vary considerably from manual to manual, so consulting more than one manual may minimize the risk of under- or over-estimating the life of a major component. In any case, the source(s) of component estimates should be identified specifically.

---

3 While the association may wish to change the quality of the component at the time of replacement, this is a separate decision.

4 For example, manuals are distributed by R.S. Means Company, Inc., F.W. Dodge, Lee Saylor, Inc., and Marshall & Swift.

The remaining life is generally defined as the expected number of years the component will continue to serve its intended purpose prior to repair or replacement. If the development is new and the developer-prepared estimates are correct, the remaining life might be estimated simply by subtracting the age of the development from the useful life of each component. The older the components, the less accurate this method will be.

Some of the factors that affect the estimate of remaining life of a component are its current age, apparent physical condition, and past maintenance record (or absence of maintenance). The current age of the component may be determined from association records. The apparent current condition must be determined through physical inspection, preferably by someone familiar with the component. Records of past maintenance must be compared with recommended maintenance in order to determine whether the item has been properly maintained or may wear out sooner than expected due to inadequate care.

In determining the remaining life of a component, a certain level of continued preventive maintenance is assumed. These maintenance assumptions should be stated explicitly so that proper maintenance can be continued throughout the component's remaining life.

The remaining life of a component implicitly specifies the year in which it must be repaired or replaced. A budget timeline can be used to show the year of replacement for each component. This timeline can serve as a schedule for expected component replacements and can be updated or changed when the Physical Analysis is updated or as components last for shorter or longer periods than expected. Exhibit 4.2 shows the year of replacement for three components in a condominium complex that is five years old, as well as the information needed to determine the replacement year.

**Exhibit 4.2 – Determining the Replacement Schedule**

<i>Component</i>	<i>Age in Years as of 12/31/95</i>	<i>Estimated Useful Life</i>	<i>Estimated Remaining Life</i>	<i>Year to Replace</i>
<i>Painting</i>	3	5	2	1998
<i>Paving (slurry coat)</i>	4	7	3	1999
<i>Roofing (wood shingle)</i>	11	15	4	2000

### ***Determining the Cost of Replacement***

Replacement costs can be obtained from manufacturers or their representatives on some items and from local licensed contractors on others. It is important to remember that the cost of component replacement should also include the cost of removing the existing component, if appropriate.

There are a number of recognized cost estimating manuals available with pricing information that can be used (e.g., R.S. Means Company, Inc., F.W. Dodge, Lee Saylor, Inc., Marshall & Swift). Cost estimates are generally comparable among manuals intended for the same geographic area, so there is less need to consult multiple manuals for cost estimates than for estimates of useful life. However, there are some cautions to be observed in using these manuals to determine costs. The majority of professionals performing reserve studies for homeowner associations obtain their cost estimates from a data base gathered from their experience. Cost estimates derived from this data could vary significantly from estimates based on manuals alone. Therefore, it may be prudent for associations performing their own study to obtain additional supporting data for their manual cost estimates from other sources, such as contractors, suppliers, etc. This collection of data should then be considered in conjunction with the results of an inspection by a reasonably qualified person when making a final determination of replacement cost.

It is important to determine the specific geographic area for which the manual offers a cost average. If the manual has national averages, it probably underestimates the cost of labor in many parts of California. If the manual has statewide or national averages, it may underestimate the cost of labor in urban areas by a significant factor.

It is also important to determine the base year in which the manual's cost estimates were made. The current cost of replacement for association components is not the cost shown in the manual, but should be adjusted for inflation since the time the cost data were obtained.

### ***Using Component Data to Develop the Funding Analysis***

Once the charts of replacement schedule and future replacement costs are completed, the Physical Analysis is finished. The next step is to figure out how much will be spent in each year for all components, and that step is a part of the Funding Analysis.

### ***Documenting Maintenance Assumptions***

An important adjunct to determining the useful life and remaining life of a component is to document the type and schedule of maintenance that is assumed for the component to survive that life. For example, if the twenty-year life expectancy of a roof is based upon an annual cleaning of the roof and gutters, the association will be able to take action to help ensure that all the roofs will indeed last. Documentation of maintenance assumptions can lead to improved maintenance throughout the project and thus to lower costs of replacement. Ignoring maintenance assumptions, or improper maintenance, will put the replacement schedule and cost estimates in jeopardy.

Thus, a properly prepared Physical Analysis will lead to a better maintenance program for the association. Clear and concise maintenance suggestions are a useful supplement to a professionally prepared Physical Analysis. These suggestions may save more than the cost of the original study on future repairs and replacements.

### Exhibit 4.3 – Physical Analysis Checklist

This checklist summarizes the major steps in developing the Physical Analysis and, under each step, suggests certain actions the Board or its designated reserve study preparer may wish to consider in performing each step.

#### Deciding which components to include:

- relevant components mentioned in the developer budget have been reviewed
- components mentioned in the CC&Rs have been reviewed
- an on-site inspection for possible additional components has been made
- the board has had a public discussion and has determined a policy stating its position on life-of-the-building, exclusive use, and quasi-structural components
- the board has communicated the list to the preparer of the Physical Analysis and, in the pro forma operating budget, to the homeowners

#### Specifying quantities of each component:

- as-built drawings have been consulted, if possible
- an on-site inspection of each component and an on-site count of each type of component have been made
- the quality of each component has been determined and expressed in terms that identify a specific grade of material

#### Determining the useful life of each component:

- manufacturer warranties have been consulted whenever possible
- environmental factors that might affect useful life have been taken into account
- installation and materials have been determined to be consistent with each manufacturer's description; if not, an adjustment has been made to the remaining useful life estimated by the warranty or by the manuals
- a standard manual has been consulted
- maintenance assumptions have been documented

#### Assessing the remaining life of each component:

- an on-site inspection of each component has been made
- past maintenance has been taken into account
- individuals with knowledge of the components have participated in the assessment of remaining life
- the board has determined what level of maintenance is expected to achieve the remaining life estimated

#### Determining the cost of replacement:

- a standard costing manual has been consulted or more than one tradesperson asked for a price for each component
- if a manual is used, the "current" price of each component has been adjusted for the age of the data in the manual
- if a manual is used, regional variations in price are taken into account
- cost of replacement includes cost of removing old component, if necessary
- adjustments have been made for grade or quality of materials or levels of maintenance of materials

## 5. What is Involved in Developing a Funding Analysis?

The goals of a Funding Analysis are to:



- establish funding goals
- identify annual funding requirements
- disclose limitations and assumptions

Once the components' estimated useful life, estimated remaining life, and estimated current replacement costs are identified, the association is ready to develop a plan for funding the reserve account. This funding plan specifies future reserve cash needs and planned methods for funding.

In preparing the funding plan, the association will have to make decisions about the amount of current assessments and the need for special assessments, balanced against projected liability. The law does not require the funding of projected replacement costs, only an explicit description of the plan for such funding, among other specific disclosures. Clearly, however, the financial viability of the association will depend a great deal on the ability of the association to replace components as they wear out and not to defer major maintenance items.

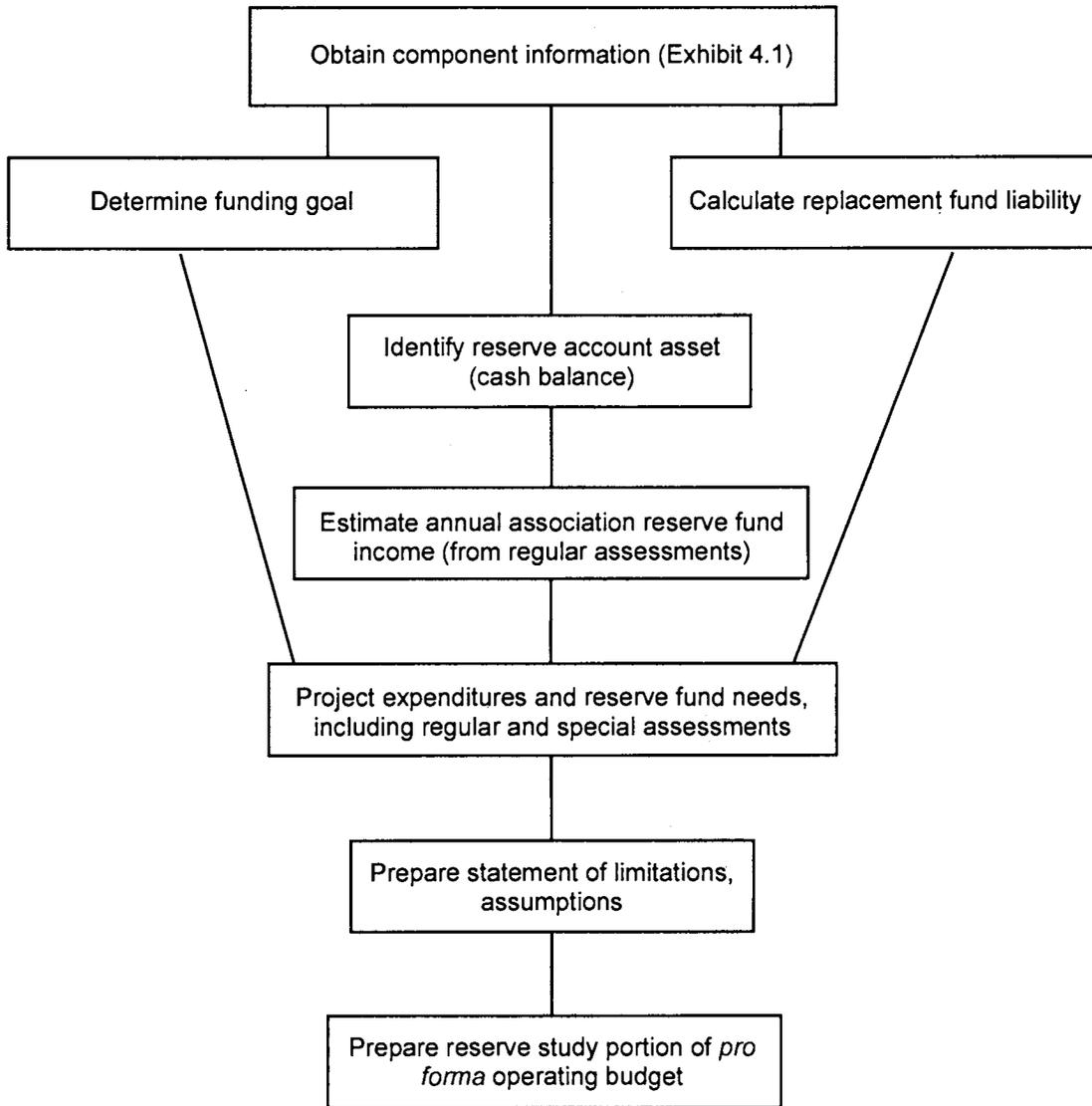
A product of the Funding Analysis process is the development of a funding plan (cash flow forecast or projection) to estimate future reserve cash receipts and disbursements. This is most easily presented in a spreadsheet format. All supporting assumptions and methodology should be carefully documented.

Exhibit 5.1 shows the major steps in the development of the funding plan and the reserve study portion of the *pro forma* operating budget. As an association completes these steps, the board will make major policy decisions. Professionals may be able to advise the board on key decisions, but it is important for the board to understand each of these decisions, since they independently affect the overall results of the funding plan. Since the amount of regular assessments and the need for any special assessments should be indicated in the plan, these decisions will affect the owners' monthly costs and property values. Because of their importance, each decision is discussed in turn, with an example showing how these decisions contribute to a long-term funding plan.

### **Determining the Funding Goal for Replacement Reserves**

Section 1365(a)(4) of the California Civil Code calls for identification of the methods of funding used to defray future repair, replacement, or additions to major components. Revenues and expenses are to be estimated on an accrual basis. However, a specific funding goal is not indicated in the law. In preparing these guidelines, we have identified several major funding strategies followed by associations. Determination of the funding strategy, including establishment of the funding goal, is one of the most important fiscal decisions to be made by an association board. The *pro forma* operating budget should clearly indicate estimated revenues and expenses, describe the funding goal, and indicate current status in meeting the goal.

### Exhibit 5.1 – Steps in the Funding Analysis Process



The funding plan should show the funds required to replace each component as it comes to the end of its useful life and indicate how the association will fund the replacements. The association should decide how much should be raised through regular assessments for the reserve account each year and how much should be raised by special assessment, if any. In addition, the association should consider how much cash will remain in the reserve account at the end of the planning period relative to the projected balance needed at that date.

Associations will have to make difficult policy choices in determining the funding goal. Many associations are currently underfunded in reserves. This is due to a lack of attention to reserve budgets in the past and underestimation of replacement costs. An ideal goal for an association is to eliminate this underfunded reserves deficit or shortage. That is, to build up the reserve fund to a

level where the cash in the replacement reserve account is at least equal to the estimated value of accumulated wear of all major components. However, this goal may not be within reach of many associations in the short run, except through special assessments.

We can identify at least three basic funding goal models. Depending on current association finances and financial health, one of these models may be currently operating. The three models identified are:

- Fully Funded Model -- setting a Reserve funding goal of keeping the Reserves at or near 100% funded.
- Threshold Funded Model -- setting a Reserve funding goal of keeping the Reserve balance above some threshold. Depending on the mix of common area major components this model may be more or less conservative than the fully funded model. The only way to tell is to compare the two models closely.
- Baseline Funded Model -- "Minimum Funded Model - setting a reserve funding goal of keeping the reserve cash balance at the end of each year in the overall reserve funding projection at or above \$-0-."

Each of these models depends on an analysis of cash flows into and out of the reserve fund over the next thirty years. Assessment calculations are then made sufficient to reach the Board of Director's funding goals.

**Calculating the Reserve Deficit:** The law establishing the reserve study requirements calls for annual disclosure of "estimated revenue and expenses" on an accrual basis. In the case of revenues, this estimate includes regular and special assessments, as well as the after-tax interest income earned on accumulated cash reserves. "Expenses" can be accrued by spreading the eventual replacement cost of each component over its total useful life or obtaining an estimate of annual component wear. After that is done, there are several methods which may be used to calculate the required estimated reserves for components and to calculate any deficit or shortage in the reserve fund, two of which are shown below.

If a component currently valued at \$10,000 has a useful life of ten years, then we can estimate the annual wear, or the annual provision for the replacement fund, at \$1,000. By year five, this component, then, would have accrued a liability of \$5,000, assuming no inflation. (If an association is "fully funded," we would expect that this \$5,000 would already be in the reserve account by the end of the fifth year.)

Exhibit 5.2 shows how to calculate a deficit in the reserve fund which can also be thought of as the current unfunded portion of the estimated value of accumulated wear of all major components. The example uses the same components shown in Exhibit 4.2. It assumes that the association, consisting of 35 units, will have an estimated \$22,000 in its reserve account at the beginning of the upcoming fiscal year. Given its liability of \$36,000 for the three components for which it is responsible, this association has a reserve deficit of \$14,000, a total of \$400 per unit.

### Exhibit 5.2 – Calculating A Reserve Deficit

Desired Balance = Current Cost/Useful Life x Effective Age  
*The Reserve Deficit = Desired Balance - cash reserves*

<i>Component Replacement</i>	<i>Current Cost</i>	<i>Useful Life</i>	<i>Effective Age</i>	<i>Desired Balance</i>
<i>Painting</i>	<i>\$10,000</i>	<i>5</i>	<i>3</i>	<i>\$6,000</i>
<i>Paving</i>	<i>\$14,000</i>	<i>7</i>	<i>4</i>	<i>\$8,000</i>
<i>Roofing</i>	<i>\$30,000</i>	<i>15</i>	<i>11</i>	<i>\$22,000</i>
<i>Total Desired Balance (current)</i>				<i>\$36,000</i>
<i>Estimated cash reserves (current)</i>				<i>\$22,000</i>
<i>Reserve Deficit (current)</i>				<i>\$14,000</i>
<i>Reserve Deficit per unit (\$14,000 ÷ 35 units)</i>				<i>\$400</i>
<i>Percentage of Funding</i>				<i>61%</i>

The problem with the above model is that it does not take into account the impact of interest and inflation. An alternative model, which does take interest and inflation into account is as follows:

$$\text{Desired Balance} = \left( \frac{\text{Current Cost}}{\text{Useful Life}} \times \text{Effective Age} \right) + \left( \frac{\frac{\text{Current Cost}}{\text{Useful Life}} \times \text{Effective Age}}{(1 + \text{Interest Rate})^{\text{Remaining Life}}} \right) - \left( \frac{\frac{\text{Current Cost}}{\text{Useful Life}} \times \text{Effective Age}}{(1 + \text{Inflation Rate})^{\text{Remaining Life}}} \right)$$

While the formula looks complicated, using it for each component yields the following results (assuming 3% inflation and 5% interest after taxes):

<i>Component Replacement</i>	<i>Current Cost</i>	<i>Useful Life</i>	<i>Effective Age</i>	<i>Remaining Life</i>	<i>Desired Balance</i>
<i>Painting</i>	<i>\$10,000</i>	<i>5</i>	<i>3</i>	<i>2</i>	<i>\$5,787</i>
<i>Paving</i>	<i>\$14,000</i>	<i>7</i>	<i>4</i>	<i>3</i>	<i>\$7,590</i>
<i>Roofing</i>	<i>\$30,000</i>	<i>15</i>	<i>11</i>	<i>4</i>	<i>\$20,553</i>
<i>Total Desired Balance (current)</i>					<i>\$33,930</i>
<i>Estimated cash reserves (current)</i>					<i>\$22,000</i>
<i>Reserve Deficit (current)</i>					<i>\$11,930</i>
<i>Reserve Deficit per unit (\$11,930 ÷ 35 units)</i>					<i>\$340</i>
<i>Percentage of Funding</i>					<i>65%</i>

While this formula takes a bit more work, assuming the interest and inflation rate estimates are accurate, it may be more reflective of the true amount of the Reserve Deficit. In most cases, the difference between the two methods is not material. However, with some mixes of common area major components the difference can be quite noticeable and failure to properly take interest and inflation into account can unfairly lead to unrealistically high calculations of the reserve deficit.

**Unfunded & Special Assessment Model:** This is the default model in place in many associations today. The association does not have reserve balances that will cover expected replacement costs, and the only recourse is to schedule special assessments to cover these costs when they are due. Lack of information about needed special assessments is a real problem for some common interest development owners. One-time costs impose an additional financial burden on owners who often have chosen CIDs for cost reasons. This is the riskiest of the models, and could jeopardize the financial viability of the association if assessments cannot be raised when needed.

