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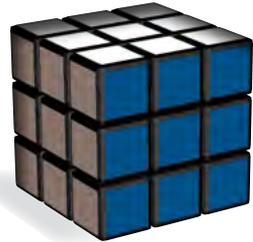
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Providing solutions to complex legal issues

Our attorneys handle a continuing and varied stream of community association legal matters. We know that the laws that govern community associations complicate decision-making and make the conduct of association business challenging. To assist those responsible for the management of community associations, we provide access to informational tools such as this 2016 Community Association Law Resource Book, a guide to statutes, regulations and checklists of importance to California community associations. Now in its 23rd year of publication, our Resource Book is a highly regarded and valuable source of information.



Epsten Grinnell & Howell also offers other educational tools such as seminars, brochures and a boot camp for board members. Additionally, our attorneys publish articles in industry publications and maintain a website that contains a wealth of valuable information for community associations.

Epsten Grinnell & Howell, APC has gathered and carefully compiled the information in this Resource Book in such a way as to ensure its maximum accuracy. However, due to the considerable volume and complexity of the content material, the publisher cannot and does not guarantee the correctness of all the information furnished, nor the complete absence of errors and omissions. Hence, no responsibility for same can be or is assumed. Epsten Grinnell & Howell, APC provides this Resource Book for reference only.

COMMUNITY ASSOCIATION LAW RESOURCE BOOK

2016 EDITION

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PREFACE

This book represents a compilation of California and federal statutes and regulations. It contains the materials which the publishers believe will most likely assist community association managers and board members in the performance of their duties. It is not intended to include every statute or regulation that could possibly affect a community association, but rather those that are most frequently encountered.

The statutes contained in this book include amendments enacted through the end of calendar year 2015. This edition is intended for use during calendar year 2016. The California Legislature has the power to enact legislation during 2016 which will become effective immediately upon enactment. Therefore, it is always necessary to consult legal counsel before relying upon the language of any given statute.

This book is the result of many hours of diligent work by the attorneys and staff of Epsten Grinnell & Howell. A special thanks to attorneys Jay Hansen, Dea Franck, Sue Hawks McClintic and Nancy Sidoruk for their contribution and hours of research. This book is designed to provide information about California statutes, not legal advice to the reader. If you have a legal question or need legal advice, please consult your attorney.

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INTRODUCTION TO THE RESOURCE BOOK

Brackets at the end of each section show the legislative year in which the bill was enacted or last amended, e.g., [2015] for the statutes enacted in the 2015 session of the Legislature. Most new or amended statutes take effect on January 1 following the year enacted. Statutes with operative (effective) dates before or after January 1, 2016 are noted.

All new statutes and amendments effective in 2016 are shown in ***bold, underlined italics*** throughout the Resource Book as are statutes previously enacted but newly-added to the Resource Book this year. We normally do not show the deletions. However, when a statute has been amended by deletions only, we have shown the location of the deletions with an empty bracket in ***bold underlined italics: []***. In our Digital¹ Version, the ***bold underlined italics*** are also in red.

The symbol ■ in the text of the statutes indicates the location of key words or topics that appear in the key word index at the back. When ■ is located at the left margin, it means that the paragraph in question concerns that index topic. However, when ■ is located at the left margin of the first paragraph, it may also indicate that the entire section or section heading relates to the index topic.

For a complete listing of legislation see the official “California Legislative Information” website at <http://leginfo.legislature.ca.gov> (or “Home Page”). From there, click on “California Law” where all the current California codes are available. The newly amended bills will appear there on and after January 1, 2016. You can search for any current California code and section there. To view the bills introduced in any given year, click on “Bill Information” from the Home Page. To view enacted legislation or “chaptered bills” by year, see <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml> and enter the chapter number, year and/or key words.

INTRODUCTION TO THE DIGITAL VERSION OF THE RESOURCE BOOK

The Digital Version contains additional statutes that are not contained in the print version of the Resource Book. These sections are identified on the Digital Version **with text in blue font**. Language added to amended statutes is shown using ***bold, red, underlined italics*** to make it even easier to see than in the print version. Because of the additional text and because the page numbers in the Digital Version correspond to the page numbering in the Adobe PDF file, the page numbering in the Digital Version will not be the same as in the print

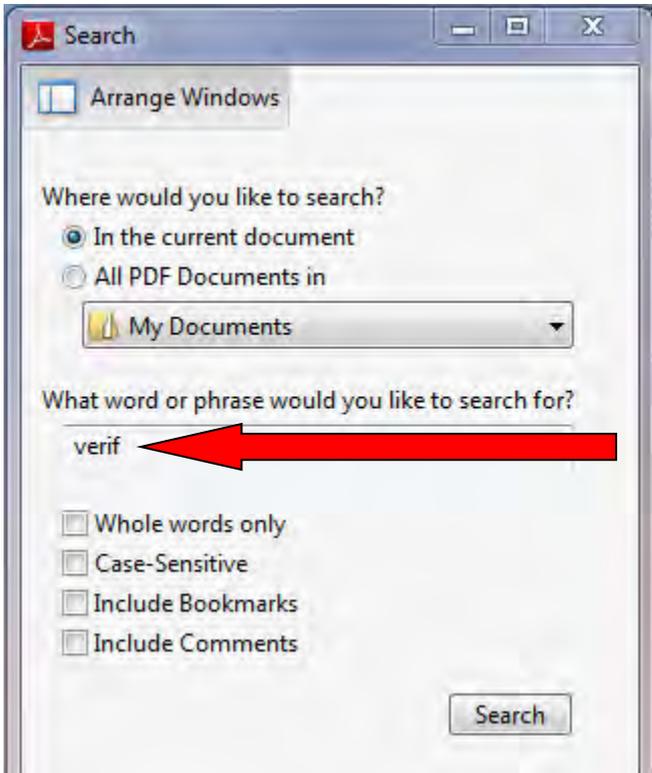
¹ Our Digital Version is available via USB drive and is also available for download via our website, www.epsten.com and select i/eBook apps in 2016.

version of the Resource Book, but all of the same information, and more, is on the Digital Version. All the sections that are not in the printed Resource Book are listed in blue font in the Table of Contents below, but the Key Word Index at the end does not contain many references to those sections. However, because of the search capabilities in Adobe Reader®, you can search for key words or phrases in any part of the Digital Version.

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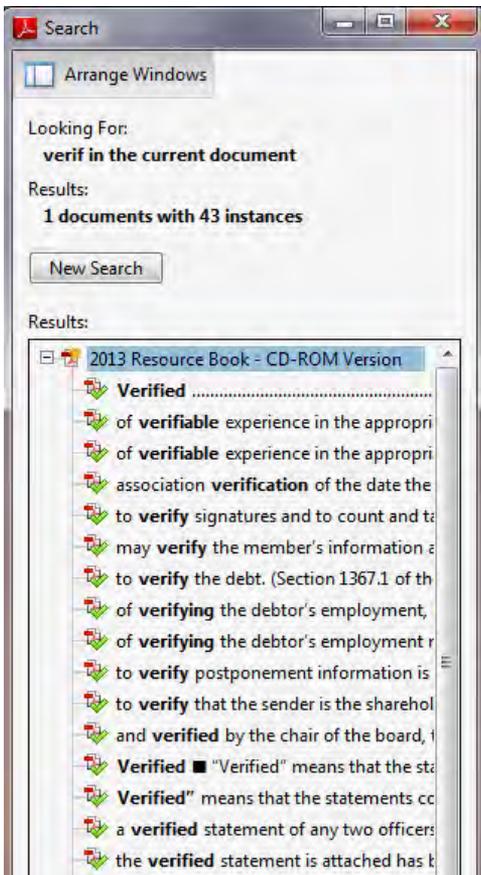
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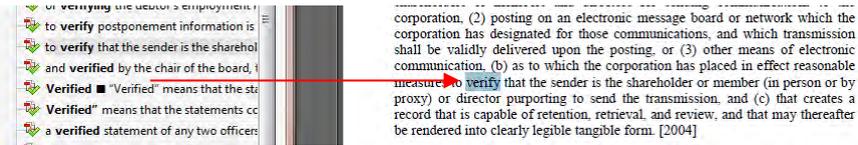
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TABLE OF CONTENTS

See Appendix B on page 620 for more details about amended and newly added statutes. The table below illustrates the significance of different font styles and the significance of colors used in the Digital Version only.

Font Style or Color or Both in Section Headings

Significance

Normal Font	Section previously in Resource Book
<u>Underlined Headings</u>	Section amended this year
<i>Italics & Underlined Headings</i>	Newly enacted or newly added to the Resource Book this year
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2016 RESOURCE BOOK –DIGITAL VERSION	6
INTRODUCTION TO THE RESOURCE BOOK.....	6
INTRODUCTION TO THE DIGITAL VERSION OF THE RESOURCE BOOK	6
SEARCHING, COPYING AND PRINTING THE DIGITAL VERSION	7
TABLE OF CONTENTS.....	11
CALIFORNIA CIVIL CODE (CC).....	38
§43.99. Immunity for Qualified Building Inspectors	38
§51. Unruh Civil Rights Act.....	39
§51.2. Age Discrimination in Housing Sales or Rentals except Riverside County	41
§51.3. Senior Citizen Housing in Counties other than Riverside	42
§51.4. Senior Housing in Counties other than Riverside; Exceptions	45
§51.10. Age Discrimination in Housing Sales or Rentals in Riverside County	46
§51.11. Senior Citizen Housing in Riverside County	46
§51.12. Senior Housing in Riverside County; Exceptions	50
§54. Right to Full Access to Public Places.....	50
§712. Prohibition of Real Estate Signs Void; Permissible Displays	50
§713. Display of Real Estate Signs	51
§714. Covenants Restricting Solar Energy System Are Void	51
§714.1. Permitted Restrictions by Common Interest Development Associations	52

§714.5.	Governing Documents May Not Prohibit Use of Manufactured Housing on Real Property	53
§782.5.	Recorded Instrument Deemed Revised to Omit Discriminatory Restrictions.....	53
§783.	Condominium Defined.....	54
§783.1.	Separate and Correlative Interests as Interests in Real Property	54
§784.	Definition of Restrictions on Real Property	54
§798.3.	Mobilehome Defined.....	54
§799.	Mobilehome Subdivision Definitions.....	55
§799.1.	Mobilehomes; Rights of Residents.....	55
§799.1.5.	Mobilehomes; Advertisement for Sale or Exchange of Mobilehomes.....	55
§799.2.	Listing Mobilehome Home Owned by Resident	56
§799.2.5.	Written Consent of Resident Required for Right of Entry to Mobilehome	56
§799.3.	Removing Mobilehomes	56
§799.4.	Approval of Mobilehome Purchase.....	57
§799.5.	Mobilehomes; Senior Housing Requirements	57
§799.6.	Mobilehomes; Waiver of Provisions Void	57
§799.7.	Mobilehomes; Notice of Utility Service Interruption.....	57
§799.8.	Mobilehomes; Disclosure of School Facilities Fees.....	57
§799.9.	Senior Homeowner Sharing Mobilehome with Care Giver...	58
§799.10.	Display of Political Signs	58
§799.11.	Improvements to Accommodate the Disabled.....	59
§801.5.	Solar Easements; Solar Energy Systems Defined	59
§817.	Definitions of Housing Cooperatives and Housing Cooperative Trusts	60
§817.1.	Additional Housing Cooperative Trust Requirements	61
§817.2.	Dissolution of Housing Cooperative or Housing Cooperative Trust	62
§817.3.	Sponsor’s Membership Standing in Workforce Housing Cooperative Trust.....	63
§817.4.	Breach of Fiduciary Duty Claim against Housing Cooperative or Housing Cooperative Trust	63
§841.	Good Neighbor Fence Act of 2013	63
§845.	Maintenance of Private Right-Of-Way Easements.....	65
§846.	Exemption from Liability – Property Used for Recreational Purposes	66
§890.	Rent Skimming Definitions.....	66
§891.	Rent Skimming Remedies	67
§892.	Criminal Prosecution for Rent Skimming	68
§893.	Affirmative Defenses against Rent Skimming	68
§894.	Severability of Rent Skimming Provisions	69
§895.	Requirements for Construction Defect Actions – Definitions	69
§896.	Standards for Building Construction	70
§897.	Intent of Standards	74

§900.	Minimum One-Year Express Warranty.....	74
§901.	Optional Greater Warranty.....	75
§902.	Effect of Enhanced Protection Agreement.....	75
§903.	Duties When Providing Enhanced Protection Agreement.....	75
§904.	Owner Duties When Disputing Enhanced Protection Agreement.....	75
§905.	Owner Enforcement of Statutory Rights Rather than Enhanced Protection Agreement.....	76
§906.	Effect of Builder Using Enhanced Protection Agreement.....	76
§907.	Owner Duty to Follow Written Maintenance Schedules.....	76
§910.	Required Prolitigation Procedures.....	76
§911.	Builder Defined.....	77
§912.	Builder's Prolitigation Duties.....	77
§913.	Builder to Acknowledge Receipt of Claim.....	79
§914.	Effect of Sections 910 Through 938.....	79
§915.	Effect of Builder's Failure to Use Nonadversarial Proceeding.....	80
§916.	Builder's Duties on Inspection and Testing.....	80
§917.	Written Offer to Repair.....	81
§918.	After Receipt of Offer to Repair.....	81
§919.	Offer to Mediate to Accompany Offer to Repair.....	82
§920.	Builder's Failure to Make Offer to Repair.....	82
§921.	Completion of Repair.....	82
§922.	Filing of Repair at Builder's Request.....	82
§923.	Copies to Owner of Materials Concerning Repairs.....	83
§924.	Written Reasons for Not Making All Repairs.....	83
§925.	Failure to Complete Timely Repair.....	83
§926.	No Right to Obtain Release or Waiver.....	83
§927.	Statute of Limitations Extended after Repair Completed.....	83
§928.	Option for Owner to Request Mediation.....	84
§929.	Cash Offer in Lieu of Repair; Release.....	84
§930.	Time Periods Strictly Construed.....	84
§931.	Claims Not Covered by Statute.....	85
§932.	Subsequently Discovered Claims.....	85
§933.	Use of Evidence of Repair Efforts.....	85
§934.	Use of Evidence of Parties' Conduct.....	85
§935.	Effect of Civil Code Section 6000.....	85
§936.	Applicability to Subcontractors, Suppliers, Etc.....	86
§937.	Design Professional Liability and Compliance with C.C.P. §411.35.....	86
§938.	Applicability of Statute.....	86
§941.	Applicable Statutes of Limitation.....	86
§942.	Violation of Standards - Burden of Proof.....	87
§943.	Statute Authorizes Only Methods for Asserting Claims.....	87
§944.	Measure of Damages Allowed.....	88
§945.	Defect Standards Binding on Purchasers, Successors and Associations.....	88

§945.5.	Comparative Fault; Effect of Unforeseen Acts	88
§1101.1.	Legislative Findings on Water Conservation Practices	89
§1101.2.	Applicability of Water Conservation Requirements.....	90
§1101.3.	Definitions Applicable to Water Conservation Requirements	90
§1101.4.	Plumbing Compliance Dates for Single Family Residential Properties.....	91
§1101.5.	Plumbing Compliance Dates for Multifamily Residential and Commercial Properties.....	91
§1101.6.	One Year Postponement of Water Conservation Requirements	92
§1101.7.	Properties Exempt from Water Conservation Requirements.	92
§1101.8.	Local Water Suppliers May Enact Policies or Ordinances....	92
§1101.9.	Exemption Based on Local Plumbing Retrofit Ordinances...	92
§1102.155.	Required Disclosure of Noncompliant Water-conserving Plumbing [Not operative until January 1, 2017]	93
§1102.6.	Mandatory Real Estate Transfer Disclosure Statement	93
§1102.6c.	Mandatory Disclosure Notice-Property Taxes	99
§1134.	Required Disclosure before Sale of Newly Converted Condominium.....	99
§1217.	Validity of Unrecorded Instrument	100
§1466.	Breach of Covenant before Acquisition of Real Property ...	100
§1479.	Application of Payments by Debtor	100
§1526.	Tender of Check as Payment in Full of Disputed Claim	101
§1542.	Effect of General Release.....	102
§1788.	Rosenthal Fair Debt Collection Practices Act.	102
§1788.1.	Debt Collection - Legislative Findings.....	102
§1788.2.	Debt Collection - Definitions	102
§1788.3.	Effect on Credit Union Employees.....	103
§1788.10.	Debt Collectors - Prohibited Conduct	104
§1788.11.	Debt Collectors - Prohibited Practices when Contacting Debtor.....	104
§1788.12.	Debt Collectors - Prohibited Practices When Contacting Others	105
§1788.13.	Debt Collectors - Prohibited Practices.....	105
§1788.14.	Debt Collectors - Other Prohibited Practices	106
§1788.15.	Debt Collectors - Prohibited Practices Involving Judicial Proceedings	107
§1788.16.	Debt Collectors - Use of Simulated Legal Processes	107
§1788.17.	Debt Collectors - Compliance with Federal Law	107
§1788.18.	Debt Collectors - When Debt Collection Activity Must Stop	108
§1788.20.	Prohibited Actions When Applying for Consumer Credit ..	110
§1788.21.	Debtor's Duty to Provide Change of Name, Address or Employment	110
§1788.22.	Unauthorized Use of Terminated Credit Privileges.....	110
§1788.30.	Liability of Debt Collector for Violations.....	111

