

## Inspection of Association Records

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Pursuant to California law, community associations are required to not only keep a large number of records, but to also allow their members to inspect many of these records.<sup>1</sup> For instance, California Civil Code (“Civil Code”) Section 1368 requires an association to allow a member to inspect its governing documents within ten (10) days of receiving the member’s written request to inspect such documents. Similarly, California Corporations Code (“Corporations Code”) Section 7160 requires an incorporated association to provide its Articles of Incorporation and Bylaws to a member “at all reasonable times during office hours.”

Civil Code Section 1365.2 provides members with the right to inspect the greatest number of association records. In accordance with Section 1365.2, a member of an association may inspect many of the association’s financial records, as well as executed contracts (provided they are not privileged); written board approval of vendor or contractor proposals and invoices; state and federal tax returns; reserve account balances and the records of payments made from reserve accounts; agendas and minutes of member meetings, open session board meetings and meetings of committees appointed by the board; the membership list; check registers; invoices and receipts; cancelled checks; purchase orders approved by the Association; and statements for services rendered. A member may even inspect reimbursement requests received by the association with the personal identification information redacted.

There are some limitations on a member’s right to inspect the above-mentioned records. For instance, with the exception of board meeting minutes, which are to be made permanently available to members, Section 1365.2 only mandates that an association provide such records for the current and prior two fiscal years. Further, the association may redact certain information (e.g., tax ID numbers, social security numbers, and bank account numbers) contained in its records before allowing a member to inspect them. A board can even refuse to allow the inspection of association

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<sup>1</sup> It should be noted that the governing documents for many associations also provide for member inspection of certain association records.

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records if it reasonably believes that the release of the requested information will lead to identify theft, be used to commit fraud in connection with the association, compromise the privacy of an individual member of the association or, if the information is privileged under law (e.g., communications between the association and its attorney). Having said this, it is important to keep in mind that if an association redacts records or refuses a request to inspect association records and the member challenges the board's actions in court, the association will have the burden of proving that the information was rightfully withheld.

### **Deadlines for Providing Association Records for Inspection**

Both the Civil Code and Corporations Code specify deadlines for the association to make requested records available for inspection by a member. For instance, many association records subject to member inspection pursuant to Civil Code Section 1365.2 must be made available to a requesting member within ten (10) business days if they were prepared during the current fiscal year and within thirty (30) calendar days if they were prepared during the prior two fiscal years.

### **The Form of Records Provided to Members**

Members have the right to request that records be provided 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.

### **Charging Members to Inspect Association Records**

Civil Code Section 1365.2 expressly grants an association the right to bill a member its direct and actual cost for photocopying or electronically duplicating requested association records, provided the association informs the member of the cost beforehand and receives the members' approval to proceed. Additionally, an association may bill a member up to \$10 per hour, not to exceed a total of \$200 per written request, for the time actually and reasonably incurred to redact private information (e.g., social security numbers, tax ID numbers, bank account numbers, etc.) from certain requested association records.

### **Liability**

An association may be held liable if it withholds association records subject to member inspection from a member requesting to inspect such records. Likewise, a member may be held liable if he or she uses the information for an improper and/or illegal purpose. For instance, pursuant to Civil Code Section 1365.2, an association that is found by the courts to have unreasonably withheld association records shall be required to pay the member's litigation costs and expenses, including his or her reasonable attorney's fees. The association may also be assessed a civil penalty of up to \$500 for the denial of each separate written request. On the other hand, an association may recover its costs if the courts find that the member's lawsuit is frivolous,

unreasonable, or without foundation. Similarly, an association may file suit against a member who sells or uses association records or information contained within the records for a commercial purpose or another purpose not reasonably related to the member's interest as a member. If the association prevails, it may be entitled to its actual damages and litigation costs, including its reasonable attorneys' fees, from the member, as well as injunctive relief.

In accordance with Civil Code Section 1365.2, an association and its officers, directors, employees and agents may also face liability for any damages incurred by a member or third party as the result of identity theft or other breach of privacy if there was an intentional, willful or negligent failure to withhold or redact private information from association records before those records were provided to a member or members.

There are many statutes that provide for member inspection of association records. Determining which records should be provided, as well as when and how can prove challenging. For this reason, we encourage our clients to promptly contact us when faced with a member's request to inspect association records.