**Mixed Model:** This is also a common model, with a combination of regular and planned special assessments to meet the cash needs of replacement. The degree to which an association can meet its cash needs through regular as opposed to special assessments may be an indicator of the association's fiscal stability.

Obviously, the choice of the funding goal or strategy will have a direct impact on the cash required of each individual owner. The strategy, and the degree to which the association has funded its reserves, should affect property value as well. (If an association shows a \$5,000 unfunded reserve deficit per unit, this amount reasonably should be reflected in the sales price.)

California law currently does not specify one model for funding, but obviously the model that reduces or eliminates the Reserve Deficit provides the most stability and is the most conservative. Association boards should carefully consider and document the choice of a funding plan and make the details of the plan available to owners in the reserve study portion of the *pro forma* operating budget. If the information is adequate and clearly presented, owners and buyers should be in a better position to evaluate the value of the unit and the development.

### ***Estimating Association Reserve Fund Income***

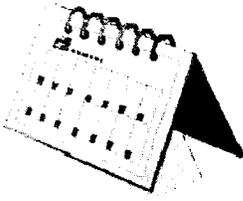
The ideal funding mechanism for building the replacement reserve account is the regular (usually monthly) assessments paid by association members. A specific dollar amount of regular association payments should be earmarked for reserves, and deposited into the reserve account as they are collected. Financing of replacement reserves from regular assessments is desirable. First, it spreads the responsibility for replacements over time, rather than allocating costs to owners who happen to be in the association in the year a particular component comes due for repair or replacement. This funding mechanism provides a more equitable distribution of the costs of aging components. Second, it provides individual owners with more certainty as to the true costs of the property.

Income from regular assessments should be calculated for each year, based on the number of units and the level of assessment per unit. In associations with several rates for different types or sizes of units, the expected income should be calculated for each class of unit and then added. Assessment increases, if any, should be estimated by year.

Section 1366 of the Civil Code provides association boards with the power to increase the regular annual assessment up to 20% per year without membership approval. However, automatic

compounding at these rates would double the assessments in just four years and triple them in six. At this rate, assessments would be 32 times as large by the twentieth year! Clearly, even though automatic increases allow an association to “catch up” with reserve deficits over some period of years, the decision to increase assessments should not be an automatic one, but rather should be a careful decision by the board. Assumptions about assessment increases should be fully disclosed in the *pro forma* operating budget.

### **Projecting Expenditures and Reserve Funding Needs**



The Physical Analysis provides the estimates for expected expenditures by year for each component. Adding these component requirements together, by year, gives the estimate of needed funds over time. We have seen how these estimates should be developed and the assumptions upon which they rely. Association members should be aware of the limitations of expenditure forecasting and of the fact that the overall funding plan is only as good as the initial estimates of replacement costs and the timing of replacement needs. Data similar to that shown in Exhibit 4.2 will be a

direct input to the Funding Analysis.

An important policy issue for the board is the decision to use current costs, or estimated future costs. Use of an inflation rate will generally result in higher estimates of future costs.

If the board uses current costs, it is essential that the board revise the plan annually based upon updated current replacement costs plus currently required or anticipated expenditures. The annual cost for each component would be calculated by dividing the unfunded replacement cost by the remaining useful life. THIS APPROACH IS VALID ONLY IF REPEATED EACH YEAR.

If the board chooses to use an inflation rate, it would apply an average annual long-term cost inflation rate to all components from the time of the study until the year of replacement (based on recent average component cost data). To keep this plan current, it is important to annually review and update projected expenditures, inflation factors and other assumptions. Here also, THIS APPROACH IS VALID ONLY IF REPEATED EACH YEAR.

There are a number of ways to select an inflation rate for estimating component costs in future years. Four reliable sources of information for inflation factors in California are the following:

- the Federal Bureau of Labor Statistics
- published information from construction cost estimating companies such as R.S. Means Company, Inc.
- the State Allocation Board
- Marshall & Swift

Any of these four sources will provide a reasonable estimate that can be used to project future costs. The interest rate assumption is an important board policy decision, and should be explicitly disclosed in the Funding Analysis. Because of their affect on estimating future costs, current cost information and inflation rate assumptions should be reviewed annually, and the projections adjusted as necessary. The examples in this report use an estimated increase in the Consumer Price Index for urban United States over the year. This information is available free of charge through the Bureau of Labor Statistics' 24-hour hotlines. See Appendix C.

Exhibit 5.3 shows the calculation of future replacement costs for the same items that were listed in Exhibit 5.2, projected forward from 1996. For each item, the years of inflation shown in Exhibit 5.3 have been determined from the year of replacement shown in Exhibit 4.2. In a real situation, it may be necessary to add additional years of inflation in order to account for old pricing information. In the example shown here, it is assumed that the pricing information on all components is up-to-date.

### Exhibit 5.3 – Determining the Future Cost of Replacement

<i>Component</i>	<i>Qty &amp; Units</i>	<i>Unit Cost</i>	<i>Current Cost to Replace (1996)</i>	<i>Year to Replace</i>	<i>Future Cost to Replace</i>
<i>Painting, exterior stucco</i>	<i>15,875 sq. ft.</i>	<i>0.63</i>	<i>\$10,000</i>	<i>1998</i>	<i>\$10,941</i>
<i>Paving, slurry coat</i>	<i>35,000 sq. ft.</i>	<i>0.40</i>	<i>\$14,000</i>	<i>1999</i>	<i>\$16,022</i>
<i>Roofing, wood shingle</i>	<i>10,715 sq. ft.</i>	<i>2.80</i>	<i>\$30,000</i>	<i>2000</i>	<i>\$35,913</i>

*(Future replacement cost was calculated with an annual 4.6% inflation rate.)*

### Estimating Interest Earnings of Reserve Account Over Funding Analysis Period



Reserve funds deposited in certificates of deposit or money market accounts will generate interest income to increase the reserves. For forecasting purposes, it is necessary to choose an interest rate. Obviously, a lower rate is more conservative, for planning purposes, than a higher rate. Interest rates can be pegged to current bank rates or CD rates. Income from the reserve and operating accounts is taxable to an association, even if the association is established as a non-profit organization. A board must adjust the interest rate assumption to account for applicable federal and state taxes. (The examples in this report assume a before-tax interest rate of 7.5% and an after-tax rate of 5.8%.)

While it is difficult to accurately project future component cost increases or future interest earned on reserve cash balances, it is important to use these factors for calculations in the Funding Analysis and to update them each year. This is particularly true for associations that have chosen to rely in part on special assessments.

As component replacement comes due in future years, it will draw against reserve funds. Hopefully, the initial reserve account, augmented by regular contributions from routine homeowner assessment payments, will provide enough “cushion” to pay for replacements as they are needed. In some cases, the reserve accounts will not be enough. The cash flow analysis will identify instances where expenditure projections for a given year exceed projected reserve cash balances. In these cases, additional funds from special assessments (or other sources, if any) would be needed to increase the reserve accounts to desired levels.

Some replacement expenses will be impossible to estimate. This might be due to unexpected breakage or destruction, failure in a “life-of-the-project” system, reduced useful life of a component, or other unexpected component cost. A line item in the cost estimates might be established as a contingency. This amount might be limited to 3% to 5% of the first-year budget in a new association. In a conversion, or in older associations with incomplete component documentation, larger contingency levels may be necessary. One useful way to establish estimates for contingency funding in on-going associations is to review prior year spending for contingency-type replacements or continuing repairs. For instance, if there is routine work done annually on underground utilities, then some funds for expected annual levels might be budgeted under the contingency category.

Exhibit 5.4 summarizes these income and cost concepts in a spreadsheet showing the results of the Funding Analysis, using the same components listed in Exhibits 4.2, 5.2, and 5.3. The rows in the spreadsheet show individual component costs and association income sources. The columns show the years included in the Funding Analysis. In this case, we have assumed a funding plan period of thirty years and a mixed model which uses regular and special assessments to maintain a positive cash balance. Because the model is not fully funded, inflation factors are employed based on the method described under “Determining the Funding Goal for Replacement Reserves”.

### **Statement of Limitations and Assumptions**

Limitations to the estimates, assumptions made in order to conduct the estimates, and the model used to make the estimates should all be documented in the Funding Analysis. A statement of the methods used to construct the estimates and the funding plan is a required part of the annual association *pro forma* operating budget.

### **Updating**

Once an association has successfully produced a reserve study (both component and funding studies), the resulting information can be used in the *pro forma* operating budget, which is produced annually. How often does the reserve study need to be updated?

Annual updates of the Funding Analysis can be carried out at the same time as the preparation of the operating budget and can call for required adjustments within the original planning period. The assumptions in the reserve study (e.g., remaining life and cost of components) should be reviewed and updated as necessary. The frequency of updates of component data will depend on the soundness of the original data and estimates, the preparer’s recommendations, the association’s ability to maintain its components adequately, and the requirements of Civil Code Section 1365.5. Even though the methodology calls for a financial study covering a time frame of twenty years or more, annual planning and periodic reviews of the reserve study can rely on updated estimates.

**Exhibit 5.4 – FUNDING STUDY: Estimated Cash Requirements by Year  
(30 year plan – 3 components; values shown here for years 1-5, 15, and 30 only)**

Major Component	Estimated Useful Life	Estimated Remaining Life	Estimated Current Cost to Replace	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Painting	5	2	\$10,000			\$10,000					
Paving	7	3	\$14,000				\$14,000				
Roofing	15	4	\$30,000					\$30,000			
Total Costs			\$54,000			\$10,000	\$14,000	\$30,000	\$0	\$0	\$0
Component cost increase factor @ 4.6% per annum				1.00	1.046	1.094	1.144	1.197	1.877	3.685	
Estimated replacement cost, in scheduled year (apply cost factor to total replacement costs)				\$0	\$10,460	\$15,318	\$34,333	\$0	\$0	\$0	\$0

<i>Cash Flow Forecasts</i>											
	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30			
Assessments, regular		\$1,500	\$1,800	\$2,160	\$2,592	\$3,110	\$10,906	\$30,515			
Assessments, special		\$0	\$0	\$0	\$30,000	\$0	\$0	\$0			
After-tax interest reserve account income, @ 5.775%		\$1,271	\$1,430	\$1,013	\$312	\$229	\$1,519	\$6,482			
Total cash receipts		\$2,771	\$3,230	\$3,173	\$32,904	\$3,339	\$12,426	\$36,997			
Major component costs (from total above)		\$0	\$10,460	\$15,318	\$34,333	\$0	\$0	\$0			
Cash receipts – cash disbursements		\$2,771	(\$7,230)	(\$12,145)	(\$1,430)	\$3,339	\$12,426	\$36,997			
Cash balance, beginning of year		\$22,000	\$24,771	\$17,541	\$5,396	\$3,967	\$26,311	\$112,241			
Cash balance, end of year	\$22,000	\$24,771	\$17,541	\$5,396	\$3,967	\$7,306	\$38,737	\$149,238			

<i>Summary</i>											
	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30			
Estimated liability (total from next page)	\$36,000	\$43,932	\$52,518	\$50,461	\$43,095	\$15,026	\$74,602	\$154,173			
Less cash balance	\$22,000	\$24,771	\$17,541	\$5,396	\$3,967	\$7,306	\$38,737	\$149,238			
Estimated unfunded liability	\$14,000	\$19,162	\$34,977	\$45,065	\$39,128	\$7,720	\$35,865	\$4,935			
Estimated unfunded liability per unit (35 units)	\$400	\$547	\$999	\$1,288	\$1,118	\$221	\$1,025	\$141			

**Exhibit 5.4 – FUNDING STUDY: Computation of Major Component Liability by Year (continued)**

<i>Major Component Replacement Liability</i>	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Painting								
Useful life	5	5	5	5	5	5	5	5
Remaining life	2	1	0	4	3	2	2	2
Replacement cost	\$10,000	\$10,460	\$10,941	\$11,971	\$11,971	\$12,522	\$19,632	\$38,543
Liability	\$6,000	\$8,368	\$10,941	\$2,394	\$4,788	\$7,513	\$11,779	\$23,126
Paving								
Useful life	7	7	7	7	7	7	7	7
Remaining life	3	2	1	0	6	5	2	1
Replacement cost	\$14,000	\$14,644	\$15,318	\$16,022	\$16,759	\$17,530	\$27,485	\$53,961
Liability	\$8,000	\$10,460	\$13,130	\$16,022	\$2,394	\$5,009	\$19,632	\$46,252
Roofing								
Useful life	15	15	15	15	15	15	15	15
Remaining life	4	3	2	1	0	14	4	4
Replacement cost	\$30,000	\$31,380	\$32,823	\$34,333	\$35,913	\$37,564	\$58,897	\$115,630
Liability	\$22,000	\$25,104	\$28,447	\$32,044	\$35,913	\$2,504	\$43,191	\$84,795
Total liability	\$36,000	\$43,932	\$52,518	\$50,461	\$43,095	\$15,026	\$74,602	\$154,173

## Exhibit 5.5 Funding Analysis Checklist

This checklist summarizes the major steps in developing the Funding Analysis and, under each step, suggests certain actions the Board or its designated reserve study preparer may wish to consider in performing each step:

### **Funding goal:**

- the association's funding goal for reserve replacement is clearly specified

### ***Pro forma* operating budget documentation:**

- the budget contains estimated revenue and expenses on an accrual basis
- the budget identifies total cash reserves currently set aside
- the budget shows funds set aside for reserves in a separate account(s)
- the estimated remaining life of all major components is shown
- the estimated current replacement cost of all major components is shown
- the budget document includes identification of methods of funding for future repair, replacement or additions
- the budget document includes a statement on methods used to develop estimates and funding plan
- the *pro forma* operating budget is distributed 45 - 60 days prior to the start of the association's next fiscal year

### **Association income and expense estimates:**

- an appropriate component inflation factor has been used to estimate replacement cost in future years
- the interest rate applied to association cash reserves is reasonable, and is an after-tax estimate
- needed special assessments are clearly identified
- assumptions about increases in the portion of regular assessments allocated to reserves are clearly specified
- income and expenditures are shown annually for the plan period

### **Association cash balances:**

- with reserve assessments, the cash balance (assets - planned reserve expenditures) is greater than zero in every year
- the reserve deficit is estimated for the current year
- the model shows a stable or decreasing reserve deficit (in constant dollars) over the plan period

## 6. How Do Boards Hire Qualified Professionals to Perform Reserve Studies?

While the individual tasks involved in reserve studies are relatively straightforward, an association board may not have the time or the expertise to carry out the work. The estimating and accounting skills required may not be present either in the board membership or in the association's management. Most of the steps described in Chapters 4 and 5 may be performed by consultants under contract to the association. To carry out the reserve study using consultants, the following should be established by the board:

- identification of common area components, exclusive use components, quasi-structural components, and life-of-the-project components (with the assistance of association management);
- the interest rate for estimating income earned on reserve balances; and
- the funding goal of the reserve study, including the degree to which reserves are to be funded by annual assessments and the need for special assessments.

These are policy decisions, to be made by the board of directors. In addition, the board is accountable for the quality of the study itself. The board should carefully specify the work tasks and carefully review potential consultants with respect to previous experience, price, and recommendations from other associations. Some or all of the work tasks that may be performed by consultants are listed below.

### **Physical Analysis Products for Consultants**

- quantification of components
- documentation of maintenance assumptions and recommendations
- identification of useful life and remaining life of components, and replacement year
- estimation of replacement cost in current and future dollars

### **Funding Analysis Products for Consultants**

- spreadsheet modeling of reserve funding, and development of solution(s) meeting the funding goals of the association
- calculation of cash balance of reserve account by year
- estimation and explanation of reserve deficit
- recommendation of needed increases in reserve portion of assessment
- recommendation of needed special assessments and timing of assessments
- preparation of statement of limitations and assumptions of reserve analysis
- preparation of reserve study information for the *pro forma* operating budget

Once the work tasks have been determined, the board must select the consultants or contractors, if any, who will perform all or part of the work. Possible outcomes of this decision-making process include the following:

- hiring an independent engineering, appraisal, or construction cost-estimating firm to perform the Physical Analysis and hiring an independent accountant experienced with community associations to produce the Funding Analysis and *pro forma* operating budget;
- hiring an organization with staff expertise to perform an integrated component and Funding Analysis;

- having the board or manager prepare these studies in cooperation with independent construction contractors and accountants, as needed;
- hiring the current management company to perform both studies and incorporate the results into the *pro forma* operating budget; and
- using any of the above in conjunction with additional work tasks performed by the board.

The type of assistance that will be needed depends upon the nature of the product(s) desired, the budget, and expertise available to the association board. The board is ultimately responsible for the reserve study disclosures. In deciding whether to hire outside help or to perform the reserve study tasks internally, the board should consider potential legal liability if the study does not meet the statutory information requirements.

One possible way to find professionals to contact for performing reserve studies is through other community associations. Other sources of names are organizations of CIDs and related professionals. It is helpful to talk with people who have worked with any firm or consultant under consideration and to examine samples of related work.

It is important that the association and the contractor understand what is required of each. Exhibits 6.1 and 6.2 provide a partial list of questions the board should ask a reserve study preparer as part of the interview process and also the information the board should provide. These questions might be used in interviews with potential consultants, or used in a written Request for Proposal (RFP), along with a clear specification of the work tasks to be performed. Answers to these questions, as well as price, should help in the selection of any needed professionals. These guides treat the Physical Analysis and Funding Analysis preparers separately, so interviews of professionals offering to perform both studies could be designed by combining the two interview guides, thereby eliminating duplications.

### ***Information the Board Should Provide***

In addition to asking questions of reserve study preparers, the association must provide information on the components and the association's financial situation. Specifically, the reserve study process should start with this information from the board and/or management:

- a list and definition of the major components;
- a statement of board policy about major components for which it is not requesting an estimate of replacement costs;
- any information on condition of the major components, including maintenance records;
- directions about any desired changes or additions (new items) in the major components;
- copy of as-built construction drawings, if they exist;
- maintenance record, component warranties, or other documentation;
- estimated replacement cash balance at beginning of next (nearest) fiscal year;
- a copy of current (and/or proposed) association budget(s);
- a board estimate of long-term interest rate to be earned on reserve account cash balance;
- a copy of the final Physical Analysis report, if already prepared, and
- projected reserve expenses prior to year end.