§1788.31.	Severability Clause.....	111
§1788.32.	Debt Collection Remedies Cumulative	112
§1788.33.	Waiver of Debt Collection Laws Contrary to Public Policy	112
§1812.700.	Mandatory Notification of Debtor Rights by Debt Collector	112
§1812.701.	Changes in Notice to Comply with Federal Law	112
§1812.702.	Violations Subject to Debt Collection Practices Act.....	113
§2782.	Indemnification of Builder by Subcontractor	113
§2897.	Priority of Liens	114
§2924.	Exercising Power of Sale in a Mortgage or Deed of Trust..	114
§2924.1.	Duty to Record Deed after Foreclosure.....	116
§2924a.	Attorney Acting as Trustee.....	117
§2924b.	Persons Entitled to Notice of Default or Sale; Notice Procedure.....	117
§2924c.	Curing Default; Reinstatement of Obligation; Authorized Fees and Costs	121
§2924d.	Fees and Costs Authorized after Recording Notice of Sale.	125
§2924e.	Providing Notice to Junior Lienholders.....	127
§2924f.	Requirements for Notice of Sale	129
§2924g.	Procedure for Handling Trustee’s Sale of Property.....	133
§2924h.	Bidding Procedures at Trustee’s Sale.....	135
§2924i.	Notice Required on Balloon Payment Loan	137
§2924j.	Disposition of Excess Funds after Trustee’s Sale.....	139
§2924k.	Distribution of Excess Funds by Trustee or Court Clerk ...	141
§2924l.	Trustee’s Declaration of Nonmonetary Status in Action Involving Deed of Trust	141
§2938.	Enforcement of an Assignment of Rent	142
§3342.	Liability for Dog Bites	148
§3342.5.	Dog Owner Duties; Civil Actions Authorized	149
§3479.	Nuisance Defined	150
§3480.	Public Nuisance.....	150
§3481.	Private Nuisance.....	150

DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT 151

PART 5. COMMON INTEREST DEVELOPMENTS 151

CHAPTER 1. GENERAL PROVISIONS 151

ARTICLE 1. PRELIMINARY PROVISIONS 151

§4000.	Title - Davis-Stirling Common Interest Development Act..	151
§4005.	Effect of Topic Headings	151
§4010.	Applicability; Construction	151
§4020.	Effect of Local Zoning Ordinances	151
§4035.	Document Delivery Methods	151
§4040.	Individual Document Delivery.....	152
§4045.	General Document Delivery.....	152
§4050.	Completion of Document Delivery	153
§4055.	Electronic Delivery	153
§4065.	Approval by Majority of All Members	153

§4070.	Approval by Majority of a Quorum of Members	153
ARTICLE 2.	DEFINITIONS	153
§4075.	Defined Terms Govern Construction of Act	153
§4076.	“Annual Budget Report” – Defined	153
§4078.	“Annual Policy Statement” – Defined.....	153
§4080.	“Association” – Defined.....	154
§4085.	“Board” – Defined.....	154
§4090.	“Board Meeting” – Defined	154
§4095.	“Common Area” – Defined	154
§4100.	“Common Interest Development” – Defined	154
§4105.	“Community Apartment Project” – Defined	155
§4110.	“Community Service Organization” – Defined.....	155
§4120.	“Condominium Plan” – Defined	155
§4125.	“Condominium Project” – Defined	155
§4130.	“Declarant” – Defined	156
§4135.	“Declaration” – Defined	156
§4140.	“Director” – Defined	156
§4145.	“Exclusive Use Common Area” – Defined	156
§4148.	“General Notice” – Defined	156
§4150.	“Governing Documents” – Defined	156
§4153.	“Individual Notice” – Defined.....	156
§4155.	“Item of Business” – Defined.....	157
§4158.	“Managing Agent” – Defined.....	157
§4160.	“Member” – Defined	157
§4170.	“Person” – Defined.....	157
§4175.	“Planned Development” – Defined	157
§4177.	“Reserve Accounts” – Defined.....	157
§4178.	“Reserve Account Requirements” – Defined	158
§4185.	“Separate Interest” – Defined.....	158
§4190.	“Stock Cooperative” – Defined.....	158
CHAPTER 2.	APPLICATION OF ACT.....	159
§4200.	Creating a Common Interest Development	159
§4201.	Act Applies Only to Developments with Common Area	159
§4202.	Sections Not Applicable to Industrial or Commercial CIDs	159
CHAPTER 3.	GOVERNING DOCUMENTS	159
ARTICLE 1.	GENERAL PROVISIONS	159
§4205.	Hierarchy of Governing Documents and the Law.....	159
§4210.	Recorded Assessment Information Statement.....	159
§4215.	Liberal Construction of Governing Documents; Severability	160
§4220.	Presumption Regarding Unit Boundaries	160
§4225.	Mandatory Removal of Discriminatory Covenants.....	160
§4230.	Amending Declaration to Delete Developer References.....	161
§4235.	Correction of Statutory Cross-References; Changes Arising from Recodification.....	162

ARTICLE 2.	DECLARATION	162
§4250.	Contents of Declaration.....	162
§4255.	Disclosures; Airport Influence Area; San Francisco Bay Conservation and Development Commission	162
§4260.	Amending Declaration	163
§4265.	Extending Term of Declaration.....	163
§4270.	Declaration Amendment Requirements.....	164
§4275.	Amending Declaration by Court Petition	164
ARTICLE 3.	ARTICLES OF INCORPORATION.....	166
§4280.	Association Articles of Incorporation	166
ARTICLE 4.	CONDOMINIUM PLAN	166
§4285.	Condominium Plan Contents.....	166
§4290.	Condominium Plan – Consent to Recordation	167
§4295.	Amending or Revoking Condominium Plan	167
ARTICLE 5.	OPERATING RULES.....	167
§4340.	Operating Rule; Rule Change – Defined.....	167
§4350.	Operating Rule Enforceability Requirements.....	167
§4355.	Operating Rules Subject to Rule-Making Procedures	168
§4360.	Rule-Making Procedures	168
§4365.	Member Vote to Reverse Rule Change	169
§4370.	Effective Date of Operating Rule Article	170
CHAPTER 4.	OWNERSHIP AND TRANSFER OF INTERESTS	170
ARTICLE 1.	OWNERSHIP RIGHTS AND INTERESTS.....	170
§4500.	Ownership of Common Area	170
§4505.	Ingress, Egress and Support	170
§4510.	No Denial of Access Rights	170
ARTICLE 2.	TRANSFER DISCLOSURE	170
§4525.	Disclosure Documents Provided to Prospective Purchaser .	170
§4528.	Form for Billing Disclosures	172
§4530.	Disclosure Documents Provided by Association.....	174
§4535.	Title Transfer – Additional Owner Compliance Requirements	175
§4540.	Transfer Disclosure; Enforcement.....	175
§4545.	Validity of Title	176
ARTICLE 3.	TRANSFER FEE.....	176
§4575.	Limitation on Amount	176
§4580.	Exemption from Transfer Fee Limitation.....	176
ARTICLE 4.	RESTRICTIONS ON TRANSFER	177
§4600.	Granting Exclusive Use of Common Area.....	177
§4605.	Enforcing Requirements for Granting Exclusive Use of Common Area	178
§4610.	Partition Actions in Condominium Projects.....	178
§4615.	Mechanics’ Liens; Emergency Repairs	179

ARTICLE 5.	TRANSFER OF SEPARATE INTEREST	179
§4625.	Separate Interest Transfer in Community Apartment Project	179
§4630.	Separate Interest Transfer in Condominium Project	179
§4635.	Separate Interest Transfer in Planned Development	179
§4640.	Separate Interest Transfer in Stock Cooperative	179
§4645.	Transfer of Exclusive Use Common Areas	180
§4650.	Severability of Property Interests	180
CHAPTER 5.	PROPERTY USE AND MAINTENANCE.....	180
ARTICLE 1.	PROTECTED USES	180
§4700.	Regulation of Separate Interests – Application of Article ...	180
§4705.	Display of United States Flag	180
§4710.	Display of Noncommercial Signs.....	181
§4715.	Pet Restrictions.....	181
§4720.	Fire Retardant Roof Covering Allowed.....	182
§4725.	Television Antennas; Satellite Dishes	182
§4730.	Unreasonable Restrictions on Marketing Separate Interests Prohibited	183
§4735.	Architectural Guidelines; Artificial Turf; Low Water-Using Plants	183
§4736.	Pressure Washing	184
§4740.	Effect of Rental Prohibitions in Governing Documents.....	184
§4745.	Electric Vehicle Charging Stations	185
§4750.	Use of Separate Interest for Personal Agriculture	187
§4750.10.	<i>Clotheslines and Drying Racks; Where Permitted</i>	<i>188</i>
ARTICLE 2.	MODIFICATION OF SEPARATE INTEREST.....	188
§4760.	Owner’s Right to Improve or Modify Separate Interest.....	188
§4765.	Architectural Review Procedures	189
ARTICLE 3.	MAINTENANCE.....	190
§4775.	General Maintenance Obligations [operative until January 1, 2017, when this section will be repealed and replaced]	190
§4775.	General Maintenance Obligations [Not operative until January 1, 2017]	190
§4780.	Default Maintenance Obligations in Specific Developments	191
§4785.	Removal of Occupants to Perform Maintenance.....	191
§4790.	Member Access to Maintain Telephone Wiring.....	191
CHAPTER 6.	ASSOCIATION GOVERNANCE.....	192
ARTICLE 1.	ASSOCIATION EXISTENCE AND POWER	192
§4800.	Common Interest Development Managed by Association ..	192
§4805.	Association May Exercise Powers of Nonprofit Mutual Benefit Corporation.....	192
§4820.	Consolidating under Joint Neighborhood Association.....	192
ARTICLE 2.	BOARD MEETING.....	192
§4900.	Open Meeting Act	192

§4910.	Board Meetings Required for Actions; Exceptions	192
§4920.	Board Meeting Notices and Agenda; Timing	193
§4923.	Emergency Board Meeting	193
§4925.	Right to Attend and Speak at <i>Board and Member Meetings</i>	193
§4930.	Agenda Required for Board Discussion and Action; Exceptions	194
§4935.	Board Executive Sessions	195
§4950.	Board Minutes	195
§4955.	Civil Action to Enforcing Meeting Requirements	195
ARTICLE 3.	MEMBER MEETING	196
§5000.	Parliamentary Procedure and Right to Speak at Member Meetings	196
ARTICLE 4.	MEMBER ELECTION	196
§5100.	Applicability of Article to Elections	196
§5105.	Election Rules Required	196
§5110.	Inspector(s) of Elections	197
§5115.	Secret Ballot, Double Envelope Voting Procedures	198
§5120.	Tabulation and Reporting of Votes	199
§5125.	Custody of Ballots, Challenges and Recounts	199
§5130.	Procedures for Use of Proxies in Elections	199
§5135.	Association Funds for Campaign Purposes Prohibited	200
§5145.	Civil Actions to Enforce Election Rights	200
ARTICLE 5.	RECORD INSPECTION	201
§5200.	Association Records and Enhanced Association Records Defined	201
§5205.	Procedures Concerning Availability of Association Records	202
§5210.	Time Periods Concerning Availability of Association Records	203
§5215.	Withholding and Redacting Association Records	204
§5220.	Member's Right to Opt out of Sharing Contact Information	205
§5225.	Member's Reasons for Requesting Membership List and Association Options	205
§5230.	Protecting Association Records from Improper Uses	205
§5235.	Enforcement Options Concerning Inspection Rights	205
§5240.	Applicability and Nonapplicability of Inspection Rights	206
ARTICLE 6.	RECORDKEEPING.....	206
§5260.	Member Delivery of Requests to Association	206
ARTICLE 7.	ANNUAL REPORTS	207
§5300.	Annual Budget, Reserves and Other Required Disclosures (Inoperative on July 1, 2016; Repealed as of January 1, 2017)	207
§5300.	<i>Annual Budget, Reserves and Other Required Disclosures (Added and Operative on July 1, 2016)</i>	209

§5305.	Annual Review of Association Financial Statement by CPA	211
§5310.	Distribution of Annual Policy Statement to Members	211
§5320.	Right to Distribute either Full or Summary of Reports	212
ARTICLE 8.	CONFLICT OF INTEREST	213
§5350.	Conflict of Interest Issues for Board and Committee Members	213
ARTICLE 9.	MANAGING AGENT	213
§5375.	Managing Agent Disclosures and Timing	213
§5380.	Managing Agent Duties in Handling Association Client Funds	214
§5385.	A Full-Time Employee is not a Managing Agent	215
ARTICLE 10.	GOVERNMENT ASSISTANCE	215
§5400.	On-line Education Course for Boards	215
§5405.	Required Filing of Biennial Statement	215
CHAPTER 7.	FINANCES	217
ARTICLE 1.	ACCOUNTING	217
§5500.	Board's Duty to Review Financial Statements and Accounts	217
ARTICLE 2.	USE OF RESERVE FUNDS	218
§5510.	Signatures on and Limitation on Use of Reserve Funds.....	218
§5515.	Transfer or Borrowing from Reserve Funds.....	218
§5520.	Using Reserve Funds for Litigation; Notice; Accounting ...	218
ARTICLE 3.	RESERVE PLANNING	219
§5550.	Reserve Study Inspection Frequency; Contents; Funding Plan	219
§5560.	Reserve Funding Plan Adoption; Assessments Needed for Adequate Funding	219
§5565.	Contents of Association's Reserve Summary	220
§5570.	Required Assessment and Reserve Funding Disclosure Summary	220
§5580.	Community Service Association Disclosure Requirements	222
CHAPTER 8.	ASSESSMENTS AND ASSESSMENT COLLECTION	223
ARTICLE 1.	ESTABLISHMENT AND IMPOSITION OF ASSESSMENTS.....	223
§5600.	Duty to Levy Assessments; Excessive Assessments or Fees	223
§5605.	Prerequisites to Levying Assessment Increases and Maximum Limits on Board-Approved Increases.....	223
§5610.	Authority to Levy Emergency Assessments.....	224
§5615.	Notice to Members of Assessment Increases	224
§5620.	Assessments Exempt from Execution by Creditors.....	224
§5625.	Assessments not to be Based on Taxable Value; Exceptions	224

ARTICLE 2.	ASSESSMENT PAYMENT AND DELINQUENCY.....	225
§5650.	Assessments as Debts; Permissible Charges and Interest....	225
§5655.	Assessment Payments by Owners and How Applied to Debt	225
§5658.	Disputed Charges and Payment under Protest.....	226
§5660.	Pre-lien Notice Requirements	226
§5665.	Assessment Payment Plans, Effect and Defaults.....	227
§5670.	Assessment Dispute Resolution and IDR	227
§5673.	Decision to Record Assessment Lien	227
§5675.	Contents and Effect of Assessment Lien	228
§5680.	Priority of Assessment Lien	228
§5685.	Payment and Rescission of Assessment Lien; Liens Recorded in Error	228
§5690.	Failure to Comply with Assessment Lien Procedures; Effect	229
ARTICLE 3.	ASSESSMENT COLLECTION	229
§5700.	Assessments Collection Using Liens and Lawsuits.....	229
§5705.	Prerequisites to Initiating Lien Foreclosures (Liens Recorded after January 1, 1996).....	229
§5710.	Requirements Applicable to Nonjudicial Foreclosure Sales	230
§5715.	Right of Redemption after Nonjudicial Foreclosure Sale....	231
§5720.	Permissible Collection Actions for Assessment Debts Less than \$1,800.....	231
§5725.	Effect of Common Area Damage and Monetary Penalties on the Right to Lien.....	232
§5730.	Mandatory Assessment Disclosure Notice	232
§5735.	Assigning or Pledging the Right to Collect Assessments....	235
§5740.	Assessment Liens Created before or after January 1, 2003.	235
CHAPTER 9.	INSURANCE AND LIABILITY.....	235
§5800.	Limitations on Officer and Director Liability	235
§5805.	Limitations on Owner Liability Arising from Common Area Ownership	236
§5810.	Notice to Owners if an Insurance Policy Lapses	237
CHAPTER 10.	DISPUTE RESOLUTION AND ENFORCEMENT.....	237
ARTICLE 1.	DISCIPLINE AND COST REIMBURSEMENT.....	237
§5850.	Monetary Penalties and Fine Schedules	237
§5855.	Hearings and Notices Regarding Member Discipline	237
§5865.	No Statutory Creation or Expansion of Right to Levy Fines	238
ARTICLE 2.	INTERNAL DISPUTE RESOLUTION (IDR)	238
§5900.	Applicability of IDR to Association-Member Disputes	238
§5905.	Fair, Reasonable and Expeditious IDR Procedure Required	238
§5910.	IDR Procedure to Satisfy Specific, Minimum Criteria.....	239
§5915.	Default IDR Procedure.....	239
§5920.	Notice to Members Describing IDR Procedure Used.....	240