## Exhibit 6.1 Interview Guide for Physical Analysis Preparers

1. Do you have any personal or professional ties to this association? (NOTE: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
2. Do you have any personal or professional ties to the developer? (NOTE: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
3. If hiring an individual or sole practitioner: Do you do all the work yourself, or will you use subcontractors? (The association should approve all subcontractors.) Are you a Professional Reserve Analyst (an Association of Reserve Analysts designation) or a Reserve Specialist (a Community Associations Institute designation) or do you hold other professional designations? What is your training (formal education and workshops)?
4. If hiring a firm: Will all work be done by employees of your firm? How do you train your employees?
5. With what professional associations are you actively involved?
6. What experience have you had with performing component studies?
7. What experience have you had in this locale?
8. May we see an example of a similar product done for another association?
9. What information do you require from the association in order to start?
10. When will you begin the study?
11. Will you be measuring the components or using drawings?
12. Will you make a physical inspection of each component? What percentage of components will you inspect for fences, walls, controllers, buildings, etc.?
13. How will you determine the cost of replacement?
14. What written sources will be used?
15. How long will it be before we have the final product?
16. Will the report provide the estimated useful life of each component?
17. Will the report provide the estimated remaining life of each component?
18. Will the report provide the current costs of repair or replacement for each component?
19. Will the report provide the future costs of repair or replacement for each component and/or the inflation rate to be applied to each component?
20. Will the report provide information on proper maintenance to help assure realization of the estimated remaining life of each component? Will the report include visuals such as photographs or video?
21. Do you have liability insurance?
22. Do you have workers' compensation insurance?
23. Please provide three references (name, phone, nature of work).
24. Cost for revisions and/or updates.

## **Exhibit 6.2 Interview Guide for Funding Analysis Preparers**

1. Do you have any personal or professional ties to this association? (NOTE: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
2. Do you have any personal or professional ties to the developer? (NOTE: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
3. If hiring an individual or sole practitioner: Do you do all the work yourself, or will you use subcontractors? (The association should approve all subcontractors.) Are you a Professional Reserve Analyst (an Association of Reserve Analysts designation) or a Reserve Specialist (a Community Associations Institute designation) or do you hold other professional designations? What is your training (formal education and workshops)?
4. If hiring a firm: Will all work be done by employees of your firm? How do you train your employees?
5. With what professional associations are you actively involved?
6. What experience have you had with community association budgeting?
7. May we see an example of a completed Funding Analysis?
8. What information do you require from the association in order to start?
9. When will you begin the study?
10. How long will it be before we have the final product?
11. Will the report provide current and future estimated liability computations?
12. Will the report provide current and future estimated cash balances by year?
13. Will the report provide current and future repair and replacement costs?
14. Will the report present alternative funding plans?
15. Will the report provide a description of assumptions and methodology, a narrative funding plan, and a graphic depiction for easier board and member understanding?
16. Will the report tell how much of a monthly contribution is needed for the reserves?
17. Do you have professional liability insurance?
18. Please provide three references (name, phone, nature of work).

## **7. What Are the Red Flags that Signal Potential Problems?**

This report has explained the important elements of the reserve study portion of the *pro forma* operating budget. In reviewing an association's current status in responding to the requirements of California Civil Code Sections 1365 and 1365.5 and in performing responsibly in the management of association assets, the following indicators may suggest problems that call for remedial action. The list starts with very basic elements of the reserve study requirements and ends with "red flag" items to be identified in reserve study data when they are available.

### **Study Data**

Reserve study data is incomplete if:

- the association has no established list of major components;
- there is no policy to distinguish reserve expenditures from operating expenses;
- there is no clear funding goal stated;
- a Physical Analysis has not been conducted;
- a Funding Analysis has not been conducted;
- information on remaining life and current replacement cost has not been prepared for all major components;
- "life of the project" components are not mentioned in assumptions, or included in the reserve budgeting;
- the *pro forma* operating budget does not contain reserve study information or assumptions;
- the association does not have a documented maintenance schedule and related assumptions for each major component;
- the list of major components in the reserve study does not include all significant common area components listed in the CC&Rs; or
- there is no separate bank account(s) for reserve funds.

### **Replacement Funds**

Reserve study data suggest replacement funding problems if:

- the reserve deficit is staying constant or increasing over time;
- special assessments are required to fund major repairs; or
- current income from assessments does not equal or exceed dollar value of annual component wear.

## **Appendix A Major Common Area Components Usually Included**

Awnings and other overhead coverings  
Balconies (see also decks)  
Benches  
Boilers  
Decks, pool and spa  
Decks, residential  
Elevator, cab  
Elevator, hydraulic, traction, etc.  
Equipment, cleaning and maintenance  
Equipment, communication and telephone  
Equipment, entertainment, music/video systems  
Equipment, exercise, recreational, etc.  
Equipment, office  
Equipment, pool, pumps, motors and filters  
Fences, chain link, wood, etc.  
Floor covering, carpet, tile, vinyl, etc.  
Floor covering, wood replacement and refinishing  
Furnishings, lobby, clubhouse, etc.  
Gates, iron, wood, etc.  
HVAC, air conditioning  
HVAC, heating systems  
Light fixtures, exterior  
Light fixtures, interior  
Paint and stain, exterior  
Paint and stain, interior common area  
Paving  
Retaining wall  
Roof  
Siding and trim  
Solar heating system, pool and spa  
Solar heating system, residential  
Spas  
Streets and drives  
Swimming pools  
Tennis courts, resurfacing  
Vehicles  
Water heaters

## **Appendix B Major Common Area Components Frequently Overlooked**

Alarm systems, fire and intrusion  
Antennas, satellite dish and other  
Asbestos encapsulation or removal  
Display cases  
Docks  
Drainage systems  
Electrical transformers  
Electrical wiring and related fixtures in common area  
Fans, exhaust, garage and other  
Fire sprinklers and related equipment  
Fountains  
Garage doors and hardware  
Garbage enclosures  
Gutters and downspouts  
Irrigation system, controllers  
Irrigation system, piping, valves and sprinkler heads  
Kiosks and message/communication centers  
Lakes, ponds and waterways  
Landscaping, replacement of major trees and plants  
Mailboxes and centers  
Monitoring system, carbon monoxide  
Planter boxes  
Plumbing fixtures, exterior  
Plumbing, water piping system  
Posts, deck, lamp, etc.  
Pumps, lakes, ponds and waterways  
Racquetball courts  
Security gates, gate operator and motor  
Septic tanks  
Sewage ejector equipment  
Skylights  
Slopes  
Stables and tack rooms  
Stairs  
Stucco, sandblasting and resurfacing  
Sump pump equipment  
Trellises  
Ventilation systems, garage  
Walkways, wood, brick, tile, etc.

## **Appendix C Sources for Inflation Rate Estimates**

U.S. Bureau of Labor Statistics  
Consumer Price Index 24-hour hotlines:  
Los Angeles (310) 235-6884  
San Diego (619) 557-6538  
San Francisco (415) 625-2270

These hotlines provide the national U.S. Consumer Price Index (CPI). The San Francisco hotline provides information specific to the San Francisco Bay Area, while the Los Angeles and San Diego numbers provide information specific to the Greater Los Angeles Metropolitan Area. Directory assistance in other parts of California may provide additional, local hotline numbers. However, no separate CPI is calculated for other regions of California.

State Allocation Board  
707 Third Street  
West Sacramento, CA 95605  
(916) 376-1771

**V.**

**Consumer Warning:  
Underfunded Homeowners  
Association Budgets**



## **Consumer Warning:** **Underfunded Homeowners Associations**

By Joseph Aiu (Statewide Subdivisions Compliance)  
California Department of Real Estate

The California Department of Real Estate (DRE) has issued this warning as a result of the growing number of homeowners associations (HOAs) that do not have sufficient funds or reserves to adequately maintain the common areas in the housing developments for which the HOA is responsible.

This warning will explain the negative effects and impacts of an underfunded HOA, offer suggestions on how to gauge the financial health of an HOA, and discuss some typical causes of an underfunded HOA.

### **Negative Effects of an Underfunded HOA:**

An underfunded budget may cause unexpected expenses for the owners living in a CID and/or have a deleterious affect on the value or condition of an owner's property. If the HOA cannot properly maintain the common areas due to budget constraints, roads, pools, exterior paint, and roofs may fall into disrepair. Moreover, underfunded HOA budgets may create pitfalls for homebuyers who do not investigate the financial health of the HOA prior to buying into a CID. HOAs facing severely underfunded budgets often must resort to levying special assessments on the owners living within the CID in order to pay for needed repairs or maintenance. Special assessments can run into the tens of thousands of dollars so owners and buyers would be wise to look into the financial health of the HOA to ensure they aren't exposing themselves to unexpected expenditures and financial problems.

### **How to know if the HOA is Financially Healthy:**

HOAs are required to produce a yearly budget and to furnish it to the owners in the association. In addition, at least once every three years, the HOA is required to review the major components of the CID that the association is obligated to repair, replace, restore, or maintain, as part of a study of the reserve account requirements, to ensure sufficient funds are, or will be, available to adequately maintain the common areas. Included in the budget documents, the HOA is required to provide a summary of its reserves and whether the reserves are adequate to maintain all the major components of the CID. This summary disclosure document is an excellent tool to determine the long term financial health of any HOA.

In addition, the law affords a potential buyer or an owner in an association the opportunity to review the HOA's financial documents. For a potential buyer, the financial documents may be requested from the seller. For an owner in the association, the financials should be received from the HOA at least annually.

### **Typical Causes of HOA Underfunding:**

Foreclosures are a significant cause of underfunded HOA budgets. Homeowners in foreclosure often do not make their assessment payments. Due to the length of the foreclosure process, the non-payment of assessments may cover a period of 90 days to a few years. Although HOAs have the ability to place a lien against a homeowner's property for non-payment of assessments, HOA liens are often extinguished at the foreclosure sale because the value of the property is insufficient to pay off all the liens against the property. This is especially true in cases where the value of the property is less than the mortgage. The end result is the HOA ends up with less than the projected assessment income, which leads to an underfunded budget.

Inadequate planning on behalf of an HOA board can also lead to an underfunded budget. In instances where a CID or HOA is facing dire economic conditions, an HOA board may succumb to the pressure of its association members and not increase assessments or even reduce assessments and forego on-going maintenance. These types of bad decisions inevitably result in the HOA levying special assessments against the owners to address health and safety issues that arise from neglect. In addition, reduced care and upkeep of a CID's common areas result in the inability to sell or secure financing because of the dilapidated condition of the property.

HOAs that rely on inadequate assessment collection procedures usually suffer from insufficient funding to satisfy their financial obligations. For example, homeowners who are not in foreclosure but refuse to pay their assessments may rely on the association's poor collection process as a way to delay making their assessment payments. This may result in a "domino effect" where other members stop paying their assessments under the rationale that since others are not paying, why should they.

### **What to be Aware of when a CID has an Underfunded Budget:**

- Special assessments. Inevitably, underfunded budgets lead to special assessments as mentioned above. This is the common method HOAs use to satisfy financial obligations. While an HOA is limited on how much it can increase assessments - typically 5% per year - a special assessment can be assessed in order to resolve a health and safety issue. This means the entire cost to make a repair can be levied against all its members, or members who are paying assessments. Special assessments can be tens of thousands of dollars.
- Inability to sell or declining property values. It can be very difficult to sell a home if the HOA's assets are inadequate to satisfy its financial obligations. Buyers will be leery of special assessments and/or increased monthly assessments. Moreover, property values may depreciate dramatically because of deferred maintenance and inadequate funds to satisfy financial obligations.
- Inability to secure financing. Lenders (subject to underwriting guidelines from Fannie Mae or Freddie Mac) may deny funding loans whenever an association funds less than 10% of its operating funds into its reserves. In addition, lenders

are reluctant to fund loans when an association cannot meet its financial obligations.

**Quick Tips for Evaluating the Financial Health of an HOA:**

- If you are a buyer, demand that the seller provide you with copies of the most current financials for your review.
- If you are an owner, make sure that you are given annual financial reports, especially the delinquency report and those pertaining to the adequacy of the reserve account.
- If you are a buyer, do a physical review of the property and observe how the common areas are maintained. For example, assess the condition of exterior paint, amenities, roads, roofs, drives, fencing, etc.
- If you are an owner, be involved with the board and its decisions, especially when you see deferred maintenance of common areas or are subject to special assessments.

**Conclusion:**

The issues raised in this warning, along with the suggested steps to take to avoid potential financial problems, are not all inclusive. Each project in California may have unique issues that can only be addressed by you, as either the buyer or owner, performing your due diligence.

However, what appears to be a common thread in today's real estate economic climate is that many projects are falling victim to hard times and the result is the underfunding of HOA budgets.

Please refer to DRE's web site, [www.dre.ca.gov](http://www.dre.ca.gov) for additional information on Common Interest Subdivisions, including the brochure [Living in a Common Interest Development](#).

**VI.**

**Living in a Common Interest  
Development (FAQs)**

State of California  
Department of Real Estate

*Living in a California*  
**COMMON  
INTEREST  
DEVELOPMENT**



---

*Living in a California Common Interest Development* was originally developed in January 1999 by the California Association of Community Managers, Inc.<sup>SM</sup> working with the Department of Real Estate (DRE). This booklet was revised in August 2002 by the Department of Real Estate.

# TABLE OF CONTENTS

	<u>Page</u>
#1 What is a common interest development (CID)?	1
#2 Do you have to join the association?	2
#3 What are Covenants, Conditions and Restrictions (CC&Rs)?	2
#4 How are the CC&Rs enforced?	2
#5 What are the Bylaws?	3
#6 Does the Department of Real Estate assist with the enforcement Of the Bylaws and CC&Rs?	3
#7 Who is in charge of the association?	3
#8 What is the board of directors and how are its members elected?	4
#9 How can you serve on the association's board of directors?	4
#10 What are the responsibilities of the board of directors?	4
#11 Are there other opportunities to volunteer in the association Besides the board of directors?	5
#12 How does the association pay its bills?	6
#13 How is the amount of the monthly assessment determined?	6
#14 Are there different types of assessments or fees?	7
#15 Who can increase the amount of the assessment?	8
#16 What happens if you do not pay your assessments?	8
#17 Are there other rules in an association?	9
#18 Can you make improvements to your home?	10
#19 Who do you contact if you have problems with or questions regarding the home interior? The association common area? Neighbors? Paying assessments?	10
#20 What is a management company and what does it do?	11
#21 Can owners rent to someone else?	11
#22 What are your individual responsibilities as an owner living in a CID	12
#23 What are your individual rights as an owner living in a CID?	12
#24 What should I do if I decide to sell my home?	12

## PREFACE

This brochure is designed to provide general information in response to some of the more frequently asked questions regarding living in a common interest development (CID). We hope it contributes to your understanding and expectations of home ownership in a CID.

Since this brochure does not contain specific legal information or guidance, it should only be used as a general source of information. If you wish to research the subject matter further, you may wish to consult with an attorney or an industry professional experienced with CIDs.

**Questions About**  
*Living in a California*  
**COMMON INTEREST  
DEVELOPMENT**

**1.**

**What is a common interest  
development (CID)?**

A CID is descriptive not only of a certain type of real estate and form of home ownership, but also of a life-style that is becoming more and more common to the American way of life. To understand the concept, it is important to know that there is no one structural type, architectural style, or standard size for CIDs. They come in a variety of types and styles, such as single family detached houses, two story townhouses, garden style units with shared "party walls," and apartment-like, multi-storied high rises. Currently in California, there are tens of thousands of CIDs which range in size from a simple two unit development to a large complex having thousands of homes, many commonly owned facilities, and multiple associations under the auspices of one overall master association. However, despite the wide range of differences that may exist among CIDs, all CIDs are similar in that they allow individual owners the use of common property and facilities and provide for a system of self-governance through an association of the homeowners within the CID.

The most common type of association of homeowners is the nonprofit mutual benefit corporation. This is a corporation in which the members of the corporation vote for a board of directors which runs the affairs of the corporation. However, some associations, usually the older ones, are unincorporated associations. In many ways, unincorporated associations are treated the same as mutual benefit corporations under California law.

## **2.** Do you have to join the association?

Membership in the association(s) is automatic. When a person buys a lot, home, townhouse, or condominium in a common interest development, he/she automatically becomes a member of the association(s).

## **3.** What are Covenants, Conditions and Restrictions (CC&Rs)?

The Declaration of the Covenants, Conditions and Restrictions, or CC&Rs, contains the ground rules for the operation of the association. This governing document identifies the association's common area and responsibilities, explains the obligation of the association to collect assessments, as well as the obligation of the owners to pay assessments. It also states that the association may sue owners for violations of the rules or failure to pay assessments, and explains what happens if there is any destruction of property in the development as a result of fire or earthquake. Usually, the CC&Rs will also state the duties and obligations of the association to its members, insurance requirements, and architectural control issues.

## **4.** How are the CC&Rs enforced?

California laws allow that either the association or an owner in a common interest development may file a lawsuit asking the court to enforce the CC&Rs. The law currently requires, with some exceptions, that either the owner or the association must offer to engage in some form of alternative dispute resolution process before filing a lawsuit.



You may wish to consult with an attorney who specializes in this type of law if you are faced with or contemplating an enforcement matter.

## **5. What are Bylaws?**

As stated above, the CC&Rs generally state how an association is to be operated. In almost every instance the association, through its board of directors, has the ultimate responsibility for managing the association. As the association is usually a corporation, Bylaws establish the rules by which the corporation will be run. Bylaws usually set forth how members vote for the board of directors, the number and term limit of members of the board of directors, the duties of the board, the duties of the officers, and other incidental provisions.

## **6. Does the Department of Real Estate assist with the enforcement of the Bylaws and CC&Rs?**

CIDs are subject to the Davis-Stirling Common Interest Development Act (California Civil Code Sections 1350 et seq.). This Act is intended to provide homeowners with a system of self-government and dispute resolution. The Department of Real Estate reviews the legal framework of all new CIDs to ensure compliance with the Subdivided Lands Law as part of the public report application process before homes are offered for sale to the public. Once sales have commenced, the Department's jurisdiction is limited to the subdivider's obligations under the public report, which does not include intervention in association disputes. Presently, there is no state or local agency that directly regulates associations or their members.