ARTICLE 3.	ALTERNATIVE DISPUTE RESOLUTION (ADR) PREREQUISITE TO CIVIL ACTION	240
§5925.	ADR Definitions	240
§5930.	ADR Required Before Filing Certain Actions	240
§5935.	Initiating ADR by Request for Resolution	241
§5940.	Time for Completing ADR Process and Cost Splitting	241
§5945.	Effect of ADR on Statutes of Limitation	241
§5950.	Filing ADR Certificate when Filing Court Action	241
§5955.	Referral to ADR and Stay of Court Action by Stipulation ..	242
§5960.	Refusal to Participate in ADR; Effect on Award of Fees and Costs	242
§5965.	Annual Disclosure of ADR Procedures to Members.....	242
ARTICLE 4.	CIVIL ACTION.....	242
§5975.	CC&Rs Are Enforceable Equitable Servitudes	242
§5980.	Association’s Standing in Litigation or Other Proceedings.	243
§5985.	Comparative Fault to Apply in Specified Cases.....	243
CHAPTER 11.	CONSTRUCTION DEFECT LITIGATION	244
§6000.	Procedures Regarding Developer Defect Litigation (operative until July 1, 2017).....	244
§6100.	Notice to Members of Construction Defect Settlement.....	252
§6150.	Notice to Members before Filing Construction Defect Action	253
CALIFORNIA CORPORATIONS CODE (CORP. CODE).....	255	
§20.	Electronic Transmission by the Corporation	255
§21.	Electronic Transmission to the Corporation.....	255
§5008.6.	Failure to File Biennial Corporate Statement	255
§5009.	Mailing Defined	256
§5010.	Computing Majority with other than Whole Number Votes; Effect of Suspension on Quorum	256
§5012.	Financial Statements of a Corporation	256
§5013.	Independent Accountant Defined	257
§5014.	Vote of Each Class	257
§5015.	Time of Giving Notice	257
§5016.	Written Notice; Notice or Report as Part of Newsletter	257
§5030.	Acknowledged.....	258
§5032.	Approved by the Board	258
§5033.	Approval by a Majority of All Members.....	258
§5034.	Approval by the Members.....	258
§5035.	Articles	259
§5036.	Authorized Number	259
§5037.	Bylaws.....	259
§5038.	Board.....	259
§5040.	Chapter	259
§5041.	Class	259
§5045.	Control.....	260
§5046.	Corporation	260

§5047.	Directors	260
§5047.5.	Liability of Directors Who Are Volunteers	260
§5049.	Distribution	262
§5050.	Domestic Corporation	262
§5051.	Filed.....	262
§5056.	Member	262
§5057.	Membership.....	262
§5058.	Membership Certificate	263
§5059.	Nonprofit Mutual Benefit Corporation.....	263
§5060.	Nonprofit Public Benefit Corporation	263
§5061.	Nonprofit Religious Corporation.....	263
§5062.	Officers' Certificate.....	263
§5063.5.	Other Business Entity	263
§5065.	Person.....	263
§5068.	Proper County	264
§5069.	Proxy; Signed	264
§5070.	Proxyholder	264
§5071.	Shareholder	264
§5072.	Shares	264
§5075.	Vacancy.....	264
§5076.	Verified	264
§5077.	Vote	265
§5078.	Voting Power.....	265
§5079.	Written or In Writing.....	265
§5080.	Written Ballot.....	265
§7110.	Nonprofit Mutual Benefit Corporation Law.....	265
§7111.	Formation; Purposes	265
§7120.	Execution and Filing of Articles of Incorporation.....	266
§7121.	Incorporating Unincorporated Association; Creditors' Rights	266
§7130.	Contents of Articles.....	267
§7131.	Articles; Statement Limiting Purposes or Powers of Corporation	267
§7132.	Articles; Authorized Provisions	267
§7133.	Articles as Prima Facie Evidence of Corporate Existence ..	268
§7140.	Powers of Corporation.....	269
§7141.	Limitations on Corporate Powers; Binding Effect of Contracts	270
§7150.	Bylaws; Manner of Adoption, Amendment, or Repeal	271
§7151.	Bylaws; Contents; Limitations	272
§7152.	Bylaws; Delegates	273
§7153.	Bylaws; Voting on Chapter or Regional Basis.....	274
§7160.	Articles and Bylaws; Inspection.....	274
§7210.	Corporate Activities under Board Direction; Delegation	274
§7211.	Board Meetings	274
§7212.	Creation of Committees to Exercise Board Powers	276
§7213.	Required Corporate Officers; Appointment of Officers.....	277

§7214.	Authority of Officers to Bind Corporation.....	278
§7215.	Bylaws, Minutes, and Resolutions; Evidence of Adoption .	278
§7220.	Election and Selection of Directors; Term of Office.....	278
§7221.	Grounds for Vacating Office of Director	279
§7222.	Removal of Directors without Cause	279
§7223.	Removal of Director by Court Order; Grounds.....	281
§7224.	Filling Vacancies on Board; Resignation of Directors.....	281
§7225.	Director Deadlock; Appointment of Provisional Director...	282
§7230.	Effect of Compensation Immaterial on Director Duties.....	282
§7231.	Director Duties and Liabilities; Business Judgment Rule ...	283
§7231.5.	Monetary Liability of Volunteer Director or Executive Officer	283
§7232.	Section 7231 Applies to Election, Selection, or Nomination of Directors	284
§7233.	Conflicts of Interest; Whether Contracts Are Void or Voidable	284
§7234.	Counting of Interested or Common Directors in Determining Quorum	285
§7235.	Loans to and Guarantee of Obligations of Directors or Officers	285
§7236.	Actions for Which Directors Shall Be Jointly and Severally Liable.....	286
§7237.	Indemnifying Corporate Agents	287
§7310.	Admission of Members	289
§7311.	Memberships; Consideration Requirements.....	290
§7312.	Multiple and Fractional Memberships.....	290
§7313.	Membership Certificates	291
§7314.	Issuance of New Membership Certificate	291
§7315.	Persons Admitted to Membership; Exceptions	292
§7320.	Transfer of Memberships	292
§7330.	Memberships with Different Rights, Privileges, Etc.	292
§7331.	Equality of Memberships	292
§7332.	Classes of Memberships; Redemption or Purchase of Memberships by Corporation.....	292
§7333.	Reference to Affiliated Persons as Members	293
§7340.	Resignation or Expiration of Membership	293
§7341.	Expulsion, Suspension, or Termination; Procedures.....	293
§7350.	Liability of Members for Debts of Corporation	294
§7351.	Dues, Assessments, or Fees Authorized.....	294
§7411.	Distributions to Members Generally Prohibited.....	295
§7412.	Distributions Prohibited if Liabilities Cannot Be Met.....	295
§7510.	Member Meetings	295
§7511.	Notice of Member Meeting	296
§7512.	Determination of Quorum	298
§7513.	Member Action Without Meeting by Written Ballot	299
§7514.	Form of Proxy or Written Ballot; Failure to Comply with Section.....	300

§7515.	Court Action When Meetings or Consent is Unduly Difficult	300
§7516.	Action Without Meeting by Written Consent.....	301
§7517.	Proxies; Ballots; Power to Accept.....	301
§7520.	Nomination and Election Procedures	302
§7521.	Nomination Procedures; Corporations with 500 or More Members.....	302
§7522.	Election of Directors; Corporations with 5,000 or More Members.....	303
§7523.	Equal Access to Corporate Publications; Vote Solicitations in Corporate Publications	303
§7524.	Mailing by Nominee in Corporation with 500 or More Members.....	304
§7525.	Liability for Content of Candidate’s Materials.....	304
§7526.	Use of Corporation Funds to Support a Nominee	304
§7527.	Statute of Limitations; Action to Challenge Validity of Election	304
§7610.	One Vote Per Member.....	305
§7611.	Determination of Record Date.....	305
§7612.	Voting Where Membership Stands on Record in Names of Two or More Persons	306
§7613.	Proxies Authorized.....	306
§7614.	Election Inspectors; Appointment; Powers and Duties	307
§7615.	Cumulative Voting; Notice of Intention to Cumulate Votes.....	308
§7616.	Actions to Determine Validity of Election or Appointment.....	308
§7710.	Derivative Actions; Required Conditions; Bond.....	309
§7810.	Amending Articles of Incorporation	310
§7811.	Adoption of Amendments by Incorporators.....	311
§7812.	Adoption of Amendments by Board and Members.....	311
§7813.	Circumstances Requiring Approval by Class	312
§7814.	Officers’ Certificate on Amendment of Articles	312
§7815.	Certificate of Amendment Adopted by Incorporators	312
§7816.	Wording of Amendment of Articles.....	313
§7817.	Certificate as Prima Facie Evidence of Amendment Adoption	313
§7818.	Extending Corporate Existence	313
§7819.	Restated Articles of Incorporation; Approval; Filing.....	313
§7910.	Approval to Pledge Assets	314
§7911.	Principal Terms of Sale; Abandonment of Proposed Transaction.....	314
§7912.	Annexation of Secretary’s Certificate to Deed or Instrument Conveying or Transferring Assets.....	315
§8210.	Filing Biennial Statement.....	315
§8211.	Resignation as Agent for Service of Process.....	316
§8212.	Corporation to Replace Vacancy in Agent for Service of Process.....	317
§8214.	Business Records for Owned Corporate Property.....	317

§8215.	Joint and Several Liability of Officers, Directors, Employees, and Agents.....	317
§8216.	Member Complaint; Actions by Attorney General; Appointment of Receivers.....	317
§8310.	Inspection of Records; Maintenance in Written Form	318
§8311.	Inspections; Authorized Persons	318
§8312.	Right of Inspection Extends to Records of Subsidiaries.....	318
§8313.	Rights of Members Not Limited by Contract, Articles, or Bylaws.....	318
§8320.	Books and Records Required of Corporation.....	318
§8321.	Annual Reports; Contents; Applicability	319
§8322.	Annual Statement to Members of Insider Transactions	319
§8323.	Court Enforcement of Inspection Requirements; Costs and Attorneys' Fees	320
§8325.	Membership Meeting Voting Results.....	321
§8330.	Membership List; Inspection Rights; Persons Authorized ..	321
§8331.	Protective Orders Against Membership List Inspection.....	322
§8332.	Limitations and Restrictions on Inspection Rights by Court	323
§8333.	Inspection of Accounting Books, Records, and Minutes	324
§8334.	Right of Directors to Inspect Corporate Documents and Properties.....	324
§8335.	Frustration of Inspection Rights by Corporate Delay; Remedies.....	324
§8336.	Court Enforcement of Inspection Rights; Contempt of Court	324
§8337.	Award of Costs and Expenses; Failure of Corporation to Comply with Proper Demand for Inspection.....	325
§8338.	Membership List as Corporate Asset and Use of Membership List	325
§8724.	Dissolution of Owners' Association.....	326
§8810.	Failure to File Biennial Statement.....	326
TITLE 3.	UNINCORPORATED ASSOCIATIONS	327
PART 1.	GENERAL PROVISIONS	327
CHAPTER 1.	DEFINITIONS	327
§18000.	Definitions and Construction.....	327
§18003.	Board	327
§18005.	Director	327
§18008.	Governing Document	327
§18010.	Governing Principles	327
§18015.	Member	328
§18020.	Nonprofit Association	328
§18025.	Officer	328
§18030.	Person.....	328
§18035.	Unincorporated Association	328
CHAPTER 2.	APPLICATION OF TITLE.....	328
§18055.	Nonapplicability of Title	328

§18060.	Specific Statute Controls over General	329
§18065.	Unincorporated Association Subject to Agency Law Generally	329
§18070.	Unincorporated Association Laws Considered a Restatement	329
CHAPTER 3.	PROPERTY.....	329
§18100.	Membership is Personal Property.....	329
§18105.	Unincorporated Association May Hold Property in its Name	329
§18110.	Association Property Not Owned by Members.....	329
§18115.	Officers to Execute Transfers of Property Interests	329
§18120.	Recorded Statement of Authority of Unincorporated Association.....	330
§18122.	Unincorporated Association Holding Property for Charitable Purposes	330
§18125.	Member’s Challenge to Unincorporated Association’s Power	330
§18130.	Unincorporated Association Dissolution and Distribution of Assets	331
§18135.	Action Against Persons Receiving Distribution of Assets ..	331
CHAPTER 4.	DESIGNATION OF AGENT FOR SERVICE OF PROCESS.....	331
§18200.	Filing Statements with Secretary of Agent; Address; Agent for Service of Process	331
§18205.	Secretary of State Filing and Indexing	332
§18210.	Resignation of Agent for Service of Process.....	333
§18215.	Expiration of Statements on File; Mailing Notice by Secretary of State	334
§18220.	Service on Association if Agent for Service Cannot Be Found	334
CHAPTER 5.	LIABILITY AND ENFORCEMENT OF JUDGMENTS	334
§18250.	Liability of Unincorporated Association	334
§18260.	Enforcing Money Judgment against Unincorporated Association	334
§18270.	Levying by Judgment Creditor of Unincorporated Association	335
CHAPTER 6.	GOVERNANCE	335
ARTICLE 1.	(RESERVED)	335
§18300.	Purpose of Legislation.....	335
ARTICLE 2.	TERMINATION OR SUSPENSION OF MEMBERSHIP	335
§18310.	Termination of Membership.....	335
§18320.	Procedures for Expulsion or Suspension of Membership....	336
ARTICLE 3.	MEMBER VOTING.....	336
§18330.	Member Voting	336
Article 4.	Amendment of Governing Documents.....	337

§18340.	Amending Governing Documents.....	337
Article 5.	Merger.....	337
§18350.	Definitions Concerning Merger.....	337
§18360.	Unincorporated Association Merging with Other Entities ..	337
§18370.	Requirements for Merger	338
§18380.	Effect of Merger	338
§18390.	Recording to Effect Change in Real Property Title Due to Merger.....	339
§18400.	Effect on Bequest to Disappearing Entity Due to Merger ...	339
Article 6.	Dissolution	339
§18410.	Methods for Dissolution.....	339
§18420.	Winding Up Affairs after Dissolution	340
PART 2.	NONPROFIT ASSOCIATIONS.....	340
CHAPTER 1.	LIABILITY	340
§18605.	Non-liability of Agents of Unincorporated Nonprofit Association.....	340
§18610.	Non-liability of Members of Unincorporated Nonprofit Association.....	340
§18615.	Circumstances Giving Rise to Personal Liability for Debts of Unincorporated Nonprofit Association	340
§18620.	Liability of Individuals in Nonprofit Association	341
§18630.	Personal Liability in Nonprofit Association under Alter Ego Theory	341
§18640.	Nonprofit Associations-Effect of Uniform Voidable Transactions Act.....	341
CALIFORNIA BUSINESS AND PROFESSIONS CODE (B&P CODE).....	342	
§7026.1.	Definitions of Contractor and Consultant; Not to Include Common Interest Development Manager.....	342
§7574.	Title - Proprietary Security Services Act.....	343
§7574.1.	Definition of Proprietary Private Security Officer	343
§7574.2.	Registration of Private Security Officer Required.....	343
§7574.3.	Effective Dates	343
§7574.5.	Training in Security Officer Skills	343
§7574.7.	Applicability of Section 7574.5.....	344
§10153.2.	Real Estate Broker Education Requirements.....	344
§10170.5.	Education Requirements to Renew Broker License	345
§11003.4.	“Limited-equity Housing Cooperative” and “Workforce Housing Cooperative Trust	347
§11010.	Requirements for BRE Public Report	348
§11210.	Title - Time-share Act of 2004.....	351
§11211.	Purposes of Act	351
§11211.5.	Applicability of Act.....	352
§11211.7.	Exemptions.....	352
§11212.	Definitions.....	353
§11213.	Title Classification for Time-Share Estate	357
§11214.	Duties of the Developer.....	357

§11215.	Time-Share Instrument Prohibitions	357
§11216.	Exchange Program	357
§11217.	Communications Not Deemed Advertisement or Promotion	360
§11218.	Time-Share Interest and the Corporation Code	360
§11219.	Amendment Carries No Retroactive Effect.....	360
§11225.	Persons Exempt from Registering Time-Share Plan	361
§11226.	Persons Required to Register Time-Share Plan.....	363
§11226.1.	Documents to be Made Available to Prospective Purchasers	366
§11227.	Final Public Report of Commissioner	366
§11228.	Term of Final Public Report.....	369
§11229.	Time-Share Plan Application and Review; Appeal Process	369
§11230.	Amenities Incomplete before Final Public Report Issuance	370
§11231.	Review and Issuance Schedule.....	370
§11232.	Filing Fees.....	371
§11233.	Required Information for a Point System Public Report.....	372
§11234.	Required Disclosures in Developer’s Public Report	372
§11235.	Short Term Product	378
§11236.	Receipt for Public Report	379
§11237.	Disclosure Statement for Incidental Benefit.....	380
§11238.	The Purchase Contract.....	381
§11239.	Cancellation Notice	382
§11240.	Contents of the Estimated Operating Budget	383
§11241.	Developer Obligation for Unsold Inventory Expenses.....	386
§11242.	Buy Down Subsidy; Developer Undertaking to Pay	388
§11242.1.	Instructions for Escrow Depository.....	388
§11243.	Escrow Requirements for Developer.....	389
§11244.	Evidence for Release of Escrow Funds to Developer	390
§11245.	Prohibited Representations and Nondisclosures.....	392
§11246.	Inventory Control System Certification	394
§11250.	Purchaser to Accommodation Ratio	394
§11251.	Components of Time-Share Instrument	395
§11252.	Majority Assent Required to Encumber Accommodations .	397
§11253.	Required Insurance Provisions of Time-Share Instrument..	397
§11254.	Conveyance of Fee or Long-Term Leasehold; Time Frame	398
§11255.	Trust or Association Documents; Accommodation in Time- Share Plan.....	398
§11256.	Requirements on Disbursement of Escrow Funds.....	400
§11265.	Regular and Special Assessments	402
§11265.1.	Delinquent Assessments and Association’s Recovery Rights	404
§11266.	Amending Declaration	405
§11267.	Managing Entity Required; Management Agreement Provisions.....	406
§11268.	Regular and Special Meetings of Members.....	408
§11269.	Voting.....	409

§11270.	Governing Body of Association	410
§11271.	Regular and Special Meeting of Governing Body.....	410
§11272.	Documents Available to Time-Share Interest Owners	411
§11273.	Inspection of Books and Records	413
§11274.	Limitations on Absolute Forfeiture	413
§11275.	Dispute Resolution Between and Association and Developer	415
§11280.	Regulation of Time-Share Plans and Exchange Programs within Exclusive Power of the State.....	416
§11281.	Acts Allowed by Commissioner to Effectuate Intent of Legislature.....	416
§11282.	Investigatory Powers of Commissioner.....	416
§11283.	Acts Triggering Desist and Refrain Order from Commissioner	417
§11284.	Disciplinary Consent Orders	417
§11285.	Relief Under Act	418
§11286.	Penalties for Fraudulent Public Report.....	418
§11287.	Punishment for Violation of Specific Sections of Act.....	418
§11288.	Effective Date.....	418
§11500.	Definitions.....	418
§11501.	“Common Interest Development Manager” Defined	419
§11502.	Qualifications for Manager Certification	420
§11502.5.	Development of Manager Education and Examination.....	421
§11503.	Certification Not Applicable to Management Firm.....	422
§11504.	Annual Disclosure by Manager.....	422
§11505.	Unfair Business Practices.....	422
§11506.	Repeal of Statute (Repealed as of January 1, 2019).....	423
§19985.	Nonprofit Entity Fundraising Through Gambling	423
§19986.	Gambling Requirements in Nonprofit Entity Fundraising ..	423
§19987.	Gambling Entity Registration May Be Required.....	425
CALIFORNIA CODE OF CIVIL PROCEDURE (CCP)		426
§116.110.	Small Claims	426
§116.120.	Legislative Findings and Declarations	426
§116.130.	Definitions.....	426
§116.210.	Creation of Small Claims Division.....	427
§116.220.	Jurisdiction	427
§116.221.	Jurisdiction up to \$10,000 in Cases Filed by Natural Persons	428
§116.222.	<i>Complaint to State Original Debt, Payments and Charges (repealed as of January 1, 2016) [2015]</i>	428
§116.230.	Fees	428
§116.231.	Actions in Which Demand Exceeds \$2,500; Filing Restrictions.....	430
§116.232.	Fee for Court to Mail Copy of Claim	431
§116.240.	Case Heard by Temporary Judge	431
§116.250.	Sessions	431
§116.260.	Small Claims Assistance	431

§116.270.	Assistance of Law Clerks	431
§116.310.	Requirements for Initiating Action.....	432
§116.320.	Commencement of Action.....	432
§116.330.	Filing of Claim Form; Order to Appear; Hearing Date	432
§116.340.	Service on Defendant; Actions on Guaranty or Surety Contracts	433
§116.360.	Defendant’s Counterclaim.....	434
§116.370.	Venue	434
§116.390.	Transfer of Claim Exceeding Small Claims Jurisdictional Limits	434
§116.410.	Standing; Minors and Incompetent Persons	435
§116.420.	Assignee Filing Claim	435
§116.430.	Fictitious Business Names.....	436
§116.510.	Manner of Conducting Hearing.....	436
§116.520.	Evidence; Witnesses.....	436
§116.530.	Prosecution or Defense by Attorneys	436
§116.531.	Assistance and Testimony of Experts.....	437
§116.540.	Participation by Individuals Other than Plaintiff and Defendant; Corporations	437
§116.550.	Use of Interpreters; List.....	439
§116.560.	Fictitious Business Names; Amending to State Correct Legal Name	439
§116.570.	Postponements.....	439
§116.610.	Judgments.....	440
§116.620.	Satisfaction of Judgment	441
§116.630.	Amendment of Party Name in Judgment	441
§116.710.	Right to Appeal	441
§116.720.	Plaintiff’s Motion to Vacate Judgment.....	442
§116.725.	Correcting Errors and Vacating Judgments.....	442
§116.730.	Defendant’s Motion to Vacate Judgment for Lack of Appearance.....	442
§116.740.	Defendant’s Motion to Vacate Judgment for Improper Service	443
§116.745.	Fee for Motion to Vacate.....	443
§116.750.	Notice of Appeal	443
§116.760.	Fee for Appeal.....	444
§116.770.	Appeal Procedure	444
§116.780.	Superior Court Judgment on Appeal; Enforcement.....	444
§116.790.	Bad-Faith Appeals; Award of Attorney’s Fees	445
§116.795.	Dismissal for Failure to Appear or Lack of Timely Prosecution	445
§116.798.	Hearing on Writs Relating to Acts of Small Claims Division	445
§116.810.	Suspension of Judgment Enforcement Pending Appeal.....	446
§116.820.	Enforcement of Judgments; Costs and Interest	446
§116.830.	Form for Disclosure of Judgment Debtor’s Assets.....	447
§116.840.	Payment of Judgment; Entry of Satisfaction of Judgment ..	447

§116.850.	Acknowledgment of Satisfaction of Judgment.....	447
§116.860.	Payment of Judgment into Court; Unclaimed Payments	448
§116.870.	Suspending Judgment Debtor’s Driving Privileges for Failing to Satisfy Judgment (to be repealed as of January 1, 2017)	449
§116.870.	Suspending Judgment Debtor’s Driving Privileges for Failing to Satisfy Judgment (operative on January 1, 2017).....	449
§116.880.	Requesting Suspension of Judgment Debtor’s Driving Privileges (to be repealed as of January 1, 2017)	449
§116.880.	<i>Requesting Suspension of Judgment Debtor’s Driving Privileges (Operative on January 1, 2017)</i>	<i>450</i>
§116.920.	Judicial Council Forms and Rules.....	452
§116.930.	Small Claims Court Publications.....	452
§116.940.	Small Claims Court Advisory Services.....	452
§116.950.	Small Claims Advisory Committee; Establishment; Composition of Committee	454
§335.	Statutes of Limitations - Introduction.....	454
§335.1.	Two Years: Assault; Battery; Personal Injury; Wrongful Death	454
§336.	Five Years: Mesne Profits of Real Property; Violation of Restrictive Covenant	455
§337.	Four Years: Contracts and Accounts	455
§337a.	“Book Account” Defined	455
§337.1.	Four Years: Injury or Death from Deficient Planning or Construction of Improvement to Real Property.....	456
§337.15.	Ten Years: Damages from Latent Deficiencies in Planning or Construction of Real Property Improvements	456
§337.2.	Four years: Breach of Lease	457
§337.5.	Ten Years: Action upon Bonds; Judgments	457
§338.	Three Years: Suit based on Statute, Trespass, Fraud and Mistake, etc.	458
§339.	Two Years: Oral Contracts; Title Insurance, Rescission, etc.	460
§339.5.	Two Years: Lease Not in Writing	461
§340.	One Year: Penalty, Forfeiture, Bail, Torts, and Escapes	461
§415.21.	Access to Gated Community to Conduct Service of Process	461
§425.15.	Procedure for Filing Cause of Action Against Officer or Director of Nonprofit Corporation Serving Without Compensation.....	462
§425.16.	Free Speech Rights; Anti-SLAPP Motion to Strike	463
§527.6	Civil Harassment and Civil Restraining Order Sought by an Individual	464
§527.8	Civil Harassment and Civil Restraining Order Sought by an Employer or Other Entities.....	470
§729.035.	Right of Redemption after Assessment Lien Foreclosure ...	476
§731.	Action for Damages or Abatement of Nuisance.....	476
CALIFORNIA GOVERNMENT CODE (GOVT. CODE).....		477

§434.5.	Right to Display Flag	477
§12191.	Fees Paid for Corporate Filings.....	477
§12926.	Unlawful Employment Practices - Definitions.....	478
§12940.	Unlawful Employment Practices; Discrimination	483
§12955.	Unlawful Housing Discrimination	488
§12955.2.	Familial Status Defined.....	490
§12955.9.	Housing for Older Persons Exempted	490
§12956.1.	Mandatory Disclaimer on Copies of Recorded Documents	491
§12956.2.	Removing Discriminatory Provisions from Recorded Documents.....	492
§53069.81.	Supplemental Law Enforcement Services; Orange County Pilot Project (operative until January 1, 2017).....	493
CALIFORNIA HEALTH & SAFETY CODE (H&S CODE)		495
1267.8.	<i>Intermediate Care Facility for Six or Fewer Developmentally Disabled Persons is Residential Use of Property.....</i>	495
1566.3.	<i>Residential Care Facility for Six or Fewer Persons is Residential Use of Property</i>	496
§1566.5.	<i>Residential Facility for Six or Fewer Persons is Residential Use of Property under Contracts, Deeds or Covenants</i>	497
§1568.0831.	<i>Residential Care Facility for Six or Fewer Persons with Chronic-Life Threatening Illness is Residential Use of Property.....</i>	498
1569.85.	<i>Residential Care Facility for the Elderly with Six or Fewer Persons is Residential Use of Property</i>	499
§1596.775.	Family Day Care; Legislative Finding and Declarations.....	500
§1596.78.	Family Day Care Home.....	500
§1596.790.	Planning Agency Defined	501
§1597.30.	Legislative Findings and Declarations	501
§1597.36.	Written Documentation to Providers of Need for Repairs, Renovations, or Additions.....	501
§1597.40.	Exclusion of Municipal Zoning, Building, and Fire Codes and Regulations; Invalidity of Restrictive Covenants	501
§1597.43.	Family Day Care Homes; Definition and Distinction	502
§1597.44.	Small Family Day Care Homes.....	503
§1597.45.	Small Family Day Care Homes – Requirements and Limitations	503
§1597.46.	Large Family Day Care Homes.....	504
§1597.465.	Large Family Day Care Homes–Requirements and Limitations	506
§1597.47.	Applicability of Chapter	506
§1597.52.	Limitation on Licensing Reviews; Restrictions Regarding Large Family Day Care Homes.....	506
§1597.53.	Exclusive Licensing Authority.....	507
§1597.531.	Mandatory Liability Insurance or Bond	507
§1597.54.	Applications for Initial Licensure; Preexisting Licenses.....	508
§1597.541.	Regulations Relating to Age-appropriate Immunizations ...	509

§1597.542.	Review of Regulations Relating to Operation of Child Day Care Facilities.....	509
§1597.55a.	Site Visits, Unannounced Visits, and Spot Checks (<i>effective June 24, 2015, operative January 1, 2016, inoperative and repealed as of January 1, 2017</i>).....	509
§1597.55a.	Site Visits, Unannounced Visits, and Spot Checks (<i>effective June 24, 2015, operative January 1, 2017</i>).....	510
§1597.55b.	Site Visitation.....	511
§1597.56.	Notice of Deficiencies; Time for Compliance; Correction..	512
§1597.57.	Duties of Department	512
§1597.59.	Period Within Which to Grant or Deny License; Criminal Records.....	513
§1597.61.	Operation of Unlicensed Facility; Cease and Desist Orders	513
§1597.62.	Civil Penalty for Violation of Chapter	513
§1597.621.	Operating Family Day Care Homes Deemed to Have Been Issued License; Requirements	514
§1597.622	<i>Employees and Volunteers Must Be Immunized Against Influenza</i>	514
§1799.102.	Good Samaritan Law.....	514
§1799.103.	Emergency Medical Services; Employer Policies.....	515
11834.23.	<i>Alcoholism or Drug Abuse Recovery or Treatment Facility for Six or Fewer Persons is Residential Use of Property</i>	516
11834.25.	<i>Alcoholism or Drug Abuse Recovery or Treatment Facility for Six or Fewer Persons is Residential Use of Property under Covenants</i>	517
§13113.7.	Smoke Alarms.....	517
§13113.8.	Smoke Alarms; Transfer Disclosures.....	518
§17920.3.	Substandard Buildings.....	520
§17926.	Requirement to Install Carbon Monoxide Detectors.....	523
§17926.1	Inspection for Operable Carbon Monoxide Detectors; Timeshares	524
§17926.2	Effect of Changing Carbon Monoxide Detector Standards.	524
§17959.	Developing Universal Design Guidelines for Home Construction	525
§18949.6.	State Building Standards; Regulations for Adoption.....	526
§25915.	Asbestos; Notice by Building Owners to Employees of Existence and Hazards of Asbestos.....	526
§25915.1.	Asbestos; Management Plan; Requirements	527
§25915.2.	Asbestos; Notice to Owners and Employees.....	528
§25915.5.	Asbestos; Notice to Building Co-owners; Immunity from Liability	530
§25916.	Asbestos; Construction, Maintenance, or Remodeling; Warning Notice	531
§25916.5.	Asbestos; Multiple Owners	531
§25917.	Asbestos; Employee Access to Asbestos Survey and Monitoring Data	531
§25917.5.	Asbestos Information System or Statewide Register.....	532

§25918.	Asbestos	532
§25919.	Asbestos-containing Construction Material	532
§25919.2.	Building	532
§25919.3.	Employee.....	532
§25919.4.	Employee’s Representative	532
§25919.5.	Owner.....	533
§25919.6.	Agent	533
§25919.7.	Punishment for Noncompliance	533
TOXIC MOLD PROTECTION ACT OF 2001 (COMMENT ONLY)		533
TOXIC MOLD PROTECTION ACT OF 2001		534
§26100.	Toxic Mold Protection Act of 2001.....	534
§26147.	Toxic Mold Written Disclosure Requirement	535
§26148.	Toxic Mold Consumer-oriented Booklet.....	535
§104113.	Defibrillators in Health Studios.....	535
§115725.	Playground Standards.....	538
§116049.1.	Public Swimming Pool; Definition; Requirements	539
§116064.2.	Pool Antientrapment Device Standards.....	540
§122331.	Dog Breed Specific Ordinances	543
§122335.	Dog Chaining and Tethering	544
CALIFORNIA INSURANCE CODE (INSUR. CODE).....		546
§678.	Insurer’s Duties on Renewal or Nonrenewal (operative until January 1, 2019)	546
§678.	Insurer’s Duties on Renewal or Nonrenewal (operative on January 1, 2019)	547
§679.9.	Insurer Disclosure Requirements	547
CALIFORNIA LABOR CODE (LAB. CODE)		549
§226.8.	Misclassifying Personnel as Independent Contractors	549
§2753.	Advice to Treat Employee as Independent Contractor to Avoid Employee Status	551
§2810.	Liability of Contracting Party to Labor or Services Contracts if Contractor Fails to Comply with Applicable Laws	551
CALIFORNIA PENAL CODE (PEN. CODE).....		554
§403.	Unlawful to Disturb or Break Up a Meeting	554
CALIFORNIA PUBLIC RESOURCES CODE (PUB. RES. CODE)		555
§25980.	Solar Shade Control Act and Public Policy.....	555
§25981.	Definitions.....	555
§25982.	Limitation on Shadows Cast on Solar Panels	555
§25982.1.	Notice to Person Affected by Requirements of Act	556
§25983.	Certain Trees or Shrubs are a Private Nuisance	556
§25984.	Limitations on Applicability of Act	556
§25985.	Ordinance May Exempt Local Governments from Solar Shade Act.....	557
§25986.	Equitable Relief for Passive Solar System	557
CALIFORNIA REVENUE AND TAXATION CODE (R&T CODE).....		558