## **7. Who is in charge of the association?**

The homeowners are in charge of the association. Often, homeowners will elect a board of directors to operate the association and preserve, enhance

and protect the value of the CID, but the board answers to the homeowners. It should be noted that it is not unusual for the board to contract with a professional management company to run the day-to-day affairs of the association. Ultimately, however, it is the board who is responsible for the oversight of the homeowner association.

## **8. What is the board of directors and how are its members elected?**

The board of directors governs the association. Its members are elected yearly or less frequently, depending upon



the terms mandated in the governing documents of the association. The governing documents also determine the number of directors. Directors are elected by the members of the association (homeowners) who vote for vacancies as they occur. Normally, each lot or unit has one vote no matter how many people own it, with the notable exception that the subdivider may, for a time, have up to three votes for each lot or unit he/she owns.

## **9. How can you serve on the association's board of directors?**

There are two ways to become a member of the board of directors. You can request that the association or nominating committee place your name on the election ballot so other members of the association will have an opportunity to vote for you in the next election or you can ask the board of directors to consider appointing you to any interim vacancy on the board.

## **10. What are the responsibilities of the board of directors?**

The board has the ultimate responsibility for operating the association. Board members must

deal in good faith on behalf of all the homeowners and exercise reasonable care. The board makes sure that the association's money is collected, its bills are paid, the association is operated efficiently, and violations of the rules of the association are addressed. For example, the board is responsible for reviewing the association's bank statements, preparing a budget, and distributing the budget (or budget summary) to the members prior to the beginning of the association's fiscal year. The board must also prepare a fiscal year-end financial statement for distribution to the members. There are numerous other things for which the board is responsible, as set forth in the association's CC&Rs, Bylaws, the Corporations Code and the Davis-Stirling Common Interest Development Act (California Civil Code Sections 1350 through 1376). Even if the board of directors opts to contract with a professional management company to run the day-to-day affairs of the association, the board of directors is still ultimately responsible for management of the association.

**11. Are there other opportunities to volunteer in the association besides the board of directors?**

Usually, an association will have a number of committees that perform valuable functions. For example, the architectural committee oversees requests for modifications to properties in the development and generally attempts to make sure that modifications and other improvements are consistent with the existing architecture of the development. There may be other committees to join, depending on the type of development in which you live. An association may have a landscape committee to oversee landscaping. There may be a welcoming committee that greets new homeowners or an election committee that coordinates the election of the board of directors. Committees are usually established by the association's Bylaws, CC&Rs, and/or the board of directors. Let your board know that you would like to actively participate in your association.

## **12.** How does the association pay its bills?

Each association has a budget that is prepared based on the common area obligations of the CID, and distributed to all of its members. The budget determines how much money the association is going to need to operate for the following year. The association has the right to bill the members for their fair share of the budgeted amount. This billing is known as an assessment, which may be paid via monthly invoices, coupons supplied by the association, or some alternative method. Ideally, the association collects sufficient money through these assessments and pays the bills for the services and goods contemplated in the budget. If the assessments collected are insufficient to pay the bills, the board of directors is allowed to levy what is known as a special assessment. Without member approval, the total of special assessments in any fiscal year cannot exceed 5 percent of the gross budgeted expenses for that year.

By paying your fair share of the obligations of the association, through the budget and assessment process, you are proportionally paying for the current and long term maintenance obligations of the association. Of course, all of the other owners are doing so as well.

## **13.** How is the amount of the monthly assessment determined?

When the budget is prepared, the amounts necessary for the daily operation and long term reserves for maintenance and replacement are determined based on the level of service for which the association is both required and willing to pay. For example, sometimes there are specific items defined in the CC&Rs that require a certain level of maintenance by the association. Once the annual amount is determined, then it must be



collected from the members in order for the association to operate. Each member's assessment is usually collected monthly, in 12 equal installments. Some associations collect assessments on a quarterly or annual basis. The CC&Rs will normally indicate the frequency of assessment collections.

**14. Are there different types of assessments or fees?**

There are several types of assessments that may apply to your association. The California Civil Code defines assessments as either being regular or special. Regular assessments are needed for the operating (day-to-day) and reserve (long-term maintenance) activities of the association.

Special assessments are those levied by the association for major repairs, replacement, or new construction of the common area or for a one-time, unanticipated expense which cannot be covered by the regular assessment (e.g., insurance premiums that unexpectedly "sky rocket").

Note, a special assessment should not be confused with a monetary penalty levied by the association against an individual owner to reimburse the association for an expense such as damage to the common area, or imposed as a disciplinary measure for a violation of the rules and regulations. Homeowners can be fined for damaging common areas and/or violating any rules and regulations of the association.

Some CIDs establish user fees or special charges for services and activities that are not customary. Typically, these are imposed on an owner specifically benefiting from the service, such as an owner who wants to use the common area pool, clubhouse, or tennis courts to entertain private guests. The fees are usually on a pay-as-you-go basis and generally cannot become a lien on the owner's unit or interest.

There are other types of assessments that may be designated by the CID homeowners association. For example, an association may have an

assessment for cable television service. A “reimbursement assessment” may be levied against an individual owner as a charge for damage to the common area resulting from an act by the owner or an owner’s guest.

The best place to look for the different types of assessments that may apply to a CID is in the CC&Rs of the association.

### **15.** Who can increase the amount of the assessment?

The board of directors can increase the amount of the assessment by following certain procedures mandated by California Civil Code Section 1366. Even if the governing documents are more restrictive, the board of directors may not increase the regular assessment more than 20 percent per year, without the approval of the owners. The board must circulate a budget to the membership no less than 45 days but no more than 60 days prior to the beginning of the fiscal year. If the budget indicates that an assessment increase greater than 20 percent is necessary, a majority of the members of the association must approve the assessment. There are also provisions for a board to increase an assessment more than 20 percent without member approval in cases of emergency such as an extraordinary expense required by order of a court, or for repairs to the common area.



### **16.** What happens if you do not pay your assessments?

Usually, the association will send you a reminder letter as a first step. The law is specific in California regarding the due date of assessments and the overall process that an association must follow regarding delinquent assessments. The law states that if an assessment is not paid within 15 days of the due date, a delinquency occurs. At this point, the association can add a charge to your

assessment in the form of a late fee in the amount of \$10.00 or ten percent of the monthly assessment amount, whichever is greater, unless the CC&Rs specify a lesser amount. Again, the law covering this area is quite clear and the board must follow these procedures.

Once a year, the association will send each owner a copy of the assessment collection policy, which will tell you the amount of the late fee. If your assessment becomes over 30 days delinquent the association has the right to assess interest up to 12 percent per year on the balance which is owed and unpaid.

If you still fail to pay your assessments, the matter may be referred to an attorney or foreclosure service. The association has the right to lien your property for the amounts owed as well as other costs such as attorney's fees.

Ultimately, the association can foreclose and take your property for your failure to pay assessments. A personal judgment may also be entered against you.

As you can see, it is imperative that all owners pay their assessments in a timely manner. Failure by several owners to pay their assessment obligation could place the association in financial jeopardy.

**17. Are there other rules in an association?**

An association's board of directors may establish rules and regulations governing issues ranging from where you can park to what you can place on a balcony or deck. Associations frequently have guidelines and rules that specify the type of landscaping that may be installed or in some instances, not installed. Rules and regulations can be just as enforceable in an association as the CC&Rs, Bylaws and applicable laws. The most frequent type of miscommunication between an owner and the association usually arises from an owner being unaware of the rules and regulations

when the association attempts to enforce them. You can easily prevent such misunderstandings by making certain you have a current copy of the rules and regulations, which may be obtained from the association or the management company.

**18. Can you make improvements to your home?**

The answer is generally yes, depending on the type of home that you have (condominium, townhouse, detached, etc.). However, in addition to the conditions in the CC&Rs, most associations have established rules and regulations (also known as Architectural Guidelines) which must be followed in order to make any alterations or improvements. Generally, associations assist members who wish to improve their property as long as the improvement is performed in a manner consistent with the CC&Rs and rules and regulations.

**19. Who do you contact if you have problems with or questions regarding the home interior? The association common area? Neighbors? Paying assessments?**

The first place to look for answers to your questions is the CC&Rs. Then you should speak to a board member or, if your association has contracted with a management company, they may be able to provide assistance. Problems with the interior of a home normally are the responsibility of the owner. The association's common area is managed by the association, so the appropriate contact is either one of the association's board members or, if applicable, the management company. When there is a dispute between neighbors, sometimes it is best resolved between those owners. Where a dispute involves payment of assessments or an infraction of the association rules or CC&Rs, it would be



appropriate to contact the board of directors and/or the management company.

## **20.** What is a management company and what does it do?

A management company is a separate business enterprise usually hired to act as the agent of the association. As an agent for the association, they take their direction specifically from the association's board of directors. Typical contractual responsibilities of the managing agent include a variety of services to the association, such as collecting assessments, paying the association's bills, taking direction from the board of directors for enforcement of rules infractions, and obtaining various vendors to perform services. Other possibilities for management company duties include assisting with the budget process; preparing meeting agendas and minutes for the board of directors; or serving as a neutral third party to help solve problems that can occur in CIDs. Additionally, the managing company may advise the board of directors on how to comply with relevant California Civil Code requirements and assist with appropriate and timely compliance.

## **21.** Can owners rent to someone else?

Some CIDs restrict the number of units that may be rented by owners. Some CC&Rs require that a rental agreement acknowledge that the tenancy is subject to all of the rules and regulations of the association. Some associations' rules and regulations also require that you provide the association with a copy of the rental agreement. In most associations, the CC&Rs state that the owner of the property being rented is responsible for the conduct of the tenant. Naturally, it is in the best interest of all parties to prevent problem situations between tenants and owners of other units. If your tenant does damage to the common area or creates a nuisance (e.g., loud music or pet problems), the disturbance could become your problem and the association may fine you.

**22. What are your individual responsibilities as an owner living in a CID?**

Primarily, you are responsible for paying your assessments on time and abiding by the CC&Rs and all other rules and regulations which exist for community harmony.

**23. What are your individual rights as an owner living in a CID?**

Your individual rights as an owner living in a CID are based upon the laws of the state of California and the documents you signed at the time of purchase. Prior to making a purchase, it is advisable to thoroughly review the CC&Rs and any other governing documents applicable to the CID. You may also wish to attend a board meeting and obtain copies of minutes from previous board meetings. The CID should be able to demonstrate that it has adequate insurance coverage, a solvent budget and a sufficient reserve account.

Generally, the rights of owners include:

- The right to participate in meetings of the board of directors and to be heard.
- The right to enter into dialogue with your association board of directors with regard to any problem you may perceive in the development.
- The right, with some exceptions, to utilize an alternative dispute resolution process, if a dispute arises between you and the association prior to the involvement of the court system.

**24. What should I do if I decide to sell my home?**

You may wish to contact a real estate professional, the board of directors, the professional management company (if your CID has one) and/or an escrow company for assistance with the many details involved with selling your home.



There are a number of documents that an individual owner is legally required to provide to a prospective purchaser of a unit in a CID. You will want to make sure that the buyer is aware of the rules and regulations of the association as well as the assessment obligation so there is not a problem or misunderstanding which could jeopardize the sale of your home.

Until the sales transaction is completed and title is transferred, the owner of record is responsible for all assessments and fines unless otherwise stated in the sales and purchase agreement. This includes new assessments approved during the sale and purchase that become due while the sale is pending.

## CONCLUSION

A successful and viable CID is generally one in which homeowners assume an active role, not only by attending association meetings, voting and paying dues on time, but also by running for elected offices, serving on committees and participating in group activities. While governing documents help establish a foundation, involved owners build the CID and make it a community. 

**VII.**  
**The Davis-Stirling Common  
Interest Development Act**

California Civil Code  
**DAVIS-STIRLING ACT**  
January 1, 2014

<b>Division 4, Part 5. COMMON INTEREST DEVELOPMENTS</b>	<b><u>Section</u></b>	<b><u>Page</u></b>
<b>CHAPTER 1. GENERAL PROVISIONS</b>		
Article 1. Preliminary Provisions	4000-4070	1-2
Article 2. Definitions	4075-4190	2-6
<b>CHAPTER 2. APPLICATION OF ACT</b>	4200-4202	6
<b>CHAPTER 3. GOVERNING DOCUMENTS</b>		
Article 1. General Provisions	4205-4235	7-8
Article 2. Declaration	4250-4275	9-10
Article 3. Articles of Incorporation	4280	11
Article 4. Condominium Plan	4285-4295	12
Article 5. Operating Rules	4340-4370	12-14
<b>CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS</b>		
Article 1. Ownership Rights and Interests	4500-4510	14
Article 2. Transfer Disclosure	4525-4545	15-17
Article 3. Transfer Fee	4575-4580	17-18
Article 4. Restrictions on Transfer	4600-4615	18-19
Article 5. Transfer of Separate Interest	4625-4650	20
<b>CHAPTER 5. PROPERTY USE AND MAINTENANCE</b>		
Article 1. Protected Uses	4700-4745	20-24
Article 2. Modification of Separate Interest	4760-4765	25-26
Article 3. Maintenance	4775-4790	26-27
<b>CHAPTER 6. ASSOCIATION GOVERNANCE</b>		
Article 1. Association Existence and Powers	4800-4820	27
Article 2. Board Meeting	4900-4955	28-30
Article 3. Member Meeting	5000	30
Article 4. Member Election	5100-5145	30-33
Article 5. Record Inspection	5200-5240	34-37
Article 6. Recordkeeping	5260	38
Article 7. Annual Reports	5300-5320	38-40
Article 8. Conflict of Interest	5350	40
Article 9. Managing Agent	5375-5385	40-42
Article 10. Government Assistance	5400-5405	42

<b>CHAPTER 7. FINANCES</b>		
Article 1. Accounting	5500	43
Article 2. Use of Reserve Funds	5510-5520	43-44
Article 3. Reserve Planning	5550-5580	44-47
<b>CHAPTER 8. ASSESSMENTS AND ASSESSMENT COLLECTION</b>		
Article 1. Establishment and Imposition of Assessments	5600-5625	47-48
Article 2. Assessment Payment and Delinquency	5650-5690	48-51
Article 3. Assessment Collection	5700-5740	51-55
<b>CHAPTER 9. INSURANCE AND LIABILITY</b>	5800-5810	55-57
<b>CHAPTER 10. DISPUTE RESOLUTION AND ENFORCEMENT</b>		
Article 1. Discipline and Cost Reimbursement	5850-5865	57
Article 2. Internal Dispute Resolution	5900-5920	58-59
Article 3. Alternative Dispute Resolution Prerequisite to Civil Action	5925-5965	59-60
Article 4. Civil Action	5975-5985	61
<b>CHAPTER 11. CONSTRUCTION DEFECT LITIGATION</b>	6000-6150	61-68

**4000.** This part shall be known and may be cited as the Davis-Stirling Common Interest Development Act. In a provision of this part, the part may be referred to as the act.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Amended by Stats. 2013, Ch. 183, Sec. 7. Effective January 1, 2014.)*

**4010.** Nothing in the act that added this part shall be construed to invalidate a document prepared or action taken before January 1, 2014, if the document or action was proper under the law governing common interest developments at the time that the document was prepared or the action was taken. For the purposes of this section, “document” does not include a governing document.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4020.** Unless a contrary intent is clearly expressed, a local zoning ordinance is construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless of the form of the common interest development.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4035.** (a) If a provision of this act requires that a document be delivered to an association, the document shall be delivered to the person designated in the annual policy statement, prepared pursuant to Section 5310, to receive documents on behalf of the association. If no person has been designated to receive documents, the document shall be delivered to the president or secretary of the association.

(b) A document delivered pursuant to this section may be delivered by any of the following methods:

(1) By email, facsimile, or other electronic means, if the association has assented to that method of delivery.

(2) By personal delivery, if the association has assented to that method of delivery. If the association accepts a document by personal delivery it shall provide a written receipt acknowledging delivery of the document.

(3) By first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service center.

*(Amended by Stats. 2013, Ch. 183, Sec. 8. Effective January 1, 2014.)*

**4040.** (a) If a provision of this act requires that an association deliver a document by “individual delivery” or “individual notice,” the document shall be delivered by one of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.

(2) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery. The consent may be revoked, in writing, by the recipient.

(b) Upon receipt of a request by a member, pursuant to Section 5260, identifying a secondary address for delivery of notices of the following types, the association shall deliver an additional copy of those notices to the secondary address identified in the request:

(1) The documents to be delivered to the member pursuant to Article 7 (commencing with Section 5300) of Chapter 6.

(2) The documents to be delivered to the member pursuant to Article 2 (commencing with Section 5650) of Chapter 8, and Section 5710.

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4045.** (a) If a provision of this act requires “general delivery” or “general notice,” the document shall be provided by one or more of the following methods:

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

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

(3) Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to Section 5310.

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

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to Section 4040. The option provided in this subdivision shall be described in the annual policy statement, prepared pursuant to Section 5310.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4055.** If the association or a member has consented to receive information by electronic delivery, and a provision of this act requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4065.** If a provision of this act requires that an action be approved by a majority of all members, the action shall be approved or ratified by an affirmative vote of a majority of the votes entitled to be cast.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4070.** If a provision of this act requires that an action be approved by a majority of a quorum of the members, the action shall be approved or ratified by an affirmative vote of a majority of the votes represented and voting in a duly held election in which a quorum is represented, which affirmative votes also constitute a majority of the required quorum.

*(Amended by Stats. 2013, Ch. 183, Sec. 9. Effective January 1, 2014.)*

**4075.** The definitions in this article govern the construction of this act.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4076.** “Annual budget report” means the report described in Section 5300.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4078.** “Annual policy statement” means the statement described in Section 5310.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4090.** “Board meeting” means either of the following:

- (a) A congregation, at the same time and place, of a sufficient number of directors to establish a quorum of the board, to hear, discuss, or deliberate upon any item of business that is within the authority of the board.
- (b) A teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this act. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend, and at least one director or a person designated by the board shall be present at that location. Participation by directors in a teleconference meeting constitutes presence at that meeting as long as all directors participating are able to hear one another, as well as members of the association speaking on matters before the board.

*(Amended by Stats. 2013, Ch. 183, Sec. 10. Effective January 1, 2014.)*

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

(b) “Community service organization or similar entity” does not include an entity that has been organized

solely to raise moneys and contribute to other nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4120.** “Condominium plan” means a plan described in Section 4285.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4125.** (a) A “condominium project” means a real property development consisting of condominiums.