§2188.3.	Assessment of Condominiums Owned in Fee and Not Owned in Fee	558
§2188.4.	Taxation of Leased Land	558
§2188.5.	Taxation of Planned Developments.....	558
§2188.7.	Taxation of Community Apartment Projects, Stock Cooperatives and Limited Equity Housing Cooperatives ...	560
§2188.8.	Taxation of Time-Share Estates in a Time-Share Project....	561
§2188.9.	Taxation of a Time-Share Project.....	563
§2188.10.	Taxation of Mobilehome Park Subdivision or Resident-Owned Mobilehome Park	565
CALIFORNIA VEHICLE CODE (CVC).....		568
§407.5.	Motorized Scooter Defined	568
§21235.	Motorized Scooter Restrictions	569
§22658.	Removing Vehicles from Private Property.....	569
§22853.	Disposition of Vehicle When Owner Is Unknown	577
§22953.	When Towing is Prohibited for at least One Hour	577
CALIFORNIA WELFARE AND INSTITUTIONS CODE (W&I CODE).....		579
§5115.	<i>Public Policy that Persons with Mental Health Disorders or Physical Disabilities Live in Normal Residential Surroundings</i>	579
§5116.	<i>Residential Home for Six or Fewer Persons with Mental Health Disorders or Other Disabilities or Dependent and Neglected Children is Residential Use of Property</i>	579
§9105.1.	Home Modification for Seniors and Persons with Disabilities	579
CALIFORNIA CODE OF REGULATIONS (CAL. CODE REG.)		580
TITLE 24 - CALIFORNIA BUILDING STANDARDS CODE.....		580
SEC. 3102B.	DEFINITIONS	580
SEC. 3120B.	REQUIRED SIGNS	580
§3120B.1	General.	580
§3120B.2	Pool user capacity sign.....	581
§3120B.2.1	Spa pool.....	581
§3120B.2.2	Other pools	581
§3120B.3	No diving sign	581
§3120B.4	No lifeguard sign.....	581
§3120B.5	Artificial respiration and cardiopulmonary resuscitation sign	581
§3120B.6	Emergency sign	581
§3120B.7	Warning Sign for a Spa Pool	581
§3120B.8	Emergency shut off.	582
§3120B.9	No use after dark.	582
§3120B.10	Keep closed	582
§3120B.11	Diarrhea.....	582
§3120B.14	Exit	582
§3120B.15	Gaseous oxidizer	582

§3120B.16	Turn on before entering.....	582
§3120B.17	Direction of flow	583
§3120B.17.1	(no title).....	583
§3120B.17.2	(no title).....	583
§3120B.17.3	(no title).....	583
UNITED STATES CODE (U.S.C.).....		584
4 U.S.C. (TITLE 4).....		584
§5	Display and Use of Flag by Civilians; Codification of Rules and Customs; Definition.....	584
Sec. 1.	Short Title.....	584
Sec. 2.	Definitions.....	584
Sec. 3.	Right to Display the Flag of the United States.	584
Sec. 4.	Limitations.	585
15 U.S.C. (TITLE 15).....		585
§8002.	Definitions (Pool and Spa Safety Act).	585
§8003.	Federal Swimming Pool and Spa Drain Cover Standard.....	586
CODE OF FEDERAL REGULATIONS (CFR) – FCC REGULATIONS.....		588
§1.4000.	Restrictions Impairing Reception of Television Broadcast Signals, Direct Broadcast Satellite Services or Multichannel Multipoint Distribution Services	588
CHECKLISTS FOR ASSOCIATIONS AND ASSOCIATION MANAGERS.....		590
§1	Checklist if the Association or Board is Sued	590
§2	Checklist of Mandatory Annual Disclosures	590
§3	Checklist of other Annual or Periodic Board Duties	598
§4	Board Meeting Checklist.....	603
§5	Board Fiscal Duty Checklist.....	604
§6	Checklist of Employment Law Duties	606
§7	Membership Meeting Checklist ■.....	606
§8	Checklist of Membership Rights	608
§9	Checklist of Membership or Owner Duties.....	612
§10	Checklist of Management Company Duties.....	613
§11	Checklist of Duties Concerning Construction Defects.....	614
§12	Checklist of Senior Housing Duties and Rights	614
APPENDIX A - COMMON PARLIAMENTARY PROCEDURE MOTIONS.....		616
APPENDIX B - STATUTES - NEW, AMENDED OR NEWLY ADDED TO RESOURCE BOOK		620
APPENDIX C.....		623
DAVIS-STIRLING ACT CONVERSION TABLES (2013 TO 2014)		623
DAVIS-STIRLING ACT CONVERSION TABLES (2014 TO 2013)		627
INDEX TO KEY WORDS AND PHRASES.....		631

§43.99. Immunity for Qualified Building Inspectors

■ (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person or other legal entity that is under contract with an applicant for a residential building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or any rules or regulations adopted pursuant to that law, or under contract with that applicant to provide independent quality review of the work of improvement to determine compliance with these plans and specifications, if the person or other legal entity meets the requirements of this section and one of the following applies:

(1) The person, or a person employed by any other legal entity, performing the work as described in this subdivision, has completed not less than five years of verifiable experience in the appropriate field and has obtained certification as a building inspector, combination inspector, or combination dwelling inspector from the International Conference of Building Officials (ICBO) and has successfully passed the technical written examination promulgated by ICBO for those certification categories.

(2) The person, or a person employed by any other legal entity, performing the work as described in this subdivision, has completed not less than five years of verifiable experience in the appropriate field and is a registered professional engineer, licensed general contractor, or a licensed architect rendering independent quality review of the work of improvement or plan examination services within the scope of his or her registration or licensure.

(3) The immunity provided under this section does not apply to any action initiated by the applicant who retained the qualified person.

(4) A “qualified person” for purposes of this section means a person holding a valid certification as one of those inspectors.

(b) Except for qualified persons, this section shall not relieve from, excuse, or lessen in any manner, the responsibility or liability of any person, company, contractor, builder, developer, architect, engineer, designer, or other individual or entity who develops, improves, owns, operates, or manages any residential building for any damages to persons or property caused by construction or design defects. The fact that an inspection by a qualified person has taken place may not be introduced as evidence in a construction defect action, including any reports or other items generated by the qualified person. This subdivision shall not apply in any action initiated by the applicant who retained the qualified person.

(c) Nothing in this section, as it relates to construction inspectors or plans examiners, shall be construed to alter the requirements for licensure, or the jurisdiction, authority, or scope of practice, of architects pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and

Professions Code, professional engineers pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or general contractors pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(d) Nothing in this section shall be construed to alter the immunity of employees of the Department of Housing and Community Development under the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) when acting pursuant to Section 17965 of the Health and Safety Code.

(e) The qualifying person shall engage in no other construction, design, planning, supervision, or activities of any kind on the work of improvement, nor provide quality review services for any other party on the work of improvement.

(f) The qualifying person, or other legal entity, shall maintain professional errors and omissions insurance coverage in an amount not less than two million dollars (\$2,000,000).

(g) The immunity provided by subdivision (a) does not inure to the benefit of the qualified person for damages caused to the applicant solely by the negligence or willful misconduct of the qualified person resulting from the provision of services under the contract with the applicant. [2012]

§51. Unruh Civil Rights Act

■ (a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, ■ genetic information, marital status, sexual orientation [~~-, citizenship, primary language, or immigration status~~]² are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation [~~-, citizenship, primary language, or immigration status~~]³ or to persons regardless of their ■ genetic information.

² The language in Section 51 shown in ~~***bold, red, underlined, italics and strikeouts***~~ was enacted by SB 600 as Chapter 282 on September 8, 2015, and was to be effective January 1, 2016. However, AB 731 also amended Section 51. It was enacted as Chapter 303 on September 21, 2015, also to be effective on January 1, 2016. According to Government Code §9605, a later enacted amendment of the same statute “trumps” the earlier enacted amendment. So the only changes that will apply are those in subdivisions (e)(3) and (e)(6) of this section that were found in both Chapters 282 and 303.

³ See footnote 2 above.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:

(1) “Disability” means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.

(2) (A) ■ “Genetic information” means, with respect to any individual, information about any of the following:

(i) The individual’s genetic tests.

(ii) The genetic tests of family members of the individual.

(iii) The manifestation of a disease or disorder in family members of the individual.

(B) ■ “Genetic information” includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(C) ■ “Genetic information” does not include information about the sex or age of any individual.

(3) “Medical condition” has the same meaning as defined in subdivision (i) of Section 12926 of the Government Code.

(4) “Religion” includes all aspects of religious belief, observance, and practice.

(5) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(6) “Sex, race, color, religion, ancestry, national origin, disability, medical condition, ■ genetic information, marital status, sexual orientation [~~-, citizenship, primary language, or immigration status~~].”⁴ includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.

(7) “Sexual orientation” has the same meaning as defined in subdivision (s) of Section 12926 of the Government Code.

⁴ See footnote 2 above.

(f) A violation of the right of any individual under the federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

~~(g) Verification of immigration status and any discrimination based upon verified immigration status, where required by federal law, shall not constitute a violation of this section.~~

~~(h) Nothing in this section shall be construed to require the provision of services or documents in a language other than English, beyond that which is otherwise required by other provisions of federal, state, or local law, including Section 1632.]⁵ [2015]~~

§51.2. Age Discrimination in Housing Sales or Rentals except Riverside County

■ (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal ■ Fair Housing Amendments Act of 1988 (Public Law 100-430) and implementing regulations against discrimination on the basis of familial status. For accommodations constructed before February 8, 1982, that meet all the criteria for senior citizen housing specified in Section 51.3, a business establishment may establish and preserve that housing development for senior citizens without the housing development being ■ designed to meet physical and social needs of senior citizens.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal. 3d 72 [*sic*]⁶ and *O'Connor v. Village Green Owners Association* (1983) 33 Cal. 3d 790.

(c) This section shall not apply to the County of ■ Riverside.

■ (d) A housing development for senior citizens constructed on or after January 1, 2001, shall be presumed to be designed to meet the physical and social needs of senior citizens if it includes all of the following elements:

(1) Entryways, walkways, and hallways in the common areas of the development, and doorways and paths of access to and within the housing units, shall be as wide as required by current laws applicable to new multifamily housing construction for provision of access to persons using a standard-width wheelchair.

(2) Walkways and hallways in the common areas of the development shall be equipped with standard height railings or grab bars to assist persons who have difficulty with walking.

(3) Walkways and hallways in the common areas shall have lighting conditions which are of sufficient brightness to assist persons who have difficulty seeing.

⁵ See footnote 2 above.

⁶ This should be 721 not 72.

(4) Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps.

(5) The development shall be designed to encourage social contact by providing at least one common room and at least some common open space.

(6) Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents.

(7) The development shall comply with all other applicable requirements for access and design imposed by law, including, but not limited to, the ■ Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), the ■ Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), and the regulations promulgated at Title 24 of the California Code of Regulations that relate to access for persons with disabilities or handicaps. Nothing in this section shall be construed to limit or reduce any right or obligation applicable under those laws.

(e) Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing. [2010]

§51.3. Senior Citizen Housing in Counties other than Riverside

■ (a) The Legislature finds and declares that this section is essential to establish and preserve specially ■ designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

■ (b) For the purposes of this section, the following definitions apply:

(1) “Qualifying resident” or “senior citizen” means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) “Qualified permanent resident” means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) “Qualified permanent resident” also means a ■ disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, “disabled” means a person who has a disability as defined in subdivision (b) of Section 54. A “disabling injury or illness” means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under this paragraph whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under this paragraph if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a ■ mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes

of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) ■ The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (h) of this section or under subdivision (b) of Section 51.4. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The condominium, stock cooperative, ■ limited-equity housing cooperative, planned development, or multiple-family residential rental

property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section; provided, however, that no housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed for or originally put to use for occupancy by senior citizens.

(g) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, ■ limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(h) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation. For purposes of this subdivision, the term “for compensation” shall include provisions of lodging and food in exchange for care.

(j) Notwithstanding any other provision of this section, this section shall not apply to the County of ■ Riverside. [2000]

§51.4. Senior Housing in Counties other than Riverside; Exceptions

■ (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal ■ Fair Housing Amendments Act of 1988 (P. L. 100-430) in recognition of the acute shortage of housing for families with children in California. The Legislature further finds and declares that the special ■ design requirements for senior housing under Sections 51.2 and 51.3 may pose a hardship to some housing developments that were constructed before the decision in *Marina Point Ltd. v. Wolfson* (1982) 30 Cal. 3d 721. The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Section 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing.

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development that relied on the exemption to the special design requirement provided by this section prior to January 1, 2001, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the changes made to this section by the enactment of Chapter 1004 of the Statutes of 2000.

(c) This section shall not apply to the County of ■ Riverside.

[2006]

§51.10. Age Discrimination in Housing Sales or Rentals in Riverside County

■ (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. A business establishment may establish and preserve housing for senior citizens, pursuant to Section 51.11, except housing as to which Section 51.11 is preempted by the prohibition in the federal ■ Fair Housing Amendments Act of 1988 (Public Law 100-430) and implementing regulations against discrimination on the basis of familial status.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790.

(c) Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing.

(d) This section shall only apply to the County of ■ Riverside.

[2010]

§51.11. Senior Citizen Housing in Riverside County

■ (a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

■ (b) For the purposes of this section, the following definitions apply:

(1) “Qualifying resident” or “senior citizen” means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) “Qualified permanent resident” means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, co-habitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) “Qualified permanent resident” also means a ■ disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, “disabled” means a person who has a disability as defined in subdivision (b) of Section 54. A “disabling injury or illness” means an illness or injury which

results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under paragraph (3) whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year, after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under paragraph (3) if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the co-resident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in that hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed with more than 20 units as a senior community by its developer and ■ zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section 4150, or qualified as a senior community under the federal ■ Fair Housing Amendments Act of 1988, as amended. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a ■ mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The ■ covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (g) of this section or subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy,

residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, ■ limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Chapter 1147 of the Statutes of 1996.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation, conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(j) This section shall only apply to the County of ■ Riverside.
[2012]

§51.12. Senior Housing in Riverside County; Exceptions

■ (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.10 and 51.11 are more stringent than the requirements for that housing under the federal ■ Fair Housing Amendments Act of 1988 (Public Law 100-430).

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development which relied on the exemption to the special ■ design requirement provided by Section 51.4 as that section read prior to January 1, 2001, shall not be deprived of the right to continue that residency, or occupancy, or use as the result of the changes made to this section by the enactment of Senate Bill 1382 or Senate Bill 2011 at the 1999-2000 Regular Session of the Legislature.

(c) This section shall only apply to the County of ■ Riverside.
[2000]

§54. Right to Full Access to Public Places

(a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

(b) For purposes of this section:

(1) "Disability" means any mental or physical disability as defined in Section 12926 of the Government Code.

(2) "Medical condition" has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

(c) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section. [2000]

§712. Prohibition of Real Estate Signs Void; Permissible Displays

■ (a) Every provision contained in or otherwise affecting a grant of a fee interest in, or purchase money security instrument upon, real property in this state heretofore or hereafter made, which purports to prohibit or restrict the right of the property owner or his or her agent to display or have displayed on the real property, or on real property owned by others with their consent, or both, signs which are reasonably located, in plain view of the public, are of reasonable dimensions and design, and do not adversely affect public safety, including traffic safety, and which advertise the property for sale, lease, or exchange, or advertise directions to the property, by the property owner or his or her agent is void as an unreasonable restraint upon the power of alienation.

(b) This section shall operate retrospectively, as well as prospectively, to the full extent that it may constitutionally operate retrospectively.

(c) A sign that conforms to the ordinance adopted in conformity with Section 713 shall be deemed to be of reasonable dimension and design pursuant to this section. [1993]

§713. Display of Real Estate Signs

■ (a) Notwithstanding any provision of any ordinance, an owner of real property or his or her agent may display or have displayed on the owner's real property, and on real property owned by others with their consent, signs which are reasonably located, in plain view of the public, are of reasonable dimensions and design, and do not adversely affect public safety, including traffic safety, as determined by the city, county, or city and county, advertising the following:

(1) That the property is for sale, lease, or exchange by the owner or his or her agent.

(2) Directions to the property.

(3) The owner's or agent's name.

(4) The owner's or agent's address and telephone number.

(b) Nothing in this section limits any authority which a person or local governmental entity may have to limit or regulate the display or placement of a sign on a private or public right-of-way. [1992]

§714. Covenants Restricting Solar Energy System Are Void

■ (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document, as defined in Section 4150 or 6552, that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities, consistent with Section 65850.5 of the Government Code.

(2) Solar energy systems used for heating water in single family residences and solar collectors used for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined in the Plumbing and Mechanical Codes.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where

applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, “significantly” means an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars (\$1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, “significantly” means an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

(2) “Solar energy system” has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) (1) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(2) For an approving entity that is an association, as defined in Section 4080 or 6528, and that is not a public entity, both of the following shall apply:

(A) The approval or denial of an application shall be in writing.

(B) If an application is not denied in writing within 45 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) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable ■ attorney’s fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section. [2014]

§714.1. Permitted Restrictions by Common Interest Development Associations

■ Notwithstanding Section 714, any association, as defined in Section 4080 or 6528, may impose reasonable provisions which:

(a) Restrict the installation of solar energy systems installed in common areas, as defined in Section 4095 or 6532, to those systems approved by the association.

(b) Require the owner of a separate interest, as defined in Section 4185 or 6564, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.