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4140.** “Director” means a natural person who serves on the board.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

(c) Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, is exclusive use common area allocated exclusively to that separate interest.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4148.** “General notice” means the delivery of a document pursuant to Section 4045.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4153.** “Individual notice” means the delivery of a document pursuant to Section 4040.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4155.** “Item of business” means any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a quorum of the board.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4158.** (a) A “managing agent” is a person who, for compensation or in expectation of compensation, exercises control over the assets of a common interest development.

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

- (1) A regulated financial institution operating within the normal course of its regulated business practice.
- (2) An attorney at law acting within the scope of the attorney’s license.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4160.** “Member” means an owner of a separate interest.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4170.** “Person” means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4175.** “Planned development” means a real property development other than a community apartment project, a condominium project, or a stock cooperative, having either or both of the following features:

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

(b) Common area and an association that maintains the common area with the power to levy assessments that may become a lien upon the separate interests in accordance with Article 2 (commencing with Section 5650) of Chapter 8.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

(2) In a condominium project, “separate interest” means a separately owned unit, as specified in Section 4125.

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

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

(b) A “stock cooperative” includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 817.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4200.** This act applies and a common interest development is created whenever a separate interest coupled with an interest in the common area or membership in the association is, or has been, conveyed, provided all of the following are recorded:

(a) A declaration.

(b) A condominium plan, if any exists.

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4201.** Nothing in this act may be construed to apply to a real property development that does not contain common area. This section is declaratory of existing law.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4202.** This part does not apply to a commercial or industrial common interest development, as defined in Section 6531.

*(Amended by Stats. 2013, Ch. 605, Sec. 19. Effective January 1, 2014.)*

- 4205.** (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.

*(Amended by Stats. 2013, Ch. 183, Sec. 11. Effective January 1, 2014.)*

**4210.** In order to facilitate the collection of regular assessments, special assessments, transfer fees as authorized by Sections 4530, 4575, and 4580, and similar charges, the board is authorized to record a statement or amended statement identifying relevant information for the association. This statement may include any or all of the following information:

- (a) The name of the association as shown in the declaration or the current name of the association, if different.  
(b) The name and address of a managing agent or treasurer of the association or other individual or entity authorized to receive assessments and fees imposed by the association.  
(c) A daytime telephone number of the authorized party identified in subdivision (b) if a telephone number is available.  
(d) A list of separate interests subject to assessment by the association, showing the assessor's parcel number or legal description, or both, of the separate interests.  
(e) The recording information identifying the declaration governing the association.  
(f) If an amended statement is being recorded, the recording information identifying the prior statement or statements which the amendment is superseding.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4215.** Any deed, declaration, or condominium plan for a common interest development shall be liberally construed to facilitate the operation of the common interest development, and its provisions shall be presumed to be independent and severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing documents.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

- 4225.** (a) No declaration or other governing document shall include a restrictive covenant in violation of Section 12955 of the Government Code.  
(b) Notwithstanding any other provision of law or provision of the governing documents, the board, without approval of the members, shall amend any declaration or other governing document that includes a restrictive covenant prohibited by this section to delete the restrictive covenant, and shall restate the declaration or other governing document without the restrictive covenant but with no other change to the declaration or governing document.

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4230.** (a) Notwithstanding any provision of the governing documents to the contrary, the board may, after the developer has completed construction of the development, has terminated construction activities, and has terminated marketing activities for the sale, lease, or other disposition of separate interests within the development, adopt an amendment deleting from any of the governing documents any provision which is unequivocally designed and intended, or which by its nature can only have been designed or intended, to facilitate the developer in completing the construction or marketing of the development. However, provisions of the governing documents relative to a particular construction or marketing phase of the development may not be deleted under the authorization of this subdivision until that construction or marketing phase has been completed.

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

(c) At least 30 days prior to taking action pursuant to subdivision (a), the board shall deliver to all members, by individual delivery, pursuant to Section 4040, (1) a copy of all amendments to the governing documents proposed to be adopted under subdivision (a), and (2) a notice of the time, date, and place the board will consider adoption of the amendments. The board may consider adoption of amendments to the governing documents pursuant to subdivision (a) only at a meeting that is open to all members, who shall be given opportunity to make comments thereon. All deliberations of the board on any action proposed under subdivision (a) shall only be conducted in an open meeting.

(d) The board may not amend the governing documents pursuant to this section without the approval of a majority of a quorum of the members, pursuant to Section 4070. For the purposes of this section, "quorum" means more than 50 percent of the members who own no more than two separate interests in the development.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4235.** (a) Notwithstanding any other provision of law or provision of the governing documents, if the governing documents include a reference to a provision of the Davis-Stirling Common Interest Development Act that was repealed and continued in a new provision by the act that added this section, the board may amend the governing documents, solely to correct the cross-reference, by adopting a board resolution that shows the correction. Member approval is not required in order to adopt a resolution pursuant to this section.

(b) A declaration that is corrected under this section may be restated in corrected form and recorded, provided that a copy of the board resolution authorizing the corrections is recorded along with the restated declaration.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

(b) The declaration may contain any other matters the declarant or the members consider appropriate.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

**“NOTICE OF AIRPORT IN VICINITY**

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

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

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

**“NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION**

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4265.** (a) The Legislature finds that there are common interest developments that have been created with deed restrictions that do not provide a means for the members to extend the term of the declaration. The Legislature further finds that covenants and restrictions contained in the declaration, are an appropriate method for protecting the common plan of developments and to provide for a mechanism for financial support for the upkeep of common area including, but not limited to, roofs, roads, heating systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the housing supply of affordable units could be impacted adversely. The Legislature further finds and

declares that it is in the public interest to provide a vehicle for extending the term of the declaration if the extension is approved by a majority of all members, pursuant to Section 4065.

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4270.** (a) A declaration may be amended pursuant to the declaration or this act. Except as provided in Section 4275, an amendment is effective after all of the following requirements have been met:

(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.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4275.** (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 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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4280.** (a) The articles of incorporation of an association filed with the Secretary of State shall include a statement, which shall be in addition to the statement of purposes of the corporation, that does all of the following:

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

(2) States the business or corporate office of the association, if any, and, if the office is not on the site of the common interest development, states the front street and nearest cross street for the physical location of the common interest development.

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

(b) The statement filed by an incorporated association with the Secretary of State pursuant to Section 8210 of the Corporations Code shall also contain a statement identifying the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.

(c) Documents filed prior to January 1, 2014, in compliance with former Section 1363.5, as it read on January 1, 2013, are deemed to be in compliance with this section.

*(Amended by Stats. 2013, Ch. 605, Sec. 20. Effective January 1, 2014.)*

**4285.** A condominium plan shall contain all of the following:

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4290.** (a) The certificate consenting to the recordation of a condominium plan that is required by subdivision (c) of Section 4285 shall be signed and acknowledged by all of the following persons:

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

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

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

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

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

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

*(Amended by Stats. 2013, Ch. 183, Sec. 12. Effective January 1, 2014.)*

**4295.** A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons who, at the time of amendment or revocation, are persons whose signatures are required under Section 4290.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4340.** For the purposes of this article:

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

(b) "Rule change" means the adoption, amendment, or repeal of an operating rule by the board.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

(a) The rule is in writing.

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

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

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

(e) The rule is reasonable.

*(Amended by Stats. 2013, Ch. 183, Sec. 13. Effective January 1, 2014.)*

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

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

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

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

(4) Any standards for delinquent assessment payment plans.

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

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

(7) Procedures for elections.

(b) Sections 4360 and 4365 do not apply to the following actions by the board:

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

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

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

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

(d) If the board determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association, it may make an emergency rule change, and no notice is required, as specified in subdivision (a). An emergency rule change is effective for 120 days, unless the rule change provides for a shorter effective period. A rule change made under this subdivision may not be readopted under this subdivision.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4365.** (a) Members of an association owning 5 percent or more of the separate interests may call a special vote of the members to reverse a rule change.

(b) A special vote of the members may be called by delivering a written request to the association. Not less than 35 days nor more than 90 days after receipt of a proper request, the association shall hold a vote of the

members on whether to reverse the rule change, pursuant to Article 4 (commencing with Section 5100) of Chapter 6. The written request may not be delivered more than 30 days after the association gives general notice of the rule change, pursuant to Section 4045.

(c) For the purposes of Section 5225 of this code and Section 8330 of the Corporations Code, collection of signatures to call a special vote under this section is a purpose reasonably related to the interests of the members of the association. A member request to copy or inspect the membership list solely for that purpose may not be denied on the grounds that the purpose is not reasonably related to the member's interests as a member.

(d) The rule change may be reversed by the affirmative vote of a majority of a quorum of the members, pursuant to Section 4070, or if the declaration or bylaws require a greater percentage, by the affirmative vote of the percentage required.

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

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4500.** Unless the declaration otherwise provides, in a condominium project, or in a planned development in which the common area is owned by the owners of the separate interests, the common area is owned as tenants in common, in equal shares, one for each separate interest.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4505.** Unless the declaration otherwise provides:

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4525.** (a) The owner of a separate interest shall provide the following documents to a prospective purchaser of the separate interest, as soon as practicable before the transfer of title or the execution of a real property sales contract, as defined in Section 2985:

(1) A copy of all governing documents. If the association is not incorporated, this shall include a statement in writing from an authorized representative of the association that the association is not incorporated.

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

(3) A copy of the most recent documents distributed pursuant to Article 7 (commencing with Section 5300) of Chapter 6.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Article 2 (commencing with Section 5650) of Chapter 8.

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

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

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

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

(9) If there is a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, a statement describing the prohibition.

(10) If requested by the prospective purchaser, a copy of the minutes of board meetings, excluding meetings held in executive session, conducted over the previous 12 months, that were approved by the board.

(b) This section does not apply to an owner that is subject to Section 11018.6 of the Business and Professions Code.

*(Amended by Stats. 2013, Ch. 183, Sec. 14. Effective January 1, 2014.)*

**4528.** The form for billing disclosures required by Section 4530 shall be in at least 10-point type and substantially the following form:

**CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY SECTION 4525\***

Property Address \_\_\_\_\_

Owner of Property \_\_\_\_\_

Owner's Mailing Address (If known or different from property address.) \_\_\_\_\_

Provider of the Section 4525 Items: \_\_\_\_\_

Print Name \_\_\_\_\_ Position or Title \_\_\_\_\_ Association or Agent \_\_\_\_\_

Date Form Completed \_\_\_\_\_

Check or Complete Applicable Column or Columns Below

Document	Civil Code Section Included	Not Available (N/A) or Not Applicable (N/App)
Articles of Incorporation or statement that not incorporated	Section 4525(a)(1)	
CC&Rs	Section 4525(a)(1)	
Bylaws	Section 4525(a)(1)	
Operating Rules	Section 4525(a)(1)	
Age restrictions, if any	Section 4525(a)(2)	
Rental restrictions, if any	Section 4525(a)(9)	
Annual budget report or summary, including reserve study	Sections 5300 and 4525(a)(3)	
Assessment and reserve funding disclosure summary	Sections 5300 and 4525(a)(4)	
Financial statement review	Sections 5305 and 4525(a)(3)	
Assessment enforcement policy	Sections 5310 and 4525(a)(4)	
Insurance summary	Sections 5300 and 4525(a)(3)	
Regular assessment	Section 4525(a)(4)	
Special assessment	Section 4525(a)(4)	
Emergency assessment	Section 4525(a)(4)	
Other unpaid obligations of seller	Sections 5675 and 4525(a)(4)	
Approved changes to assessments	Sections 5300 and 4525(a)(4), (8)	
Settlement notice regarding common area defects	Sections 4525(a)(6), (7), and 6100	
Preliminary list of defects	Sections 4525(a)(6), 6000, and 6100	
Notice(s) of violation	Sections 5855 and 4525(a)(5)	
Required statement of fees	Section 4525	
Minutes of regular board meetings conducted over the previous 12 months, if requested	Section 4525(a)(10)	
Total fees for these documents:		

\* The information provided by this form may not include all fees that may be imposed before the close of escrow. Additional fees that are not related to the requirements of Section 4525 may be charged separately.

*(Amended by Stats. 2013, Ch. 183, Sec. 15. Effective January 1, 2014.)*

**4530.** (a) (1) Upon written request, the association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest, or any other recipient authorized by the owner, with a copy of the requested documents specified in Section 4525.

(2) The documents required to be made available pursuant to this section may be maintained in electronic form, and may be posted on the association's Internet Web site. Requesting parties shall have the option of receiving the documents by electronic transmission if the association maintains the documents in electronic form.

(3) Delivery of the documents required by this section shall not be withheld for any reason nor subject to any condition except the payment of the fee authorized pursuant to subdivision (b).

(b) (1) The association may collect a reasonable fee based upon the association's actual cost for the procurement, preparation, reproduction, and delivery of the documents requested pursuant to this section. Additional fees shall not be charged by the association for the electronic delivery of the documents requested.

(2) Upon receipt of a written request, the association shall provide, on the form described in Section 4528, a written or electronic estimate of the fees that will be assessed for providing the requested documents.

(3) (A) A cancellation fee for documents specified in subdivision (a) shall not be collected if either of the following applies:

(i) The request was canceled in writing by the same party that placed the order and work had not yet been performed on the order.

(ii) The request was canceled in writing and any work that had been performed on the order was compensated.

(B) The association shall refund all fees collected pursuant to paragraph (1) if the request was canceled in writing and work had not yet been performed on the order.

(C) If the request was canceled in writing, the association shall refund the share of fees collected pursuant to paragraph (1) that represents the portion of the work not performed on the order.

(4) Fees for any documents required by this section shall be distinguished from other fees, fines, or assessments billed as part of the transfer or sales transaction.

(c) An association may contract with any person or entity to facilitate compliance with this section on behalf of the association.

(d) The association shall also provide a recipient authorized by the owner of a separate interest with a copy of the completed form specified in Section 4528 at the time the required documents are delivered.

*(Amended by Stats. 2013, Ch. 183, Sec. 16. Effective January 1, 2014.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4575.** Except as provided in Section 4580, neither an association nor a community service organization or similar entity may impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

- (a) An amount not to exceed the association's actual costs to change its records.
- (b) An amount authorized by Section 4530.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4580.** The prohibition in Section 4575 does not apply to a community service organization or similar entity, or to a nonprofit entity that provides services to a common interest development under a declaration of trust, of either of the following types:

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

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

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

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

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

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

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

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

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

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

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

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

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

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

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

(F) To accommodate a disability.

(G) To assign a parking space, storage unit, or other amenity, that is designated in the declaration for assignment, but is not assigned by the declaration to a specific separate interest.

(H) To install and use an electric vehicle charging station in an owner's garage or a designated parking space that meets the requirements of Section 4745, where the installation or use of the charging station requires reasonable access through, or across, the common area for utility lines or meters.

(I) To install and use an electric vehicle charging station through a license granted by an association under Section 4745.

(J) To comply with governing law.

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

(b) A member who prevails in a civil action to enforce the member's rights pursuant to Section 4600 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 equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

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

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

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

(4) Any conditions in the declaration for sale under the circumstances described in this subdivision have been met.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4615.** (a) In a condominium project, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the condominium project or the owners' agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the condominium project unless

that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs thereto.

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4625.** In a community apartment project, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the community apartment project. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4630.** In a condominium project the common area is not subject to partition, except as provided in Section 4610. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4635.** In a planned development, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area, if any exists. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4640.** In a stock cooperative, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the ownership interest in the corporation, however evidenced. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4645.** Nothing in this article prohibits the transfer of exclusive use areas, independent of any other interest in a common interest subdivision, if authorization to separately transfer exclusive use areas is expressly stated in the declaration and the transfer occurs in accordance with the terms of the declaration.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4700.** This article includes provisions that limit the authority of an association or the governing documents to regulate the use of a member's separate interest. Nothing in this article is intended to affect the application of

any other provision that limits the authority of an association to regulate the use of a member's separate interest, including, but not limited to, the following provisions:

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

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

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

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4705.** (a) Except as required for the protection of the public health or safety, no governing document shall limit or prohibit, or be construed to limit or prohibit, the display of the flag of the United States by a member on or in the member's separate interest or within the member's exclusive use common area.

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4710.** (a) The governing documents may not prohibit posting or displaying of noncommercial signs, posters, flags, or banners on or in a member's separate interest, except as required for the protection of public health or safety or if the posting or display would violate a local, state, or federal law.

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4720.** (a) No association may require a homeowner to install or repair a roof in a manner that is in violation of Section 13132.7 of the Health and Safety Code.

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

(b) This section shall not apply to any covenant, condition, or restriction, as described in subdivision (a), that imposes reasonable restrictions on the installation or use of a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of 36 inches or less. For purposes of this section, “reasonable restrictions” means those restrictions that do not significantly increase the cost of the video or television antenna system, including all related equipment, or significantly decrease its efficiency or performance and include all of the following:

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

(2) Requirement of a member to obtain the approval of the association for the installation of a video or television antenna that has a diameter or diagonal measurement of 36 inches or less on a separate interest owned by another.

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

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

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

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

(c) For purposes of this section, "market" and "marketing" mean listing, advertising, or obtaining or providing access to show the owner's interest in the development.

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4735.** (a) Notwithstanding any other law, a provision of the governing documents shall be void and unenforceable if it does any of the following:

(1) Prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group.

(2) Has the effect of prohibiting or restricting compliance with either of the following:

(A) A water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of Section 65595 of the Government Code.

(B) Any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the Water Code.

(b) This section shall not prohibit an association from applying landscaping rules established in the governing documents, to the extent the rules fully conform with the requirements of subdivision (a).

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4740.** (a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to his or her separate interest.

(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.

(c) For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

- (d) Prior to renting or leasing his or her separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.
- (e) Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.
- (f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4745.** (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, and any provision of a governing document, as defined in Section 4150, that either effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in an owner's designated parking space, including, but not limited to, a deeded parking space, a parking space in an owner's exclusive use common area, or a parking space that is specifically designated for use by a particular owner, or is in conflict with the provisions of this section is void and unenforceable.

(b) (1) This section does not apply to provisions that impose reasonable restrictions on electric vehicle charging stations. However, it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.