(c) Provide for the maintenance, repair, or replacement of roofs or other building components.

(d) Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system. [2013]

§714.5. Governing Documents May Not Prohibit Use of Manufactured Housing on Real Property

■ The covenants, conditions, and restrictions or other management documents shall not prohibit the sale, lease, rent, or use of real property on the basis that the structure intended for occupancy on the real property is constructed in an offsite facility or factory, and subsequently moved or transported in sections or modules to the real property. Nothing herein shall preclude the governing instruments from being uniformly applied to all structures subject to the covenants, conditions, and restrictions or other management documents.

This section shall apply to covenants, conditions, and restrictions or other management documents adopted on and after the effective date of this section. [1987]

§782.5. Recorded Instrument Deemed Revised to Omit Discriminatory Restrictions

■ (a) Any deed or other written instrument that relates to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, any deed or instrument that relates to title to real property, which contains any provision that purports to forbid, restrict, or condition the right of any person or persons to sell, buy, lease, rent, use or occupy the property on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, with respect to any person or persons, shall be deemed to be revised to omit that provision.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of this code, relating to housing for senior citizens. Subdivision (d) of Section 51, Section 4760, and Section 6714 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

(c) This section shall not be construed to limit or expand the powers of a court to reform a deed or other written instrument. [2013]

§783. Condominium Defined

■ A condominium is an estate in real property described in Section 4125 or 6542. A condominium may, with respect to the duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, (3) an estate for years, such as a leasehold or a subleasehold, or (4) any combination of the foregoing. [2013]

§783.1. Separate and Correlative Interests as Interests in Real Property

■ In a stock cooperative, as defined in Section 4190 or 6566, both the separate interest, as defined in paragraph (4) of subdivision (a) of Section 4185 or in paragraph (3) of subdivision (a) of Section 6564, and the correlative interest in the stock cooperative corporation, however designated, are interests in real property. [2013]

§784. Definition of Restrictions on Real Property

■ “Restriction,” when used in a statute that incorporates this section by reference, means a limitation on, or provision affecting, the use of real property in a deed, declaration, or other instrument, whether in the form of a covenant, ■ equitable servitude, condition subsequent, ■ negative easement, or other form of restriction. [1998]

§798.3. Mobilehome Defined

■ (a) “Mobilehome” is a structure designed for human habitation and for being moved on a street or highway under permit pursuant to Section 35790 of the Vehicle Code. Mobilehome includes a manufactured home, as defined in Section 18007 of the Health and Safety Code, and a mobilehome, as defined in Section 18008 of the Health and Safety Code, but, except as provided in subdivision (b), does not include a recreational vehicle, as defined in Section 799.29 of this code and Section 18010 of the Health and Safety Code or a commercial coach as defined in Section 18001.8 of the Health and Safety Code.

(b) “Mobilehome,” for purposes of this chapter, other than Section 798.73, also includes trailers and other recreational vehicles of all types defined in Section 18010 of the Health and Safety Code, other than motor homes, truck campers, and camping trailers, which are used for human habitation if the occupancy criteria of either paragraph (1) or (2), as follows, are met:

(1) The trailer or other recreational vehicle occupies a mobilehome site in the park, on November 15, 1992, under a rental agreement with a term of one month or longer, and the trailer or other recreational vehicle occupied a mobilehome site in the park prior to January 1, 1991.

(2) The trailer or other recreational vehicle occupies a mobilehome site in the park for nine or more continuous months commencing on or after November 15, 1992.

“Mobilehome” does not include a trailer or other recreational vehicle located in a recreational vehicle park subject to Chapter 2.6 (commencing with Section 799.20). [2005]

§799. Mobilehome Subdivision Definitions

■ As used in this article:

(a) “Ownership or management” means the ownership or management of a subdivision, cooperative, or condominium for mobilehomes, or of a resident-owned mobilehome park.

(b) “Resident” means a person who maintains a residence in a subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park.

(c) “Resident-owned mobilehome park” means any entity other than a subdivision, cooperative, or condominium for mobilehomes, through which the residents have an ownership interest in the mobilehome park. [1997]

§799.1. Mobilehomes; Rights of Residents

■ (a) Except as provided in subdivision (b), this article shall govern the rights of a resident who has an ownership interest in the subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park in which his or her mobilehome is located or installed. In a subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park, Article 1 (commencing with Section 798) to Article 8 (commencing with Section 798.84), inclusive, shall apply only to a resident who does not have an ownership interest in the subdivision, cooperative, or condominium for mobilehomes, or the resident-owned mobilehome park, in which his or her mobilehome is located or installed.

(b) Notwithstanding subdivision (a), in a mobilehome park owned and operated by a nonprofit mutual benefit corporation, established pursuant to Section 11010.8 of the Business and Professions Code, whose members consist of park residents where there is no recorded subdivision declaration or condominium plan, Article 1 (commencing with Section 798) to Article 8 (commencing with Section 798.84), inclusive, shall govern the rights of members who are residents that rent their space from the corporation. [2012]

§799.1.5. Mobilehomes; Advertisement for Sale or Exchange of Mobilehomes

A homeowner or resident, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome through the death of the resident of the mobilehome who was a resident at the time of his or her death, or the agent of any of those persons, may advertise the sale or exchange of his or her mobilehome or, if not prohibited by the terms of an agreement with the management or ownership, may advertise the rental of his or her mobilehome by displaying a ■ sign in the window of the mobilehome, or by a sign posted on the side of the mobilehome facing the street, or by a sign in front of the mobilehome facing the street, stating that the mobilehome is for sale or exchange or, if not prohibited, for rent by the owner of the mobilehome or his

or her agent. Any such person also may display a sign conforming to these requirements indicating that the mobilehome is on display for an “open house,” unless the park rules prohibit the display of an open house sign. The sign shall state the name, address, and telephone number of the owner of the mobilehome or his or her agent. The sign face may not exceed 24 inches in width and 36 inches in height. Signs posted in front of a mobilehome pursuant to this section may be of an H-frame or A-frame design with the sign face perpendicular to, but not extending into, the street. A homeowner or resident, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome through the death of the resident of the mobilehome who was a resident at the time of his or her death, or the agent of any of those persons, may attach to the sign or their mobilehome tubes or holders for leaflets that provide information on the mobilehome for sale, exchange, or rent. [2005]

§799.2. Listing Mobilehome Home Owned by Resident

The ownership or management shall not show or list for sale a mobilehome owned by a resident without first obtaining the resident’s written authorization. The authorization shall specify the terms and conditions regarding the showing or listing.

Nothing contained in this section shall be construed to affect the provisions of the Health and Safety Code governing the licensing of mobilehome salesmen. [1983]

§799.2.5. Written Consent of Resident Required for Right of Entry to Mobilehome

(a) Except as provided in subdivision (b), the ownership or management shall have no right of entry to a mobilehome without the prior written consent of the resident. The consent may be revoked in writing by the resident at any time. The ownership or management shall have a right of entry upon the land upon which a mobilehome is situated for maintenance of utilities, trees, and driveways, for maintenance of the premises in accordance with the rules and regulations of the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park when the homeowner or resident fails to so maintain the premises, and protection of the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park at any reasonable time, but not in a manner or at a time that would interfere with the resident’s quiet enjoyment.

(b) The ownership or management may enter a mobilehome without the prior written consent of the resident in case of an emergency or when the resident has abandoned the mobilehome. [2006]

§799.3. Removing Mobilehomes

■ The ownership or management shall not require the removal of a mobilehome from a subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park in the event of its sale to a third party. [1997]

§799.4. Approval of Mobilehome Purchase

■ The ownership or management may require the right to prior approval of the purchaser of a mobilehome that will remain in the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park and that the selling resident, or his or her agent give notice of the sale to the ownership or management before the close of the sale. Approval cannot be withheld if the purchaser has the financial ability to pay the fees and charges of the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park unless the ownership or management reasonably determines that, based on the purchaser's prior residences, he or she will not comply with the ■ rules and regulations of the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park. [1997]

§799.5. Mobilehomes; Senior Housing Requirements

■ The ownership or management may require that a purchaser of a mobilehome that will remain in the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park comply with any rule or regulation limiting residency based on age requirements for housing for older persons, provided that the rule or regulation complies with the provisions of the federal ■ Fair Housing Act, as amended by Public Law 104-76, and implementing regulations. [1997]

§799.6. Mobilehomes; Waiver of Provisions Void

No agreement shall contain any provision by which the purchaser waives his or her rights under the provisions of this article. Any such waiver shall be deemed contrary to public policy and void and unenforceable. [1983]

§799.7. Mobilehomes; Notice of Utility Service Interruption

■ The ownership or management shall provide, by posting notice on the mobilehomes of all affected homeowners and residents, at least 72 hours' written advance notice of an interruption in utility service of more than two hours for the maintenance, repair, or replacement of facilities of utility systems over which the management has control within the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park, if the interruption is not due to an emergency. The ownership or management shall be liable only for actual damages sustained by a homeowner or resident for violation of this section.

"Emergency," for purposes of this section, means the interruption of utility service resulting from an accident or act of nature, or cessation of service caused by other than the management's regular or planned maintenance, repair, or replacement of utility facilities. [1997]

§799.8. Mobilehomes; Disclosure of School Facilities Fees

The management, at the time of an application for residency, shall disclose in writing to any person who proposes to purchase or install a manufactured home or mobilehome on a space or lot, on which the construction of the pad or foundation system commenced after September 1, 1986, and no

other manufactured home or mobilehome was previously located, installed, or occupied, that the manufactured home or mobilehome may be subject to a school facilities fee under Sections 53080 and 53080.4 of, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of, the Government Code. [1994]

§799.9. Senior Homeowner Sharing Mobilehome with Care Giver

■ (a) A homeowner may share his or her mobilehome with any person 18 years of age or older if that person is providing live-in health care, live-in supportive care, or supervision to the homeowner pursuant to a written treatment plan prepared by a physician and surgeon. A fee shall not be charged by management for that person. That person shall have no rights of tenancy in, and shall comply with the ■ rules and regulations of, the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park.

(b) A senior homeowner who resides in a subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park, that has implemented rules or regulations limiting residency based on age requirements for housing for older persons, pursuant to Section 799.5, may share his or her mobilehome with any person 18 years of age or older if this person is a parent, sibling, child, or grandchild of the senior homeowner and requires live-in health care, live-in supportive care, or supervision pursuant to a written treatment plan prepared by a physician and surgeon. A fee shall not be charged by management for that person. Unless otherwise agreed upon, the management shall not be required to manage, supervise, or provide for this person's care during his or her stay in the subdivision, cooperative or condominium for mobilehomes, or resident-owned mobilehome park. That person shall have no rights of tenancy in, and shall comply with the rules and regulations of, the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park. As used in this subdivision, "senior homeowner" means a homeowner or resident who is 55 years of age or older. [2008]

§799.10. Display of Political Signs

■ A resident may not be prohibited from displaying a political campaign sign relating to a candidate for election to public office or to the initiative, referendum, or recall process in the window or on the side of a manufactured home or mobilehome, or within the site on which the home is located or installed. The size of the face of a political sign may not exceed six square feet, and the sign may not be displayed in excess of a period of time from 90 days prior to an election to 15 days following the election, unless a local ordinance within the jurisdiction where the manufactured home or mobilehome subject to this article is located imposes a more restrictive period of time for the display of such a sign. In the event of a conflict between the provisions of this section and the provisions of Part 5 (commencing with Section 4000) of Division 4, relating to the size and display of political campaign signs, the provisions of this section shall prevail. [2012]

§799.11. Improvements to Accommodate the Disabled

■ The ownership or management shall not prohibit a homeowner or resident from installing accommodations for the disabled on the home or the site, lot, or space on which the mobilehome is located, including, but not limited to, ramps or handrails on the outside of the home, as long as the installation of those facilities complies with code, as determined by an enforcement agency, and those facilities are installed pursuant to a permit, if required for the installation, issued by the enforcement agency. The management may require that the accommodations installed pursuant to this section be removed by the current homeowner at the time the mobilehome is removed from the park or pursuant to a written agreement between the current homeowner and the management prior to the completion of the resale of the mobilehome in place in the park. This section is not exclusive and shall not be construed to condition, affect, or supersede any other provision of law or regulation relating to accessibility or accommodation for the disabled. [2008]

§801.5. Solar Easements; Solar Energy Systems Defined

■ (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. “Solar easement” means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, “solar energy system” means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated. [1978]

§817.⁷ Definitions of Housing Cooperatives and Housing Cooperative Trusts

■ “Limited-equity housing cooperative” or a “workforce housing cooperative trust” means a corporation organized on a cooperative basis that, in addition to complying with Section 817.1 as may be applicable, meets all of the following requirements:

(a) The corporation is any of the following:

(1) Organized as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code.

(2) Holds title to real property as the beneficiary of a trust providing for distribution for public or charitable purposes upon termination of the trust.

(3) Holds title to real property subject to conditions that will result in reversion to a public or charitable entity upon dissolution of the corporation.

(4) Holds a leasehold interest, of at least 20 years’ duration, conditioned on the corporation’s continued qualification under this section, and provides for reversion to a public entity or charitable corporation.

(b) (1) The articles of incorporation or bylaws require the purchase and sale of the stock or membership interest of resident owners who cease to be permanent residents, at no more than a transfer value determined as provided in the articles or bylaws, and that shall not exceed the aggregate of the following:

(A) The consideration paid for the membership or shares by the first occupant of the unit involved, as shown on the books of the corporation.

(B) The value, as determined by the board of directors of the corporation, of any improvements installed at the expense of the member or a prior member with the prior approval of the board of directors.

(C) Accumulated simple interest, an inflation allowance at a rate that may be based on a cost-of-living index, an income index, or market-interest index, or compound interest if specified in the articles of incorporation or bylaws. For newly formed corporations, accumulated simple interest shall apply. Any increment pursuant to this paragraph shall not exceed a 10-percent annual increase on the consideration paid for the membership or share by the first occupant of the unit involved.

(2) (A) Except as provided in subparagraph (B), for purposes of a return of transfer value, both of the following are prohibited:

⁷ This is the first section of what was enacted in 2009 as AB 1246. It encompasses sections 817 through 817.4, inclusive. While these are all found on the Digital Version of the Resource Book, only section 817 is in the printed copy. If you wish to see the full text, you can retrieve it at <http://leginfo.legislature.ca.gov/faces/codes.xhtml> by clicking the Civil Code, then “Expand all” and scrolling to the line that includes 817 and clicking on the link.

(i) A board of directors returning transfer value, either full or partial, to a member while he or she still remains a member.

(ii) An existing member accepting the return of his or her transfer value, either full or partial.

(B) A board of directors may return to an existing member and the existing member may accept return of his or her transfer value in the event that the member moves within the cooperative from a category of unit initially valued at a higher price to a different category of unit valued at a lower price.

(c) The articles of incorporation or bylaws require the board of directors to sell the stock or membership interest purchased as provided in subdivision (b) to new member-occupants or resident shareholders at a price that does not exceed the “transfer value” paid for the unit.

(d) The “corporate equity,” that is defined as the excess of the current fair market value of the corporation’s real property over the sum of the current transfer values of all shares or membership interests, reduced by the principal balance of outstanding encumbrances upon the corporate real property as a whole, shall be applied as follows:

(1) So long as any such encumbrance remains outstanding, the corporate equity shall not be used for distribution to members, but only for the following purposes, and only to the extent authorized by the board, subject to the provisions and limitations of the articles of incorporation and bylaws:

(A) For the benefit of the corporation or the improvement of the real property.

(B) For expansion of the corporation by acquisition of additional real property.

(C) For public benefit or charitable purposes.

(2) Upon sale of the property, dissolution of the corporation, or occurrence of a condition requiring termination of the trust or reversion of title to the real property, the corporate equity is required by the articles, bylaws, or trust or title conditions to be paid out, or title to the property transferred, subject to outstanding encumbrances and liens, for the transfer value of membership interests or shares, for use for a public or charitable purpose.

(e) Amendment of the bylaws and articles of incorporation requires the affirmative vote of at least two-thirds of the resident-owner members or shareholders. [2009]

§817.1. Additional Housing Cooperative Trust Requirements

■ (a) A “workforce housing cooperative trust” is an entity organized pursuant to this section that complies with Section 817 and with all of the following:

(1) Allows the governing board to be composed of two classes of board members. One class is elected by the residents, and one class is appointed by sponsor organizations, including employer and employee organizations, chambers of commerce, government entities, unions, religious organizations, nonprofit organizations, cooperative organizations, and other forms of organizations. Resident members shall elect a majority of the board

members. However, sponsor organizations may appoint up to one less than a majority of the board members. The numerical composition and class of the sponsor and resident board members shall be set in the articles of incorporation and in the bylaws.

(2) Requires the charter board of a workforce housing cooperative trust to be composed of only sponsor board members, to remain in place for one year after the first resident occupancy. One year after the first resident occupancy, the resident members shall elect a single board member. Three years after the first resident occupancy, resident members shall elect a majority of the board members.

(3) Prohibits the removal of the appointees of sponsor organizations, except for cause.