(2) For purposes of this section, "reasonable restrictions" are restrictions that do not significantly increase the cost of the station or significantly decrease its efficiency or specified performance.

(c) An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local authorities, and all other applicable zoning, land use, or other ordinances, or land use permits.

(d) For purposes of this section, "electric vehicle charging station" means a station that is designed in compliance with the California Building Standards Code and delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.

(e) If approval is required for the installation or use of an electric vehicle charging station, the application for approval shall be processed and approved by the association in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed. The approval or denial of an application shall be in writing. If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) If the electric vehicle charging station is to be placed in a common area or an exclusive use common area, as designated in the common interest development's declaration, the following provisions apply:

(1) The owner first shall obtain approval from the association to install the electric vehicle charging station and the association shall approve the installation if the owner agrees in writing to do all of the following:

(A) Comply with the association's architectural standards for the installation of the charging station.

(B) Engage a licensed contractor to install the charging station.

(C) Within 14 days of approval, provide a certificate of insurance that names the association as an additional insured under the owner's insurance policy in the amount set forth in paragraph (3).

(D) Pay for the electricity usage associated with the charging station.

(2) The owner and each successive owner of the charging station shall be responsible for all of the following:

(A) Costs for damage to the charging station, common area, exclusive use common area, or separate interests resulting from the installation, maintenance, repair, removal, or replacement of the charging station.

(B) Costs for the maintenance, repair, and replacement of the charging station until it has been removed and for the restoration of the common area after removal.

(C) The cost of electricity associated with the charging station.

(D) Disclosing to prospective buyers the existence of any charging station of the owner and the related responsibilities of the owner under this section.

(3) The owner and each successive owner of the charging station, at all times, shall maintain a homeowner liability coverage policy in the amount of one million dollars (\$1,000,000) and shall name the association as a named additional insured under the policy with a right to notice of cancellation.

(4) A homeowner shall not be required to maintain a homeowner liability coverage policy for an existing National Electrical Manufacturers Association standard alternating current power plug.

(g) Except as provided in subdivision (h), installation of an electric vehicle charging station for the exclusive use of an owner in a common area, that is not an exclusive use common area, shall be authorized by the association only if installation in the owner's designated parking space is impossible or unreasonably expensive. In such cases, the association shall enter into a license agreement with the owner for the use of the space in a common area, and the owner shall comply with all of the requirements in subdivision (f).

(h) The association or owners may install an electric vehicle charging station in the common area for the use of all members of the association and, in that case, the association shall develop appropriate terms of use for the charging station.

(i) An association may create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station.

(j) An association that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(k) In any action to enforce compliance with this section, the prevailing plaintiff shall be awarded reasonable attorney's fees.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4760.** (a) Subject to the governing documents and applicable law, a member may do the following:

(1) Make any improvement or alteration within the boundaries of the member's separate interest that does not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

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

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

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

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4765.** (a) This section applies if the governing documents require association approval before a member may make a physical change to the member's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

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

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

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

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

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board or a body that has the same membership as the board, at a meeting that satisfies the requirements of Article 2 (commencing with Section 4900) of Chapter 6. Reconsideration by the board does not constitute dispute resolution within the meaning of Section 5905.

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

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

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

(1) Personal delivery of a copy of the notice to the occupants, and if an occupant is not the owner, individual delivery pursuant to Section 4040, of a copy of the notice to the owner.

(2) Individual delivery pursuant to Section 4040 to the occupant at the address of the separate interest, and if the occupant is not the owner, individual delivery pursuant to Section 4040, of a copy of the notice to the owner.

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4790.** Notwithstanding the provisions of the declaration, a member is entitled to reasonable access to the common area for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common area of the member's separate interest pursuant to subdivision (c) of Section 4145. The access shall be subject to the consent of the association, whose approval shall not be unreasonably withheld, and which may include the association's approval of telephone wiring upon the exterior of the common area, and other conditions as the association determines reasonable.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4800.** 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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4805.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4820.** Whenever two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, members of each participating association shall be (a)

entitled to attend all meetings of the joint association other than executive sessions, (b) given reasonable opportunity for participation in those meetings, and (c) entitled to the same access to the joint association's records as they are to the participating association's records.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4910.** (a) The board shall not take action on any item of business outside of a board meeting.

(b) (1) Notwithstanding Section 7211 of the Corporations Code, the board shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as specified in paragraph (2).

(2) Electronic transmissions may be used as a method of conducting an emergency board meeting if all directors, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the board meeting. These written consents may be transmitted electronically.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4920.** (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.

*(Amended by Stats. 2013, Ch. 183, Sec. 17. Effective January 1, 2014.)*

**4923.** An emergency board meeting may be called by the president of the association, or by any two directors other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by Section 4920.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4925.** (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.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4930.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4935.** (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.

(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.

(c) The board shall adjourn to, or meet solely in, executive session to discuss a payment plan pursuant to Section 5665.

(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.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4950.** (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.  
(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**4955.** (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, restitution, or a combination thereof, within one year of the date the cause of action accrues.

(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 equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5000.** (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.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5100.** (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.

(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.

(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.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5105.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5110.** (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.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5115.** (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:

(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.

(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.

(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.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5120.** (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.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5125.** 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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5130.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5135.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5145.** (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, 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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5200.** For the purposes of this article, the following definitions shall apply:

(a) "Association records" means all of the following:

(1) Any financial document required to be provided to a member in Article 7 (commencing with Section 5300) or in Sections 5565 and 5810.

(2) Any financial document or statement required to be provided in Article 2 (commencing with Section 4525) of Chapter 4.

(3) Interim financial statements, periodic or as compiled, containing any of the following:

(A) Balance sheet.

(B) Income and expense statement.

(C) Budget comparison.

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

The records described in this paragraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

(4) Executed contracts not otherwise privileged under law.

(5) Written board approval of vendor or contractor proposals or invoices.

(6) State and federal tax returns.

(7) Reserve account balances and records of payments made from reserve accounts.

(8) Agendas and minutes of meetings of the members, the board, and any committees appointed by the board pursuant to Section 7212 of the Corporations Code; excluding, however, minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900).

(9) Membership lists, including name, property address, and mailing address, but not including information for members who have opted out pursuant to Section 5220.

(10) Check registers.

(11) The governing documents.

(12) An accounting prepared pursuant to subdivision (b) of Section 5520.

(13) An "enhanced association record" as defined in subdivision (b).

(b) "Enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5205.** (a) The association shall make available association records for the time periods and within the timeframes provided in Section 5210 for inspection and copying by a member of the association, or the member's designated representative.

(b) A member of the association may designate another person to inspect and copy the specified association records on the member's behalf. The member shall make this designation in writing.

(c) The association shall make the specified association records available for inspection and copying in the association's business office within the common interest development.

(d) If the association does not have a business office within the development, the association shall make the specified association records available for inspection and copying at a place agreed to by the requesting member and the association.

(e) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to subdivision (d) or if the requesting member submits a written request directly to the association for copies of specifically identified records, the association may satisfy the requirement to make the association records available for inspection and copying by delivering copies of the specifically identified records to the member by individual delivery pursuant to Section 4040 within the timeframes set forth in subdivision (b) of Section 5210.

(f) The association may bill the requesting member for the direct and actual cost of copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs, and the member shall agree to pay those costs, before copying and sending the requested documents.

(g) In addition to the direct and actual costs of copying and mailing, the association may bill the requesting member an amount not in excess of ten dollars (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written request, for the time actually and reasonably involved in redacting an enhanced association record. If the enhanced association record includes a reimbursement request, the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request. The association shall inform the member of the estimated costs, and the member shall agree to pay those costs, before retrieving the requested documents.

(h) Requesting parties shall have the option of receiving specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that electronic format. The association may deliver specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that prevents the records from being altered.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5210.** (a) Association records are subject to member inspection for the following time periods:

(1) For the current fiscal year and for each of the previous two fiscal years.

(2) Notwithstanding paragraph (1), minutes of member and board meetings are subject to inspection permanently. 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 subject to inspection.

(b) When a member properly requests access to association records, access to the requested records shall be granted within the following time periods:

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

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

(3) Any record or statement available pursuant to Article 2 (commencing with Section 4525) of Chapter 4, Article 7 (commencing with Section 5300), Section 5565, or Section 5810, within the timeframe specified therein.

(4) Minutes of member and board meetings, within the timeframe specified in subdivision (a) of Section 4950.

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

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5215.** (a) Except as provided in subdivision (b), the association may withhold or redact information from the association records if any of the following are true:

(1) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, "identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property. Examples of information that may be withheld or redacted pursuant to this paragraph include bank account numbers of members or vendors, social security or tax identification numbers, and check, stock, and credit card numbers.

(2) The release of the information is reasonably likely to lead to fraud in connection with the association.

(3) The information is privileged under law. Examples include documents subject to attorney-client privilege or relating to litigation in which the association is or may become involved, and confidential settlement agreements.

(4) The release of the information is reasonably likely to compromise the privacy of an individual member of the association.

(5) The information contains any of the following:

(A) Records of goods or services provided a la carte to individual members of the association for which the association received monetary consideration other than assessments.

(B) Records of disciplinary actions, collection activities, or payment plans of members other than the member requesting the records.

(C) Any person's personal identification information, including, without limitation, social security number, tax identification number, driver's license number, credit card account numbers, bank account number, and bank routing number.

(D) Minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900), except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services.

(E) Personnel records other than the payroll records required to be provided under subdivision (b).

(F) Interior architectural plans, including security features, for individual homes.

(b) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

(c) No association, officer, director, employee, agent, or volunteer of an association shall be liable for damages to a member of the association or any third party as the result of identity theft or other breach of privacy because of the failure to withhold or redact that member's information under this section unless the failure to withhold or redact the information was intentional, willful, or negligent.

(d) If requested by the requesting member, an association that denies or redacts records shall provide a written explanation specifying the legal basis for withholding or redacting the requested records.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5220.** A member of the association may opt out of the sharing of that member's name, property address, and mailing address by notifying the association in writing that the member prefers to be contacted via the alternative process described in subdivision (c) of Section 8330 of the Corporations Code. This opt out shall remain in effect until changed by the member.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5225.** A member requesting the membership list shall state the purpose for which the list is requested which purpose shall be reasonably related to the requester's interest as a member. If the association reasonably

believes that the information in the list will be used for another purpose, it may deny the member access to the list. If the request is denied, in any subsequent action brought by the member under Section 5235, the association shall have the burden to prove that the member would have allowed use of the information for purposes unrelated to the member's interest as a member.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5230.** (a) The association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. An association may bring an action against any person who violates this article for injunctive relief and for actual damages to the association caused by the violation.

(b) This article may not be construed to limit the right of an association to damages for misuse of information obtained from the association records pursuant to this article or to limit the right of an association to injunctive relief to stop the misuse of this information.

(c) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this article.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5235.** (a) A member may bring an action to enforce that member's right to inspect and copy the association records. If a court finds that the association unreasonably withheld access to the association records, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to five hundred dollars (\$500) for the denial of each separate written request.

(b) A cause of action under this section may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

(c) A prevailing association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5240.** (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.

(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.

(c) This article applies 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.

(d) 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 Bureau of Real Estate so long as the subdivider or all subdividers offering those separate interests for sale, or any employees of those subdividers or any other person who receives direct or indirect compensation from any of those subdividers, comprise a majority of the 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.

*(Amended (as added by Stats. 2012, Ch. 180, Sec. 2) by Stats. 2013, Ch. 352, Sec. 54. Effective September 26, 2013. Section, as amended, initially operative on January 1, 2014, by Sec. 543 of Ch. 352, and pursuant to Stats. 2012, Ch. 180, Sec. 3.)*

**5260.** To be effective, any of the following requests shall be delivered in writing to the association, pursuant to Section 4035:

- (a) A request to change the member's information in the association membership list.
- (b) A request to add or remove a second address for delivery of individual notices to the member, pursuant to subdivision (b) of Section 4040.
- (c) A request for individual delivery of general notices to the member, pursuant to subdivision (b) of Section 4045, or a request to cancel a prior request for individual delivery of general notices.
- (d) A request to opt out of the membership list pursuant to Section 5220, or a request to cancel a prior request to opt out of the membership list.
- (e) A request to receive a full copy of a specified annual budget report or annual policy statement pursuant to Section 5320.
- (f) A request to receive all reports in full, pursuant to subdivision (b) of Section 5320, or a request to cancel a prior request to receive all reports in full.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5300.** (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 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.”

(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 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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5305.** 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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5310.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5320.** (a) When a report is prepared pursuant to Section 5300 or 5310, the association shall deliver one of the following documents to all members, by individual delivery pursuant to Section 4040:

(1) The full report.

(2) A summary of the report. The summary shall include a general description of the content of the report. Instructions on how to request a complete copy of the report at no cost to the member shall be printed in at least 10-point boldface type on the first page of the summary.

(b) Notwithstanding subdivision (a), if a member has requested to receive all reports in full, the association shall deliver the full report to that member, rather than a summary of the report.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5350.** (a) Notwithstanding any other law, and regardless of whether an association is incorporated or unincorporated, the provisions of Sections 7233 and 7234 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the board or a committee of the board.

(b) A director or member of a committee shall not vote on any of the following matters:

(1) Discipline of the director or committee member.

(2) An assessment against the director or committee member for damage to the common area or facilities.

(3) A request, by the director or committee member, for a payment plan for overdue assessments.

(4) A decision whether to foreclose on a lien on the separate interest of the director or committee member.

(5) Review of a proposed physical change to the separate interest of the director or committee member.

(6) A grant of exclusive use common area to the director or committee member.

(c) Nothing in this section limits any other provision of law or the governing documents that govern a decision in which a director may have an interest.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5375.** A prospective managing agent of a common interest development shall provide a written statement to the board as soon as practicable, but in no event more than 90 days, before entering into a management agreement which shall contain all of the following information concerning the managing agent:

(a) The names and business addresses of the owners or general partners of the managing agent. If the managing agent is a corporation, the written statement shall include the names and business addresses of the directors and officers and shareholders holding greater than 10 percent of the shares of the corporation.

(b) Whether or not any relevant licenses such as architectural design, construction, engineering, real estate, or accounting have been issued by this state and are currently held by the persons specified in subdivision (a). If a license is currently held by any of those persons, the statement shall contain the following information:

(1) What license is held.

(2) The dates the license is valid.

(3) The name of the licensee appearing on that license.

(c) Whether or not any relevant professional certifications or designations such as architectural design, construction, engineering, real property management, or accounting are currently held by any of the persons specified in subdivision (a), including, but not limited to, a professional common interest development manager. If any certification or designation is held, the statement shall include the following information:

- (1) What the certification or designation is and what entity issued it.
- (2) The dates the certification or designation is valid.
- (3) The names in which the certification or designation is held.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5380.** (a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit those funds that are not placed into an escrow account with a bank, savings association, or credit union or into an account under the control of the association, into a trust fund account maintained by the managing agent in a bank, savings association, or credit union in this state. All funds deposited by the managing agent in the trust fund account shall be kept in this state in a financial institution, as defined in Section 31041 of the Financial Code, which is insured by the federal government, and shall be maintained there until disbursed in accordance with written instructions from the association entitled to the funds.

(b) At the written request of the board, the funds the managing agent accepts or receives on behalf of the association shall be deposited into an interest-bearing account in a bank, savings association, or credit union in this state, provided all of the following requirements are met:

(1) The account is in the name of the managing agent as trustee for the association or in the name of the association.

(2) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(3) The funds in the account are kept separate, distinct, and apart from the funds belonging to the managing agent or to any other person for whom the managing agent holds funds in trust except that the funds of various associations may be commingled as permitted pursuant to subdivision (d).

(4) The managing agent discloses to the board the nature of the account, how interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and any notice requirements or penalties for withdrawal of funds from the account.

(5) No interest earned on funds in the account shall inure directly or indirectly to the benefit of the managing agent or the managing agent's employees.

(c) The managing agent shall maintain a separate record of the receipt and disposition of all funds described in this section, including any interest earned on the funds.

(d) The managing agent shall not commingle the funds of the association with the managing agent's own money or with the money of others that the managing agent receives or accepts, unless all of the following requirements are met:

(1) The managing agent commingled the funds of various associations on or before February 26, 1990, and has obtained a written agreement with the board of each association that the managing agent will maintain a fidelity and surety bond in an amount that provides adequate protection to the associations as agreed upon by the managing agent and the board of each association.

(2) The managing agent discloses in the written agreement whether the managing agent is deriving benefits from the commingled account or the bank, credit union, or savings institution where the moneys will be on deposit.

(3) The written agreement provided pursuant to this subdivision includes, but is not limited to, the name and address of the bonding companies, the amount of the bonds, and the expiration dates of the bonds.

(4) If there are any changes in the bond coverage or the companies providing the coverage, the managing agent discloses that fact to the board of each affected association as soon as practical, but in no event more than 10 days after the change.

(5) The bonds assure the protection of the association and provide the association at least 10 days' notice prior to cancellation.

(6) Completed payments on the behalf of the association are deposited within 24 hours or the next business day and do not remain commingled for more than 10 calendar days.

(e) The prevailing party in an action to enforce this section shall be entitled to recover reasonable legal fees and court costs.

(f) As used in this section, "completed payment" means funds received that clearly identify the account to which the funds are to be credited.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5385.** For the purposes of this article, "managing agent" does not include a full-time employee of the association.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5400.** To the extent existing funds are available, the Department of Consumer Affairs and the Bureau of Real Estate shall develop an online education course for the board regarding the role, duties, laws, and responsibilities of directors and prospective directors, and the nonjudicial foreclosure process.

*(Amended (as added by Stats. 2012, Ch. 180, Sec. 2) by Stats. 2013, Ch. 352, Sec. 55. Effective September 26, 2013. Section (in this amended form) initially operative on January 1, 2014, by Sec. 543 of Ch. 352, and pursuant to Stats. 2012, Ch. 180, Sec. 3.)*

**5405.** (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 email address of the president of the association, other than the address, telephone number, or email 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, 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, Consumer Services, 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.

*(Amended (as added by Stats. 2012, Ch. 180) by Stats. 2013, Ch. 353, Sec. 12. Effective September 26, 2013. Addition and amendment of this section are operative January 1, 2014, by Stats. 2012, Ch. 180, Sec. 3, and Stats. 2013, Ch. 353, Sec. 129.)*

**5500.** Unless the governing documents impose more stringent standards, the board shall do all of the following:

(a) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.