(4) Allows for the issuance of separate classes of shares to sponsor organizations or support organizations. These shares shall be denominated as “workforce housing shares” and shall receive a rate of return of no more than 10 percent simple interest pursuant to subparagraph (C) of paragraph (1) of subdivision (b) of Section 817.

(5) Requires, in order to amend the bylaws or articles of incorporation of a workforce housing cooperative trust, the affirmative vote of at least a majority of the resident-owner members or shareholders and a majority of each class of board members. The rights of the sponsor board members or the sponsors shall not be changed without the affirmative vote of two-thirds of the sponsor board members.

(b) A workforce housing cooperative trust shall be entitled to operate at multiple locations in order to sponsor limited-equity housing cooperatives. A workforce housing cooperative trust may either own or lease land for the purpose of developing limited-equity housing cooperatives.

(c) A workforce housing cooperative trust may be created when at least 51 percent of the occupied units in a multifamily property that is in foreclosure support efforts to buy the building or property. [2009]

§817.2. Dissolution of Housing Cooperative or Housing Cooperative Trust

■ The procedure for the dissolution of a limited-equity housing cooperative or workforce housing cooperative trust that receives or has received a public subsidy shall be as follows:

(a) The city, or the county for any unincorporated area, in which the limited-equity housing cooperative or workforce housing cooperative trust is located, shall hold a public hearing. The cooperative or trust shall pay for all costs associated with the public hearing.

(b) The city or county shall provide notice to all interested parties. The notice shall be given at least 120 days prior to the date of the hearing. The city or county shall obtain a list of all other limited-equity housing cooperatives and cooperative development organizations in the state from the California Center for Cooperative Development, if the list exists, and provide notice to all of the entities on the list in an effort to create a merger with an existing limited-

equity housing cooperative or workforce housing cooperative trust. The notice shall be mailed first class, postage prepaid, in the United States mail.

(c) If the dissolving limited-equity housing cooperative or workforce housing cooperative trust merges with an existing cooperative or trust, to the extent possible, the merger shall be with the geographically closest cooperative or trust.

(d) If the dissolving limited-equity housing cooperative or workforce housing cooperative trust does not merge with an existing cooperative or trust, both of the following shall occur:

(1) Upon completion of the public hearing required pursuant to subdivision (a), the city or county shall adopt a resolution approving of the dissolution and make a finding that the dissolution plan meets the requirements of state and federal law, meets the donative intent standards of the United States Internal Revenue Service, and is free of private inurement, which includes, but is not limited to, a prohibition on any member receiving any payment in excess of the transfer value to which he or she is entitled pursuant to subdivision (b) of Section 817.

(2) The city or county shall forward all of the information and written testimony from the hearing to the Office of the Attorney General for the Attorney General to consider as part of his or her ruling on the dissolution. [2009]

§817.3. Sponsor's Membership Standing in Workforce Housing Cooperative Trust

■ Each entity named as a sponsor organization of a workforce housing cooperative trust formed pursuant to Section 817 shall have the legal standing of a member unless it revokes, in writing, its sponsorship. [2009]

§817.4. Breach of Fiduciary Duty Claim against Housing Cooperative or Housing Cooperative Trust

■ (a) In any action instituted on or after January 1, 2010, against a board of directors and its members based upon a breach of corporate or fiduciary duties or a failure to comply with the requirements of this chapter, a prevailing plaintiff may recover reasonable ■ attorney's fees and costs.

(b) If an organization formed under this chapter uses public funds, it shall not use any corporate funds to avoid compliance with this chapter or to pursue dissolution if the intent or outcome is for some or all of the members to receive any payment in excess of the transfer value to which he or she is entitled pursuant to subdivision (b) of Section 817. [2009]

§841. Good Neighbor Fence Act of 2013

(a) Adjoining landowners shall share equally in the responsibility for maintaining the boundaries and monuments between them.

(b) (1) Adjoining landowners are presumed to share an equal benefit from any fence dividing their properties and, unless otherwise agreed to by the parties in a written agreement, shall be presumed to be equally

responsible for the reasonable costs of construction, maintenance, or necessary replacement of the fence.

(2) Where a landowner intends to incur costs for a fence described in paragraph (1), the landowner shall give 30 days' prior written notice to each affected adjoining landowner. The notice shall include notification of the presumption of equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence. The notice shall include a description of the nature of the problem facing the shared fence, the proposed solution for addressing the problem, the estimated construction or maintenance costs involved to address the problem, the proposed cost sharing approach, and the proposed timeline for getting the problem addressed.

(3) The presumption in paragraph (1) may be overcome by a preponderance of the evidence demonstrating that imposing equal responsibility for the reasonable costs of construction, maintenance, or necessary replacement of the fence would be unjust. In determining whether equal responsibility for the reasonable costs would be unjust, the court shall consider all of the following:

(A) Whether the financial burden to one landowner is substantially disproportionate to the benefit conferred upon that landowner by the fence in question.

(B) Whether the cost of the fence would exceed the difference in the value of the real property before and after its installation.

(C) Whether the financial burden to one landowner would impose an undue financial hardship given that party's financial circumstances as demonstrated by reasonable proof.

(D) The reasonableness of a particular construction or maintenance project, including all of the following:

(i) The extent to which the costs of the project appear to be unnecessary or excessive.

(ii) The extent to which the costs of the project appear to be the result of the landowner's personal aesthetic, architectural, or other preferences.

(E) Any other equitable factors appropriate under the circumstances.

(4) Where a party rebuts the presumption in paragraph (1) by a preponderance of the evidence, the court shall, in its discretion, consistent with the party's circumstances, order either a contribution of less than an equal share for the costs of construction, maintenance, or necessary replacement of the fence, or order no contribution.

(c) For the purposes of this section, the following terms have the following meanings:

(1) "Landowner" means a private person or entity that lawfully holds any possessory interest in real property, and does not include a city, county, city and county, district, public corporation, or other political subdivision, public body, or public agency.

(2) "Adjoining" means contiguous to or in contact with.

[2013]

§845. Maintenance of Private Right-Of-Way Easements

■ (a) The owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair.

(b) If the easement is owned by more than one person, or is attached to parcels of land under different ownership, the cost of maintaining it in repair shall be shared by each owner of the easement or the owners of the parcels of land, as the case may be, pursuant to the terms of any agreement entered into by the parties for that purpose. In the absence of an agreement, the cost shall be shared proportionately to the use made of the easement by each owner.

(c) If any owner refuses to perform, or fails after demand in writing to pay the owner's proportion of the cost, an action to recover that owner's share of the cost, or for specific performance or contribution, may be brought by the other owners, either jointly or severally. The action may be brought before, during, or after performance of the maintenance work, as follows:

(1) The action may be brought in small claims court if the amount claimed to be due as the owner's proportion of the cost does not exceed the jurisdictional limit of the small claims court. A small claims judgment shall not affect apportionment of any future costs that are not requested in the small claims action.

(2) Except as provided in paragraph (1), the action shall be filed in superior court and, notwithstanding Section 1141.13 of the Code of Civil Procedure, the action shall be subject to judicial arbitration pursuant to Chapter 2.5 of Title 3 of Part 3 (commencing with Section 1141.10) of the Code of Civil Procedure. A superior court judgment shall not affect apportionment of any future costs that are not requested in the action, unless otherwise provided in the judgment.

(3) In the absence of an agreement addressing the maintenance of the easement, any action for specific performance or contribution shall be brought in a court in the county in which the easement is located.

(4) Nothing in this section precludes the use of any available alternative dispute resolution program to resolve actions regarding the maintenance of easements in the small claims court or the superior court.

(d) In the event that snow removal is not required under subdivision (a), or under any independent contractual or statutory duty, an agreement entered into pursuant to subdivision (b) to maintain the easement in repair shall be construed to include snow removal within the maintenance obligations of the agreement if all of the following exist.

(1) Snow removal is not expressly precluded by the terms of the agreement.

(2) Snow removal is not necessary to provide access to the properties served by the easement.

(3) Snow removal is approved in advance by the property owners or their elected representatives in the same manner as provided by the agreement for repairs to the easement. [2012]

§846. Exemption from Liability – Property Used for Recreational Purposes

■ An owner of any estate or any other interest in real property, whether possessory or no possessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on those premises to persons entering for a recreational purpose, except as provided in this section.

A “recreational purpose,” as used in this section, includes activities such as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, private noncommercial aviation activities, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for that purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of the person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property. [2014]

§890. Rent Skimming Definitions

■ (a) (1) “Rent skimming” means using revenue received from the rental of a parcel of residential real property at any time during the first year period after acquiring that property without first applying the revenue or an equivalent amount to the payments due on all mortgages and deeds of trust encumbering that property.

(2) For purposes of this section, “rent skimming” also means receiving revenue from the rental of a parcel of residential real property where the person receiving that revenue, without the consent of the owner or owner’s

agent, asserted possession or ownership of the residential property, whether under a false claim of title, by trespass, or any other unauthorized means, rented the property to another, and collected rents from the other person for the rental of the property. This paragraph does not apply to any tenant, subtenant, lessee, sublessee, or assignee, nor to any other hirer having a lawful occupancy interest in the residential dwelling.

(b) “Multiple acts of rent skimming” means knowingly and willfully rent skimming with respect to each of five or more parcels of residential real property acquired within any two-year period.

(c) “Person” means any natural person, any form of business organization, its officers and directors, and any natural person who authorizes rent skimming or who, being in a position of control, fails to prevent another from rent skimming. [1998]

§891. Rent Skimming Remedies

■ (a) A seller of an interest in residential real property who received a promissory note or other evidence of indebtedness for all or a portion of its purchase price secured by a lien on the property may bring an action against any person who has engaged in rent skimming with respect to that property. A seller who prevails in the action shall recover all actual damages and reasonable attorney's fees and costs. The court may award any appropriate equitable relief. The court shall award exemplary damages of not less than three times the actual damages if the defendant has engaged in multiple acts of rent skimming and may award exemplary damages in other cases.

(b) A seller of an interest in residential real property who reacquires the interest from a person who has engaged in rent skimming with respect to that property, or a law enforcement agency, may request the court for an order declaring that the reacquired interest is not encumbered by any lien that is or has the effect of a judgment lien against the person who engaged in rent skimming if the lien is not related to any improvement of the property and does not represent security for loan proceeds made by a bona fide lien holder without knowledge of facts constituting a violation of this title. The motion or application shall be made with at least 30 days' advance written notice to all persons who may be affected by the order, including lienholders, and shall be granted unless the interests of justice would not be served by such an order.

(c) A mortgagee or beneficiary under a deed of trust encumbering residential real property may bring an action against a person who has engaged in rent skimming with respect to that property as one of multiple acts of rent skimming, whether or not the person has become contractually bound by an obligation secured by the mortgage or deed of trust. The mortgagee or beneficiary who prevails in the action shall recover actual damages to the extent of the amount of the rent collected on the encumbered property and attorney's fees and costs. The court also may order any appropriate equitable relief and may award exemplary damages.

(d) A tenant of residential real property may bring an action against a person who has engaged in rent skimming with respect to that property for the recovery of actual damages, including any security, as defined in Section

1950.5, and moving expenses if the property is sold at a foreclosure sale and the tenant was required to move. A prevailing plaintiff in such an action shall be awarded reasonable attorney's fees and costs. The court also may award exemplary damages; it shall award exemplary damages of at least three times the amount of actual damages if the payments due under any deed of trust or mortgage were two or more months delinquent at the time the tenant rented the premises or if the defendant has engaged in multiple acts of rent skimming.

(e) The rights and remedies provided in this section are in addition to any other rights and remedies provided by law.

(f) Rent skimming is unlawful, and any waiver of the provisions of this section are *[sic]* void and unenforceable as contrary to public policy.

(g) Sections 580a, 580b, 580d, and 726 of the Code of Civil Procedure do not apply to any action brought under this title. [1986]

§892. Criminal Prosecution for Rent Skimming

■ (a) Any person who engages in multiple acts of rent skimming is subject to criminal prosecution. Each act of rent skimming comprising the multiple acts of rent skimming shall be separately alleged. A person found guilty of five acts shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or by imprisonment in a county jail for not more than one year, by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment. A person found guilty of additional acts shall be separately punished for each additional act by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or by imprisonment in a county jail for not more than one year, by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(b) If a defendant has been once previously convicted of a violation of subdivision (a), any subsequent knowing and willful act of rent skimming shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or by imprisonment in a county jail for not more than one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(c) A prosecution for a violation of this section shall be commenced within three years after the date of the acquisition of the last parcel of property that was the subject of the conduct for which the defendant is prosecuted.

(d) The penalties under this section are in addition to any other remedies or penalties provided by law for the conduct proscribed by this section. [2011]

§893. Affirmative Defenses against Rent Skimming

■ (a) It is an affirmative defense for a natural person who is a defendant in a civil action brought under Section 891, or a criminal action brought under Section 892, if all of the following occurred:

(1) The defendant used the rental revenue due but not paid to holders of mortgages or deeds of trust to make payments to any of the following:

(A) Health care providers, as defined in paragraph (2) of subdivision (c) of Section 6146 of the Business and Professions Code, for the unforeseen and necessary medical treatment of the defendant or his or her spouse, parents, or children.

(B) Licensed contractors or material suppliers to correct the violation of any statute, ordinance, or regulation relating to the habitability of the premises.

(2) The defendant made the payments within 30 days of receiving the rental revenue.

(3) The defendant had no other source of funds from which to make the payments.

(b) The defendant has the burden of producing evidence of each element of the defense specified in subdivision (a) in a criminal action under Section 892 and the burden of proof of each element of the defense in a civil action under Section 891. [1986]

§894. Severability of Rent Skimming Provisions

■ If any provision of this title or the application thereof to any person or circumstances is held to be unconstitutional, the remainder of the title and the application of its provisions to other persons and circumstances shall not be affected thereby. [1986]

§895.⁸ Requirements for Construction Defect Actions – Definitions

■ (a) “Structure” means any residential dwelling, other building, or improvement located upon a lot or within a common area.

(b) “Designed moisture barrier” means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer’s recommendations.

(c) “Actual moisture barrier” means any component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as a barrier against moisture.

(d) “Unintended water” means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.

(e) “Close of escrow” means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in Section 4080, “close of escrow” means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association’s ability to decide whether to initiate a claim under this title, whichever is later.

⁸ This is the first section of what was enacted in 2002 as SB 800. It encompasses sections 896 through 945.5, inclusive. While all these are found on the Digital Version of the Resource Book, only section 895 and 896 are in the printed copy. If you wish to see them all, you can retrieve them at <http://leginfo.legislature.ca.gov/faces/codes.xhtml> by clicking the Civil Code, then “Expand all” and scrolling to the line or lines that include the sections you want and clicking on the link to those sections.

(f) “Claimant” or “homeowner” includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in Section 4080. [2012]

§896. Standards for Building Construction

■ In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant’s claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

(a) With respect to water issues:

(1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.

(2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, “systems” include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, “systems” include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, “systems” include, without limitation, framing, substrate, and sheathing, if any.

(5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, “systems” include, without limitation, framing, substrate, flashing, and sheathing, if any.

(6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, “systems” include, without limitation, framing, substrate, flashing, and sheathing, if any.

(7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.

(8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.

(9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.

(10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.

(13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.

(14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.

(15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.

(16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.

(17) Showers, baths and related waterproofing systems shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) The waterproofing system behind or under ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage. Ceramic tile systems shall

be designed and installed so as to deflect intended water to the waterproofing system.

(b) With respect to structural issues:

(1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.

(2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.

(3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.

(4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

(c) With respect to soil issues:

(1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.

(2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

(3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

(d) With respect to fire protection issues:

(1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.

(2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.

(3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

(e) With respect to plumbing and sewer issues:

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

(f) With respect to electrical system issues:

Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

(g) With respect to issues regarding other areas of construction:

(1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.

(2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.

(3) (A) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.

(B) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.

(C) For purposes of this paragraph, "manufactured product" means a product that is completely manufactured offsite.

(D) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.

(E) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.

(4) Heating shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space if the heating was installed pursuant to a building permit application submitted prior to January 1, 2008, or capable of maintaining a room temperature of 68 degrees Fahrenheit at a point three feet above the floor and two feet from exterior walls in all habitable rooms at the design temperature if the heating was installed pursuant to a building permit application submitted on or before January 1, 2008.

(5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.

(6) Attached structures shall be constructed to comply with interunit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.

(7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.

(8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.

(10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow.

(11) Roofing materials shall be installed so as to avoid materials falling from the roof.

(12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.