(b) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.

(c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(e) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5510.** (a) The signatures of at least two persons, who shall be directors, or one officer who is not a director and one who is a director, shall be required for the withdrawal of moneys from the association's reserve accounts.

(b) The board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or

maintenance of, major components that the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5515.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5520.** (a) When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation pursuant to subdivision (b) of Section 5510, the association shall provide general notice pursuant to Section 4045 of that decision, and of the availability of an accounting of those expenses.

(b) Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5550.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5560.** (a) The reserve funding plan required by Section 5550 shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan.

(b) The plan shall be adopted by the board at an open meeting before the membership of the association as described in Article 2 (commencing with Section 4900) of Chapter 6.

(c) If the board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in Section 5605.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5565.** The summary of the association's reserves required by paragraph (2) of subdivision (b) of Section 5300 shall be based on the most recent review or study conducted pursuant to Section 5550, shall be based only on assets held in cash or cash equivalents, shall be printed in boldface type, and shall include all of the following:

(a) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(b) As of the end of the fiscal year for which the study is prepared:

(1) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(3) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to paragraph (2). Instead of complying with the requirements set forth in this paragraph, an association that is obligated to issue a review of its financial statement pursuant to Section 5305 may include in the review a statement containing all of the information required by this paragraph.

(c) The percentage that the amount determined for purposes of paragraph (2) of subdivision (b) equals the amount determined for purposes of paragraph (1) of subdivision (b).

(d) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of paragraph (2) of subdivision (b) from the amount determined for purposes of paragraph (1) of subdivision (b) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5570.** (a) The disclosures required by this article with regard to an association or a property shall be summarized on the following form:

Assessment and Reserve Funding Disclosure Summary For the Fiscal Year Ending \_\_\_\_\_

(1) The regular assessment per ownership interest is \$\_\_\_\_\_ per \_\_\_\_\_. Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_\_ of the attached summary.

(2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_\_ of the attached report.

(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association’s obligation for repair and/or replacement of major components during the next 30 years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members?

Approximate date assessment will be due:	Amount per ownership interest per month or year:
	Total:

(5) All major components are included in the reserve study and are included in its calculations.

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570, the estimated amount required in the reserve fund at the end of the current fiscal year is \$\_\_\_\_\_, based in whole or in part on the last reserve study or update prepared by \_\_\_\_\_ as of \_\_\_\_\_ (month), \_\_\_\_\_ (year). The projected reserve fund cash balance at the end of the current fiscal year is \$\_\_\_\_\_, resulting in reserves being \_\_\_\_\_ percent funded at this date.

If an alternate, but generally accepted, method of calculation is also used, the required reserve amount is \$\_\_\_\_\_. (See attached explanation)

(7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next five budget years is \$\_\_\_\_\_, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is \$\_\_\_\_\_, leaving the reserve at \_\_\_\_\_ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be \$\_\_\_\_\_, leaving the reserve at \_\_\_\_\_ percent funding.

Note: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change. At the time this summary was prepared, the assumed long-term before-tax interest rate earned on reserve funds was \_\_\_\_\_ percent per year, and the

assumed long-term inflation rate to be applied to major component repair and replacement costs was \_\_\_\_\_ percent per year.

(b) For the purposes of preparing a summary pursuant to this section:

(1) "Estimated remaining useful life" means the time reasonably calculated to remain before a major component will require replacement.

(2) "Major component" has the meaning used in Section 55530. Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each annual budget report or summary thereof that is delivered pursuant to Section 5300. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.

(4) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the board to fund reserves in accordance with this calculation.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5580.** (a) Unless the governing documents impose more stringent standards, any community service organization whose funding from the association or its members exceeds 10 percent of the organization's annual budget shall prepare and distribute to the association 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 Article 5 (commencing with Section 5200) of Chapter 6.

(b) If the community service organization does not comply with the standards, the report shall disclose the noncompliance in detail. If a community service organization is responsible for the maintenance of major components for which an association would otherwise be responsible, the community service organization shall supply to the association the information regarding those components that the association would use to complete disclosures and reserve reports required under this article and Section 5300. An association may rely upon information received from a community service organization, and shall provide access to the information pursuant to the provisions of Article 5 (commencing with Section 5200) of Chapter 6.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5600.** (a) Except as provided in Section 5605, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this act.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5605.** (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.

(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.

(c) For the purposes of this section, "quorum" means more than 50 percent of the members.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5610.** 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:

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5615.** 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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5620.** (a) Regular assessments imposed or collected to perform the obligations of an association under the governing documents or this act shall be exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision.

(b) This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by a majority of a quorum of members, pursuant to Section 4070, at a member meeting or election, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5625.** (a) Except as provided in subdivision (b), notwithstanding any provision of this act or the governing documents to the contrary, an association shall not levy assessments on separate interests within the common interest development based on the taxable value of the separate interests unless the association, on or before December 31, 2009, in accordance with its governing documents, levied assessments on those separate interests based on their taxable value, as determined by the tax assessor of the county in which the separate interests are located.

(b) An association that is responsible for paying taxes on the separate interests within the common interest development may levy that portion of assessments on separate interests that is related to the payment of taxes based on the taxable value of the separate interest, as determined by the tax assessor.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5650.** (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 or other sums are levied.

(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:

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5655.** (a) Any payments made by the owner of a separate interest toward a debt described in subdivision (a) of Section 5650 shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest.

(b) When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it.

(c) The association shall provide a mailing address for overnight payment of assessments. The address shall be provided in the annual policy statement.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5658.** (a) If a dispute exists between the owner of a separate interest and the association regarding any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits of the small claims court stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the owner of the separate interest may, in addition to pursuing dispute resolution pursuant to Article 3 (commencing with Section 5925) of Chapter 10, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, pursuant to subdivision (b) of Section 5650, and commence an action in small claims court pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure.

(b) Nothing in this section shall impede an association's ability to collect delinquent assessments as provided in this article or Article 3 (commencing with Section 5700).

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5660.** At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under Section 5650, the association shall notify the owner of record in writing by certified mail of the following:

(a) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records pursuant to Section 5205, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed:

"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(b) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(c) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(d) The right to request a meeting with the board as provided in Section 5665.

(e) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association's "meet and confer" program required in Article 2 (commencing with Section 5900) of Chapter 10.

(f) The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing with Section 5925) of Chapter 10 before the association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5665.** (a) An owner, other than an owner of any interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7 of the Business and Professions Code, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to Section 5660. The association shall provide the owners the standards for payment plans, if any exists.

(b) The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more directors to meet with the owner.

(c) Payment plans may incorporate any assessments that accrue during the payment plan period. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan.

(d) Payment plans shall not impede an association's ability to record a lien on the owner's separate interest to secure payment of delinquent assessments.

(e) In the event of a default on any payment plan, the association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5670.** Prior to recording a lien for delinquent assessments, an association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association's "meet and confer" program required in Article 2 (commencing with Section 5900) of Chapter 10.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5673.** For liens recorded on or after January 1, 2006, the decision to record a lien for delinquent assessments shall be made only by the board and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the directors in an open meeting. The board shall record the vote in the minutes of that meeting.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5675.** (a) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with subdivision (b) of Section 5650, shall be a lien on the owner's separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall

state the amount of the assessment and other sums imposed in accordance with subdivision (b) of Section 5650, a legal description of the owner's separate interest in the common interest development against which the assessment and other sums are levied, and the name of the record owner of the separate interest in the common interest development against which the lien is imposed.

(b) The itemized statement of the charges owed by the owner described in subdivision (b) of Section 5660 shall be recorded together with the notice of delinquent assessment.

(c) In order for the lien to be enforced by nonjudicial foreclosure as provided in Sections 5700 to 5710, inclusive, the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale.

(d) The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association.

(e) A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association's records, and the notice shall be mailed no later than 10 calendar days after recordation.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5680.** A lien created pursuant to Section 5675 shall be prior to all other liens recorded subsequent to the notice of delinquent assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5685.** (a) Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied.

(b) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(c) If it is determined that an association has recorded a lien for a delinquent assessment in error, the association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the notice prescribed in Section 5660, and costs of recordation and release of the lien authorized under subdivision (b) of Section 5720, and pay all costs related to any related dispute resolution or alternative dispute resolution.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5690.** An association that fails to comply with the procedures set forth in this article shall, prior to recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5700.** (a) Except as otherwise provided in this article, after the expiration of 30 days following the recording of a lien created pursuant to Section 5675, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a.

(b) Nothing in Article 2 (commencing with Section 5650) or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is

created pursuant to Article 2 (commencing with Section 5650) or prohibits an association from taking a deed in lieu of foreclosure.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5705.** (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association's "meet and confer" program required in Article 2 (commencing with Section 5900) of Chapter 10 or alternative dispute resolution as set forth in Article 3 (commencing with Section 5925) of Chapter 10. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(c) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the directors in an executive session. The board shall record the vote in the minutes of the next meeting of the board open to all members. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the owner or owners. A board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(d) The board shall provide notice by personal service in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a separate interest who occupies the separate interest or to the owner's legal representative, if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5710.** (a) Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust.

(b) In addition to the requirements of Section 2924, the association shall serve a notice of default on the person named as the owner of the separate interest in the association's records or, if that person has designated a legal representative pursuant to this subdivision, on that legal representative. Service shall be in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. An owner may designate a legal representative in a writing that is mailed to the association in a manner that indicates that the association has received it.

(c) The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d, plus the cost of service for either of the following:

(1) The notice of default pursuant to subdivision (b).

(2) The decision of the board to foreclose upon the separate interest of an owner as described in subdivision (d) of Section 5705.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5715.** (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale. In addition to the requirements of

Section 2924f, a notice of sale in connection with an association's foreclosure of a separate interest in a common interest development shall include a statement that the property is being sold subject to the right of redemption created in this section.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5720.** (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of Part 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount to that described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments secured by the lien are more than 12 months delinquent. An association that chooses to record a lien under these provisions, prior to recording the lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in Article 2 (commencing with Section 5900) of Chapter 10.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) The limitation on foreclosure of assessment liens for amounts under the stated minimum in this section does not apply to any of the following:

(1) Assessments secured by a lien that are more than 12 months delinquent.

(2) Assessments owed by owners of separate interests in time-share estates, as defined in subdivision (x) of Section 11212 of the Business and Professions Code.

(3) Assessments owed by the developer.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5725.** (a) A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common area and facilities caused by a member or the member's guest or tenant may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(b) A monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing documents, except for the late payments, may not be characterized nor treated in the governing documents as an assessment that may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)

**5730.** (a) The annual policy statement, prepared pursuant to Section 5310, shall include the following notice, in at least 12-point type:

**"NOTICE ASSESSMENTS AND FORECLOSURE**

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

**ASSESSMENTS AND FORECLOSURE**

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 5700 through 5720 of the Civil Code, inclusive)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common area damaged by a member or a member's guests, if the governing documents provide for this. (Section 5725 of the Civil Code)

The association must comply with the requirements of Article 2 (commencing with Section 5650) of Chapter 8 of Part 5 of Division 4 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 5675 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 5660 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 5685 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

## PAYMENTS

When an owner makes a payment, the owner may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 5655 of the Civil Code)

An owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of Part 5 of Division 4 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 3 (commencing with Section 5925) of Chapter 10 of Part 5 of Division 4 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 5685 of the Civil Code)

## MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share interest may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exists. (Section 5665 of the Civil Code)

The board must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 5665 of the Civil Code)"

(b) An association distributing the notice required by this section to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7 of the Business and Professions Code may delete from the notice described in subdivision (a) the portion regarding meetings and payment plans.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5735.** (a) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association.

(b) Nothing in subdivision (a) restricts the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5740.** (a) Except as otherwise provided, this article applies to a lien created on or after January 1, 2003.

(b) A lien created before January 1, 2003, is governed by the law in existence at the time the lien was created.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5800.** (a) A volunteer officer or volunteer director of an association that manages a common interest development that is exclusively residential, shall not be personally liable in excess of the coverage of insurance specified in paragraph (4) to any person who suffers injury, including, but not limited to, bodily injury,

emotional distress, wrongful death, or property damage or loss as a result of the tortious act or omission of the volunteer officer or volunteer director if all of the following criteria are met:

- (1) The act or omission was performed within the scope of the officer's or director's association duties.
- (2) The act or omission was performed in good faith.
- (3) The act or omission was not willful, wanton, or grossly negligent.

(4) The association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance that shall include coverage for (A) general liability of the association and (B) individual liability of officers and directors of the association for negligent acts or omissions in that capacity; provided that both types of coverage are in the following minimum amounts:

(A) At least five hundred thousand dollars (\$500,000) if the common interest development consists of 100 or fewer separate interests.

(B) At least one million dollars (\$1,000,000) if the common interest development consists of more than 100 separate interests.

(b) The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director's or officer's status as a volunteer within the meaning of this section.

(c) An officer or director who at the time of the act or omission was a declarant, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property, is not a volunteer for the purposes of this section.

(d) Nothing in this section shall be construed to limit the liability of the association for its negligent act or omission or for any negligent act or omission of an officer or director of the association.

(e) This section shall only apply to a volunteer officer or director who is a tenant of a separate interest in the common interest development or is an owner of no more than two separate interests in the common interest development.

(f) (1) For purposes of paragraph (1) of subdivision (a), the scope of the officer's or director's association duties shall include, but shall not be limited to, both of the following decisions:

(A) Whether to conduct an investigation of the common interest development for latent deficiencies prior to the expiration of the applicable statute of limitations.

(B) Whether to commence a civil action against the builder for defects in design or construction.

(2) It is the intent of the Legislature that this section clarify the scope of association duties to which the protections against personal liability in this section apply. It is not the intent of the Legislature that these clarifications be construed to expand, or limit, the fiduciary duties owed by the directors or officers.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5805.** (a) It is the intent of the Legislature to offer civil liability protection to owners of the separate interests in a common interest development that have common area owned in tenancy-in-common if the association carries a certain level of prescribed insurance that covers a cause of action in tort.

(b) Any cause of action in tort against any owner of a separate interest arising solely by reason of an ownership interest as a tenant-in-common in the common area of a common interest development shall be brought only against the association and not against the individual owners of the separate interests, if both of the insurance requirements in paragraphs (1) and (2) are met:

(1) The association maintained and has in effect for this cause of action, one or more policies of insurance that include coverage for general liability of the association.

(2) The coverage described in paragraph (1) is in the following minimum amounts:

(A) At least two million dollars (\$2,000,000) if the common interest development consists of 100 or fewer separate interests.

(B) At least three million dollars (\$3,000,000) if the common interest development consists of more than 100 separate interests.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5810.** The association shall, as soon as reasonably practicable, provide individual notice pursuant to Section 4040 to all members if any of the policies described in the annual budget report pursuant to Section 5300 have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in the annual budget report pursuant to Section 5300, the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5850.** (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.

(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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5855.** (a) When the board is to meet to consider or impose discipline upon a member, or to impose a monetary charge as a means of reimbursing the association for costs incurred by the association in the repair of damage to common area and facilities caused by a member or the member's guest or tenant, the board shall notify the member in writing, by either personal delivery or individual delivery pursuant to Section 4040, at least 10 days prior to the meeting.

(b) The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which a member may be disciplined or the nature of the damage to the common area and facilities for which a monetary charge may be imposed, and a statement that the member has a right to attend and may address the board at the meeting. The board shall meet in executive session if requested by the member.

(c) If the board imposes discipline on a member or imposes a monetary charge on the member for damage to the common area and facilities, the board shall provide the member a written notification of the decision, by either personal delivery or individual delivery pursuant to Section 4040, within 15 days following the action.

(d) A disciplinary action or the imposition of a monetary charge for damage to the common area shall not be effective against a member unless the board fulfills the requirements of this section.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5865.** Nothing in Section 5850 or 5855 shall be construed to create, expand, or reduce the authority of the board to impose monetary penalties on a member for a violation of the governing documents.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5900.** (a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this act, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the governing documents of the common interest development or association.

(b) This article supplements, and does not replace, Article 3 (commencing with Section 5925), relating to alternative dispute resolution as a prerequisite to an enforcement action.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5905.** (a) An association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article.

(b) In developing a procedure pursuant to this article, an association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development.

(c) If an association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article, the procedure provided in Section 5915 applies and satisfies the requirement of subdivision (a).

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5910.** A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.

(c) If the procedure is invoked by a member, the association shall participate in the procedure.

(d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the board.

(e) A resolution of a dispute pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the association and is judicially enforceable. An agreement reached pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.

(f) The procedure shall provide a means by which the member and the association may explain their positions.

(g) A member of the association shall not be charged a fee to participate in the process.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5915.** (a) This section applies to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.

(3) The board shall designate a director to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

(d) A member may not be charged a fee to participate in the process.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5920.** The annual policy statement prepared pursuant to Section 5310 shall include a description of the internal dispute resolution process provided pursuant to this article.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5925.** As used in this article:

(a) "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) "Enforcement action" means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this act.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5930.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5935.** (a) Any party to a dispute may initiate the process required by Section 5930 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

(1) A brief description of the dispute between the parties.

(2) A request for alternative dispute resolution.

(3) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.

(4) If the party on whom the request is served is the member, a copy of this article.

(b) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5940.** (a) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(c) The costs of the alternative dispute resolution shall be borne by the parties.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5945.** If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

(a) The period provided in Section 5935 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 5940 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 5940.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5950.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5955.** (a) After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(b) The costs of the alternative dispute resolution shall be borne by the parties.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5960.** In an enforcement action in which attorney's fees and costs may be awarded, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5965.** (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.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5975.** (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

(c) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5980.** An association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the members, in matters pertaining to the following:

(a) Enforcement of the governing documents.

(b) Damage to the common area.

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**5985.** (a) In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 5980, the amount of damages recovered by the association shall be reduced by the amount of damages allocated to the association or its managing agents in direct proportion to their percentage of fault based upon principles of comparative fault. The comparative fault of the association or its managing agents may be raised by way of defense, but shall not be the basis for a cross-action or separate action against the association or its managing agents for contribution or implied indemnity, where the only damage was sustained by the association or its members. It is the intent of the Legislature in enacting this subdivision to require that comparative fault be pleaded as an affirmative defense, rather than a separate cause of action, where the only damage was sustained by the association or its members.

(b) In an action involving damages described in subdivision (b), (c), or (d) of Section 5980, the defendant or cross-defendant may allege and prove the comparative fault of the association or its managing agents as a setoff to the liability of the defendant or cross-defendant even if the association is not a party to the litigation or is no longer a party whether by reason of settlement, dismissal, or otherwise.

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

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

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**6000.** (a) Before an association files a complaint for damages against a builder, developer, or general contractor (respondent) of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of this section shall be satisfied with respect to the builder, developer, or general contractor.

(b) The association shall serve upon the respondent a "Notice of Commencement of Legal Proceedings." The notice shall be served by certified mail to the registered agent of the respondent, or if there is no registered agent, then to any officer of the respondent. If there are no current officers of the respondent, service shall be upon the person or entity otherwise authorized by law to receive service of process. Service upon the general contractor shall be sufficient to initiate the process set forth in this section with regard to any builder or

developer, if the builder or developer is not amenable to service of process by the foregoing methods. This notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity applicable to the claim for the period set forth in subdivision (c). The notice shall include all of the following:

(1) The name and location of the project.

(2) An initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue.

(3) A description of the results of the defects, if known.

(4) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed.

(5) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted.

(c) Service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through the processes set forth in this section. This 180-day period may be extended for one additional period, not to exceed 180 days, only upon the mutual agreement of the association, the respondent, and any parties not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any extensions beyond the first extension shall require the agreement of all participating parties. Unless extended, the dispute resolution process prescribed by this section shall be deemed completed. All extensions shall continue the tolling period described in subdivision (b).

(d) Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to meet and confer with the board. Unless the respondent and the association otherwise agree, there shall be not more than one meeting, which shall take place no later than 10 days from the date of the respondent's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (a) of Section 4925 and subdivisions (a) and (b) of Section 4935. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and the respondent consent in writing to their admission.

(e) Upon receipt of the notice, the respondent shall, within 60 days, comply with the following:

(1) The respondent shall provide the association with access to, for inspection and copying of, all plans and specifications, subcontracts, and other construction files for the project that are reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed. The association shall provide the respondent with access to, for inspection and copying of, all files reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed, including all reserve studies, maintenance records and any survey questionnaires, or results of testing to determine the nature and extent of defects. To the extent any of the above documents are withheld based on privilege, a privilege log shall be prepared and submitted to all other parties. All other potentially responsible parties shall have the same rights as the respondent regarding the production of documents upon receipt of written notice of the claim, and shall produce all relevant documents within 60 days of receipt of the notice of the claim.

(2) The respondent shall provide written notice by certified mail to all subcontractors, design professionals, their insurers, and the insurers of any additional insured whose identities are known to the respondent or readily ascertainable by review of the project files or other similar sources and whose potential responsibility appears on the face of the notice. This notice to subcontractors, design professionals, and insurers shall include a copy of the Notice of Commencement of Legal Proceedings, and shall specify the date and manner by which the parties shall meet and confer to select a dispute resolution facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its obligation to participate in the meet and confer or serve a written acknowledgment of receipt regarding this notice, advise the recipient that it will waive any challenge to selection of the dispute resolution facilitator if it elects not to participate in the meet and confer, advise the

recipient that it may seek the assistance of an attorney, and advise the recipient that it should contact its insurer, if any. Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who receives written notice from the respondent regarding the meet and confer shall, prior to the meet and confer, serve on the respondent a written acknowledgment of receipt. That subcontractor or design professional shall, within 10 days of service of the written acknowledgment of receipt, provide to the association and the respondent a Statement of Insurance that includes both of the following:

(A) The names, addresses, and contact persons, if known, of all insurance carriers, whether primary or excess and regardless of whether a deductible or self-insured retention applies, whose policies were in effect from the commencement of construction of the subject project to the present and which potentially cover the subject claims.

(B) The applicable policy numbers for each policy of insurance provided.

(3) Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who so chooses, may, at any time, make a written request to the dispute resolution facilitator for designation as a peripheral party. That request shall be served contemporaneously on the association and the respondent. If no objection to that designation is received within 15 days, or upon rejection of that objection, the dispute resolution facilitator shall designate that subcontractor or design professional as a peripheral party, and shall thereafter seek to limit the attendance of that subcontractor or design professional only to those dispute resolution sessions deemed peripheral party sessions or to those sessions during which the dispute resolution facilitator believes settlement as to peripheral parties may be finalized. Nothing in this subdivision shall preclude a party who has been designated a peripheral party from being reclassified as a nonperipheral party, nor shall this subdivision preclude a party designated as a nonperipheral party from being reclassified as a peripheral party after notice to all parties and an opportunity to object. For purposes of this subdivision, a peripheral party is a party having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

(f) (1) Within 20 days of sending the notice set forth in paragraph (2) of subdivision (e), the association, respondent, subcontractors, design professionals, and their insurers who have been sent a notice as described in paragraph (2) of subdivision (e) shall meet and confer in an effort to select a dispute resolution facilitator to preside over the mandatory dispute resolution process prescribed by this section. Any subcontractor or design professional who has been given timely notice of this meeting but who does not participate, waives any challenge he or she may have as to the selection of the dispute resolution facilitator. The role of the dispute resolution facilitator is to attempt to resolve the conflict in a fair manner. The dispute resolution facilitator shall be sufficiently knowledgeable in the subject matter and be able to devote sufficient time to the case. The dispute resolution facilitator shall not be required to reside in or have an office in the county in which the project is located. The dispute resolution facilitator and the participating parties shall agree to a date, time, and location to hold a case management meeting of all parties and the dispute resolution facilitator, to discuss the claims being asserted and the scheduling of events under this section. The case management meeting with the dispute resolution facilitator shall be held within 100 days of service of the Notice of Commencement of Legal Proceedings at a location in the county where the project is located. Written notice of the case management meeting with the dispute resolution facilitator shall be sent by the respondent to the association, subcontractors and design professionals, and their insurers who are known to the respondent to be on notice of the claim, no later than 10 days prior to the case management meeting, and shall specify its date, time, and location. The dispute resolution facilitator in consultation with the respondent shall maintain a contact list of the participating parties.

(2) No later than 10 days prior to the case management meeting, the dispute resolution facilitator shall disclose to the parties all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed dispute resolution facilitator would be able to resolve the conflict in a fair manner. The facilitator's disclosure shall include the existence of any ground specified in Section 170.1 of the Code of Civil

Procedure for disqualification of a judge, any attorney-client relationship the facilitator has or had with any party or lawyer for a party to the dispute resolution process, and any professional or significant personal relationship the facilitator or his or her spouse or minor child living in the household has or had with any party to the dispute resolution process. The disclosure shall also be provided to any subsequently noticed subcontractor or design professional within 10 days of the notice.

(3) A dispute resolution facilitator shall be disqualified by the court if he or she fails to comply with this subdivision and any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting. If the dispute resolution facilitator complies with this subdivision, he or she shall be disqualified by the court on the basis of the disclosure if any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting.

(4) If the parties cannot mutually agree to a dispute resolution facilitator, then each party shall submit a list of three dispute resolution facilitators. Each party may then strike one nominee from the other parties' list, and petition the court, pursuant to the procedure described in subdivisions (n) and (o), for final selection of the dispute resolution facilitator. The court may issue an order for final selection of the dispute resolution facilitator pursuant to this paragraph.

(5) Any subcontractor or design professional who receives notice of the association's claim without having previously received timely notice of the meet and confer to select the dispute resolution facilitator shall be notified by the respondent regarding the name, address, and telephone number of the dispute resolution facilitator. Any such subcontractor or design professional may serve upon the parties and the dispute resolution facilitator a written objection to the dispute resolution facilitator within 15 days of receiving notice of the claim. Within seven days after service of this objection, the subcontractor or design professional may petition the superior court to replace the dispute resolution facilitator. The court may replace the dispute resolution facilitator only upon a showing of good cause, liberally construed. Failure to satisfy the deadlines set forth in this subdivision shall constitute a waiver of the right to challenge the dispute resolution facilitator.

(6) The costs of the dispute resolution facilitator shall be apportioned in the following manner: one-third to be paid by the association; one-third to be paid by the respondent; and one-third to be paid by the subcontractors and design professionals, as allocated among them by the dispute resolution facilitator. The costs of the dispute resolution facilitator shall be recoverable by the prevailing party in any subsequent litigation pursuant to Section 1032 of the Code of Civil Procedure, provided however that any nonsettling party may, prior to the filing of the complaint, petition the facilitator to reallocate the costs of the dispute resolution facilitator as they apply to any nonsettling party. The determination of the dispute resolution facilitator with respect to the allocation of these costs shall be binding in any subsequent litigation. The dispute resolution facilitator shall take into account all relevant factors and equities between all parties in the dispute resolution process when reallocating costs.

(7) In the event the dispute resolution facilitator is replaced at any time, the case management statement created pursuant to subdivision (h) shall remain in full force and effect.

(8) The dispute resolution facilitator shall be empowered to enforce all provisions of this section.

(g) (1) No later than the case management meeting, the parties shall begin to generate a data compilation showing the following information regarding the alleged defects at issue:

(A) The scope of the work performed by each potentially responsible subcontractor.

(B) The tract or phase number in which each subcontractor provided goods or services, or both.

(C) The units, either by address, unit number, or lot number, at which each subcontractor provided goods or services, or both.

(2) This data compilation shall be updated as needed to reflect additional information. Each party attending the case management meeting, and any subsequent meeting pursuant to this section, shall provide all information available to that party relevant to this data compilation.

(h) At the case management meeting, the parties shall, with the assistance of the dispute resolution facilitator, reach agreement on a case management statement, which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive, except that the parties may dispense with one or more of these elements if they agree that it is appropriate to do so. The case management statement shall provide that the following elements shall take place in the following order:

(1) Establishment of a document depository, located in the county where the project is located, for deposit of documents, defect lists, demands, and other information provided for under this section. All documents exchanged by the parties and all documents created pursuant to this subdivision shall be deposited in the document depository, which shall be available to all parties throughout the prefiling dispute resolution process and in any subsequent litigation. When any document is deposited in the document depository, the party depositing the document shall provide written notice identifying the document to all other parties. The costs of maintaining the document depository shall be apportioned among the parties in the same manner as the costs of the dispute resolution facilitator.

(2) Provision of a more detailed list of defects by the association to the respondent after the association completes a visual inspection of the project. This list of defects shall provide sufficient detail for the respondent to ensure that all potentially responsible subcontractors and design professionals are provided with notice of the dispute resolution process. If not already completed prior to the case management meeting, the Notice of Commencement of Legal Proceedings shall be served by the respondent on all additional subcontractors and design professionals whose potential responsibility appears on the face of the more detailed list of defects within seven days of receipt of the more detailed list. The respondent shall serve a copy of the case management statement, including the name, address, and telephone number of the dispute resolution facilitator, to all the potentially responsible subcontractors and design professionals at the same time.

(3) Nonintrusive visual inspection of the project by the respondent, subcontractors, and design professionals.

(4) Invasive testing conducted by the association, if the association deems appropriate. All parties may observe and photograph any testing conducted by the association pursuant to this paragraph, but may not take samples or direct testing unless, by mutual agreement, costs of testing are shared by the parties.

(5) Provision by the association of a comprehensive demand which provides sufficient detail for the parties to engage in meaningful dispute resolution as contemplated under this section.

(6) Invasive testing conducted by the respondent, subcontractors, and design professionals, if they deem appropriate.

(7) Allowance for modification of the demand by the association if new issues arise during the testing conducted by the respondent, subcontractor, or design professionals.

(8) Facilitated dispute resolution of the claim, with all parties, including peripheral parties, as appropriate, and insurers, if any, present and having settlement authority. The dispute resolution facilitators shall endeavor to set specific times for the attendance of specific parties at dispute resolution sessions. If the dispute resolution facilitator does not set specific times for the attendance of parties at dispute resolution sessions, the dispute resolution facilitator shall permit those parties to participate in dispute resolution sessions by telephone.

(i) In addition to the foregoing elements of the case management statement described in subdivision (h), upon mutual agreement of the parties, the dispute resolution facilitator may include any or all of the following elements in a case management statement: the exchange of consultant or expert photographs; expert presentations; expert meetings; or any other mechanism deemed appropriate by the parties in the interest of resolving the dispute.

(j) The dispute resolution facilitator, with the guidance of the parties, shall at the time the case management statement is established, set deadlines for the occurrence of each event set forth in the case management

statement, taking into account such factors as the size and complexity of the case, and the requirement of this section that this dispute resolution process not exceed 180 days absent agreement of the parties to an extension of time.

(k) (1) (A) At a time to be determined by the dispute resolution facilitator, the respondent may submit to the association all of the following:

- (i) A request to meet with the board to discuss a written settlement offer.
- (ii) A written settlement offer, and a concise explanation of the reasons for the terms of the offer.
- (iii) A statement that the respondent has access to sufficient funds to satisfy the conditions of the settlement offer.
- (iv) A summary of the results of testing conducted for the purposes of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the respondent with actual test results.

(B) If the respondent does not timely submit the items required by this subdivision, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision only.

(C) No less than 10 days after the respondent submits the items required by this paragraph, the respondent and the board shall meet and confer about the respondent's settlement offer.

(D) If the board rejects a settlement offer presented at the meeting held pursuant to this subdivision, the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the respondent.

(E) No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

- (i) That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting.
- (ii) The options that are available to address the problems, including the filing of a civil action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases.
- (iii) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board at the meeting held pursuant to subdivision (d) that was received from the respondent.

(F) The respondent shall pay all expenses attributable to sending the settlement offer to all members of the association. The respondent shall also pay the expense of holding the meeting, not to exceed three dollars (\$3) per association member.

(G) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to subparagraph (E) are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(H) No more than one request to meet and discuss a written settlement offer may be made by the respondent pursuant to this subdivision.

(I) All defect lists and demands, communications, negotiations, and settlement offers made in the course of the prelitigation dispute resolution process provided by this section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code and all applicable decisional law. This inadmissibility shall not be extended to any other documents or communications which would not otherwise be deemed inadmissible.

(m) Any subcontractor or design professional may, at any time, petition the dispute resolution facilitator to release that party from the dispute resolution process upon a showing that the subcontractor or design professional is not potentially responsible for the defect claims at issue. The petition shall be served contemporaneously on all other parties, who shall have 15 days from the date of service to object. If a subcontractor or design professional is released, and it later appears to the dispute resolution facilitator that it

may be a responsible party in light of the current defect list or demand, the respondent shall renounce the party as provided by paragraph (2) of subdivision (e), provide a copy of the current defect list or demand, and direct the party to attend a dispute resolution session at a stated time and location. A party who subsequently appears after having been released by the dispute resolution facilitator shall not be prejudiced by its absence from the dispute resolution process as the result of having been previously released by the dispute resolution facilitator.

(n) Any party may, at any time, petition the superior court in the county where the project is located, upon a showing of good cause, and the court may issue an order, for any of the following, or for appointment of a referee to resolve a dispute regarding any of the following:

(1) To take a deposition of any party to the process, or subpoena a third party for deposition or production of documents, which is necessary to further prelitigation resolution of the dispute.

(2) To resolve any disputes concerning inspection, testing, production of documents, or exchange of information provided for under this section.

(3) To resolve any disagreements relative to the timing or contents of the case management statement.

(4) To authorize internal extensions of timeframes set forth in the case management statement.

(5) To seek a determination that a settlement is a good faith settlement pursuant to Section 877.6 of the Code of Civil Procedure and all related authorities. The page limitations and meet and confer requirements specified in this section shall not apply to these motions, which may be made on shortened notice. Instead, these motions shall be subject to other applicable state law, rules of court, and local rules. A determination made by the court pursuant to this motion shall have the same force and effect as the determination of a postfiling application or motion for good faith settlement.

(6) To ensure compliance, on shortened notice, with the obligation to provide a Statement of Insurance pursuant to paragraph (2) of subdivision (e).

(7) For any other relief appropriate to the enforcement of the provisions of this section, including the ordering of parties, and insurers, if any, to the dispute resolution process with settlement authority.

(o) (1) A petition filed pursuant to subdivision (n) shall be filed in the superior court in the county in which the project is located. The court shall hear and decide the petition within 10 days after filing. The petitioning party shall serve the petition on all parties, including the date, time, and location of the hearing no later than five business days prior to the hearing. Any responsive papers shall be filed and served no later than three business days prior to the hearing. Any petition or response filed under this section shall be no more than three pages in length.

(2) All parties shall meet with the dispute resolution facilitator, if one has been appointed and confer in person or by telephone prior to the filing of that petition to attempt to resolve the matter without requiring court intervention.

(p) As used in this section:

(1) "Association" shall have the same meaning as defined in Section 4080.

(2) "Builder" means the declarant, as defined in Section 4130.

(3) "Common interest development" shall have the same meaning as in Section 4100, except that it shall not include developments or projects with less than 20 units.

(q) The alternative dispute resolution process and procedures described in this section shall have no application or legal effect other than as described in this section.

(r) This section shall become operative on July 1, 2002, however it shall not apply to any pending suit or claim for which notice has previously been given.

(s) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180. Inoperative July 1, 2017. Repealed as of January 1, 2018, by its own provisions.)*

**6100.** (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged defects in the common areas, alleged defects in the separate interests that the association is obligated to maintain or repair, or alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair, where the defects giving rise to the dispute have not been corrected, the association shall, in writing, inform only the members of the association whose names appear on the records of the association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(1) A general description of the defects that the association reasonably believes, as of the date of the disclosure, will be corrected or replaced.

(2) A good faith estimate, as of the date of the disclosure, of when the association believes that the defects identified in paragraph (1) will be corrected or replaced. The association may state that the estimate may be modified.

(3) The status of the claims for defects in the design or construction of the common interest development that were not identified in paragraph (1) whether expressed in a preliminary list of defects sent to each member of the association or otherwise claimed and disclosed to the members of the association.

(b) Nothing in this section shall preclude an association from amending the disclosures required pursuant to subdivision (a), and any amendments shall supersede any prior conflicting information disclosed to the members of the association and shall retain any privilege attached to the original disclosures.

(c) Disclosure of the information required pursuant to subdivision (a) or authorized by subdivision (b) shall not waive any privilege attached to the information.

(d) For the purposes of the disclosures required pursuant to this section, the term “defects” shall be defined to include any damage resulting from defects.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*

**6150.** (a) Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board shall provide a written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of this meeting.

(b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*