(14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard. [2012]

§897. Intent of Standards

The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage. [2002]

§900. Minimum One-Year Express Warranty

■ As to fit and finish items, a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish of the following building components. Except as otherwise provided by the standards specified in Chapter 2 (commencing with Section 896), this warranty shall cover the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, but shall not apply to damage to those components caused by defects in other components governed by the other

provisions of this title. Any fit and finish matters covered by this warranty are not subject to the provisions of this title. If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year. [2002]

§901. Optional Greater Warranty

A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner than that set forth in Chapter 2 (commencing with Section 896). A builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner. This type of express contract constitutes an “enhanced protection agreement.” [2002]

§902. Effect of Enhanced Protection Agreement

If a builder offers an enhanced protection agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in Chapter 2 (commencing with Section 896). If an enhanced protection agreement is in place, Chapter 2 (commencing with Section 896) no longer applies other than to set forth minimum provisions by which to judge the enforceability of the particular provisions of the enhanced protection agreement. [2002]

§903. Duties When Providing Enhanced Protection Agreement

If a builder offers an enhanced protection agreement in place of the provisions set forth in Chapter 2 (commencing with Section 896), the election to do so shall be made in writing with the homeowner no later than the close of escrow. The builder shall provide the homeowner with a complete copy of Chapter 2 (commencing with Section 896) and advise the homeowner that the builder has elected not to be subject to its provisions. If any provision of an enhanced protection agreement is later found to be unenforceable as not meeting the minimum standards of Chapter 2 (commencing with Section 896), a builder may use this chapter in lieu of those provisions found to be unenforceable. [2002]

§904. Owner Duties When Disputing Enhanced Protection Agreement

If a builder has elected to use an enhanced protection agreement, and a homeowner disputes that the particular provision or time periods of the enhanced protection agreement are not greater than, or equal to, the provisions of Chapter 2 (commencing with Section 896) as they apply to the particular deficiency alleged by the homeowner, the homeowner may seek to enforce the application of the standards set forth in this chapter as to those claimed deficiencies. If a homeowner seeks to enforce a particular standard in lieu of a provision of the enhanced protection agreement, the homeowner shall give the builder written notice of that intent at the time the homeowner files a notice of claim pursuant to Chapter 4 (commencing with Section 910). [2002]

§905. Owner Enforcement of Statutory Rights Rather than Enhanced Protection Agreement

If a homeowner seeks to enforce Chapter 2 (commencing with Section 896), in lieu of the enhanced protection agreement in a subsequent litigation or other legal action, the builder shall have the right to have the matter bifurcated, and to have an immediately binding determination of his or her responsive pleading within 60 days after the filing of that pleading, but in no event after the commencement of discovery, as to the application of either Chapter 2 (commencing with Section 896) or the enhanced protection agreement as to the deficiencies claimed by the homeowner. If the builder fails to seek that determination in the timeframe specified, the builder waives the right to do so and the standards set forth in this title shall apply. As to any nonoriginal homeowner, that homeowner shall be deemed in privity for purposes of an enhanced protection agreement only to the extent that the builder has recorded the enhanced protection agreement on title or provided actual notice to the nonoriginal homeowner of the enhanced protection agreement. If the enhanced protection agreement is not recorded on title or no actual notice has been provided, the standards set forth in this title apply to any nonoriginal homeowners' claims. [2002]

§906. Effect of Builder Using Enhanced Protection Agreement

■ A builder's election to use an enhanced protection agreement addresses only the issues set forth in Chapter 2 (commencing with Section 896) and does not constitute an election to use or not use the provisions of Chapter 4 (commencing with Section 910). The decision to use or not use Chapter 4 (commencing with Section 910) is governed by the provisions of that chapter. [2002]

§907. Owner Duty to Follow Written Maintenance Schedules

■ A homeowner is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practices. A failure by a homeowner to follow these obligations, schedules, and practices may subject the homeowner to the affirmative defenses contained in Section 944. [2002]

§910. Required Prelitigation Procedures

■ Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures:

(a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that

the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.

(b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section. [2002]

§911. Builder Defined

(a) For purposes of this title, except as provided in subdivision (b), “builder” means any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling residential units to the public for the property that is the subject of the homeowner’s claim or was in the business of building, developing, or constructing residential units for public purchase for the property that is the subject of the homeowner’s claim.

(b) For the purposes of this title, “builder” does not include any entity or individual whose involvement with a residential unit that is the subject of the homeowner’s claim is limited to his or her capacity as general contractor or contractor and who is not a partner, member of, subsidiary of, or otherwise similarly affiliated with the builder. For purposes of this title, these nonaffiliated general contractors and nonaffiliated contractors shall be treated the same as subcontractors, material suppliers, individual product manufacturers, and design professionals. [2002]

§912. Builder’s Prelitigation Duties

A builder shall do all of the following:

(a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Bureau of Real Estate public reports, and available engineering calculations, that pertain to a homeowner’s residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with

reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

(f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(g) A builder shall provide, with the original sales documentation, a written copy of this title, which shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

(i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action. [2013]

§913. Builder to Acknowledge Receipt of Claim

A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant’s legal representative, or if the builder receives a written representation letter from a homeowner’s attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder’s counsel shall only be with the claimant’s legal representative, if any. [2002]

§914. Effect of Sections 910 Through 938

(a) This chapter establishes a nonadversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence nonadversarial contractual provisions other than the nonadversarial procedures and remedies set forth in this chapter, but may not, in addition to its own nonadversarial contractual provisions, require adherence to the nonadversarial procedures and remedies set forth in this chapter, regardless of whether the builder’s own alternative nonadversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable.

At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the nonadversarial procedure of this section or attempt to enforce alternative nonadversarial contractual provisions. If the builder elects to use alternative nonadversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder’s alternative nonadversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.

(b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of ■ alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding resolution to enforce the other chapters of this title or any other disputes

between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a nonadversarial procedure or provision has been completed. [2002]

§915. Effect of Builder’s Failure to Use Nonadversarial Proceeding

If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative nonadversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action. [2002]

§916. Builder’s Duties on Inspection and Testing

(a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative’s office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, video recorded, or photographed by the claimant or his or her legal representative.

(b) Nothing that occurs during a builder’s or claimant’s inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

(d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that

person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision does not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant. [2009]

§917. Written Offer to Repair

Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter. [2002]

§918. After Receipt of Offer to Repair

Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair. [2002]

§919. Offer to Mediate to Accompany Offer to Repair

The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four-hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor. [2002]

§920. Builder's Failure to Make Offer to Repair

If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action. [2002]

§921. Completion of Repair

(a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

(b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days. [2002]

§922. Filing of Repair at Builder's Request

The builder shall, upon request, allow the repair to be observed and electronically recorded, video recorded, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be

used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation. [2009]

§923. Copies to Owner of Materials Concerning Repairs

The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs. [2002]

§924. Written Reasons for Not Making All Repairs

If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards. [2002]

§925. Failure to Complete Timely Repair

If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action. [2002]

§926. No Right to Obtain Release or Waiver

The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944. [2002]

§927. Statute of Limitations Extended after Repair Completed

■ If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later. [2002]

§928. Option for Owner to Request Mediation

■ If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder.

At the homeowner’s sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later. [2002]

§929. Cash Offer in Lieu of Repair; Release

(a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter. [2002]

§930. Time Periods Strictly Construed

(a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a postclaim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her ■ attorney’s fees and costs in bringing or opposing the motion. [2002]

§931. Claims Not Covered by Statute

■ If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter. [2002]

§932. Subsequently Discovered Claims

Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinitiate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinitiate this process as to that standard. [2002]

§933. Use of Evidence of Repair Efforts

■ If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation. [2002]

§934. Use of Evidence of Parties' Conduct

■ Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis. [2002]

§935. Effect of Civil Code Section 6000

■ To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 6000, but an action is subsequently commenced under Section 6000, the parties are excused from performing the substantially similar requirements under Section 6000. [2012]

§936. Applicability to Subcontractors, Suppliers, Etc.

■ Each and every provision of the other chapters of this title apply to general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a general contractor, subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for builders, general contractors, subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, the negligence standard in this section does not apply to any general contractor, subcontractor, material supplier, individual product manufacturer, or design professional with respect to claims for which strict liability would apply. [2003]

§937. Design Professional Liability and Compliance with C.C.P. §411.35

■ Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title. [2002]

§938. Applicability of Statute

This title applies only to new residential units where the purchase agreement with the buyer was signed by the seller on or after January 1, 2003. [2002]

§941. Applicable Statutes of Limitation

■ (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.

(b) As used in this section, “action” includes an action for indemnity brought against a person arising out of that person’s performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).

(c) The limitation prescribed by this section may not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.

(d) Sections 337.15 and 337.1 of the Code of Civil Procedure do not apply to actions under this title.

(e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivision (a) or (b) of Section 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivision (a) or (b) of Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision. Causes of action and damages to which this chapter does not apply are not limited by this section. [2003]

§942. Violation of Standards - Burden of Proof

■ In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction. [2003]

§943. Statute Authorizes Only Methods for Asserting Claims

(a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.

(b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law. [2003]

§944. Measure of Damages Allowed

■ If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards set forth in this title, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards, the reasonable cost of removing and replacing any improper repair by the builder, reasonable ■ relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute. [2002]

§945. Defect Standards Binding on Purchasers, Successors and Associations

■ The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Sections 4810 and 4815 shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title. [2012]

§945.5. Comparative Fault; Effect of Unforeseen Acts

■ A builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, can demonstrate any of the following affirmative defenses in response to a claimed violation:

(a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an “unforeseen act of nature” means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.

(b) To the extent it is caused by a homeowner’s unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner’s claim.

(c) To the extent it is caused by the homeowner or his or her agent, employee, general contractor, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder’s or manufacturer’s recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder’s recommended

maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.

(d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose.

(e) To the extent that the time period for filing actions bars the claimed violation.

(f) As to a particular violation for which the builder has obtained a valid release.

(g) To the extent that the builder's repair was successful in correcting the particular violation of the applicable standard.

(h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved. [2003]

§1101.1. Legislative Findings on Water Conservation Practices

■ The Legislature finds and declares all of the following:

(a) Adequate water supply reliability for all uses is essential to the future economic and environmental health of California.

(b) Environmentally sound strategies to meet future water supply and wastewater treatment needs are key to protecting and restoring aquatic resources in California.

(c) There is a pressing need to address water supply reliability issues raised by growing urban areas.

(d) Economic analysis by urban water agencies has identified urban water conservation as a cost-effective approach to addressing water supply needs.

(e) There are many water conservation practices that produce significant energy and other resource savings that should be encouraged as a matter of state policy.

(f) Since the 1991 signing of the "Memorandum of Understanding Regarding Urban Water Conservation in California," many urban water and wastewater treatment agencies have gained valuable experience that can be applied to produce significant statewide savings of water, energy, and associated infrastructure costs. This experience indicates a need to regularly revise and update water conservation methodologies and practices.

(g) To address these concerns, it is the intent of the Legislature to require that residential and commercial real property built and available for use or occupancy on or before January 1, 1994, be equipped with water-conserving plumbing fixtures.

(h) It is further the intent of the Legislature that retail water suppliers are encouraged to provide incentives, financing mechanisms, and funding to assist property owners with these retrofit obligations. [2009]

§1101.2.² Applicability of Water Conservation Requirements

■ Except as provided in Section 1101.7, this article shall apply to residential and commercial real property built and available for use on or before January 1, 1994. [2009]

§1101.3. Definitions Applicable to Water Conservation Requirements

■ For the purposes of this article:

(a) “Commercial real property” means any real property that is improved with, or consisting of, a building that is intended for commercial use, including hotels and motels, that is not a single-family residential real property or a multifamily residential real property.

(b) “Multifamily residential real property” means any real property that is improved with, or consisting of, a building containing more than one unit that is intended for human habitation, or any mixed residential-commercial buildings or portions thereof that are intended for human habitation. Multifamily residential real property includes residential hotels but does not include hotels and motels that are not residential hotels.

(c) “Noncompliant plumbing fixture” means any of the following:

(1) Any toilet manufactured to use more than 1.6 gallons of water per flush.

(2) Any urinal manufactured to use more than one gallon of water per flush.

(3) Any showerhead manufactured to have a flow capacity of more than 2.5 gallons of water per minute.

(4) Any interior faucet that emits more than 2.2 gallons of water per minute.

(d) “Single-family residential real property” means any real property that is improved with, or consisting of, a building containing not more than one unit that is intended for human habitation.

(e) “Water-conserving plumbing fixture” means any fixture that is in compliance with current building standards applicable to a newly constructed real property of the same type.

(f) “Sale or transfer” means the sale or transfer of an entire real property estate or the fee interest in that real property estate and does not include the sale or transfer of a partial interest, including a leasehold. [2009]

² This is the second section in a series enacted in 2009 as SB 407. It encompasses Sections 1101.1 through 1101.9, inclusive and Section 1102.155. All of these are found on the *Digital Version* of the Resource Book, but only sections 1101.2 through 1101.5 are in the printed copy. If you wish to see them all, you can retrieve them at <http://leginfo.legislature.ca.gov/faces/codes.xhtml> by clicking the Civil Code, then “Expand all” and scrolling to the line or lines that include the sections you want clicking on the links to those sections.

§1101.4. Plumbing Compliance Dates for Single Family Residential Properties

■ (a) On and after January 1, 2014, for all building alterations or improvements to single-family residential real property, as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department, the permit applicant shall replace all noncompliant plumbing fixtures with water-conserving plumbing fixtures.

(b) On or before January 1, 2017, noncompliant plumbing fixtures in any single-family residential real property shall be replaced by the property owner with water-conserving plumbing fixtures.

(c) On and after January 1, 2017, a seller or transferor of single-family residential real property shall disclose in writing to the prospective purchaser or transferee the requirements of subdivision (b) and whether the real property includes any noncompliant plumbing fixtures. [2009]

§1101.5. Plumbing Compliance Dates for Multifamily Residential and Commercial Properties

■ (a) On or before January 1, 2019, all noncompliant plumbing fixtures in any multifamily residential real property and in any commercial real property shall be replaced with water-conserving plumbing fixtures.

(b) An owner or the owner's agent may enter the owner's property for the purpose of installing, repairing, testing, and maintaining water-conserving plumbing fixtures required by this section, consistent with notice requirements of Section 1954.

(c) On and after January 1, 2019, the water-conserving plumbing fixtures required by this section shall be operating at the manufacturer's rated water consumption at the time that the tenant takes possession. A tenant shall be responsible for notifying the owner or owner's agent if the tenant becomes aware that a water-conserving plumbing fixture within his or her unit is not operating at the manufacturer's rated water consumption. The owner or owner's agent shall correct an inoperability in a water-conserving plumbing fixture upon notice by the tenant or if detected by the owner or the owner's agent.

(d) (1) On and after January 1, 2014, all noncompliant plumbing fixtures in any multifamily residential real property and any commercial real property shall be replaced with water-conserving plumbing fixtures in the following circumstances:

(A) For building additions in which the sum of concurrent building permits by the same permit applicant would increase the floor area of the space in a building by more than 10 percent, the building permit applicant shall replace all noncompliant plumbing fixtures in the building.

(B) For building alterations or improvements in which the total construction cost estimated in the building permit is greater than one hundred fifty thousand dollars (\$150,000), the building permit applicant shall replace all noncompliant plumbing fixtures that service the specific area of the improvement.

(C) Notwithstanding subparagraph (A) or (B), for any alterations or improvements to a room in a building that require a building

permit and that room contains any noncompliant plumbing fixtures, the building permit applicant shall replace all noncompliant plumbing fixtures in that room.

(2) Replacement of all noncompliant plumbing fixtures with water-conserving plumbing fixtures, as described in paragraph (1), shall be a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department.

(e) On and after January 1, 2019, a seller or transferor of multifamily residential real property or of commercial real property shall disclose to the prospective purchaser or transferee, in writing, the requirements of subdivision (a) and whether the property includes any noncompliant plumbing fixtures. This disclosure may be included in other transactional documents. [2013]

§1101.6. One Year Postponement of Water Conservation Requirements

■ The duty of an owner or building permit applicant to comply with the requirements of this article shall be postponed for one year from the date of issuance of a demolition permit for the building. If the building is demolished within the one-year postponement, the requirements of this article shall not apply. If the building is not demolished after the expiration of one year, the provisions of this article shall apply, subject to appeal to the local building department, even though the demolition permit is still in effect or a new demolition permit has been issued. [2009]

§1101.7. Properties Exempt from Water Conservation Requirements

This article shall not apply to any of the following:

(a) Registered historical sites.

(b) Real property for which a licensed plumber certifies that, due to the age or configuration of the property or its plumbing, installation of water-conserving plumbing fixtures is not technically feasible.

(c) A building for which water service is permanently disconnected. [2009]

§1101.8. Local Water Suppliers May Enact Policies or Ordinances

A city, county, or city and county, or a retail water supplier may do either of the following:

(a) Enact local ordinances or establish policies that promote compliance with this article.

(b) Enact local ordinances or establish policies that will result in a greater amount of water savings than those provided for in this article. [2009]

§1101.9. Exemption Based on Local Plumbing Retrofit Ordinances

Any city, county, or city and county that has adopted an ordinance requiring retrofit of noncompliant plumbing fixtures prior to July 1, 2009, shall be exempt from the requirements of this article so long as the ordinance remains in effect. [2009]

§1102.155. Required Disclosure of Noncompliant Water-conserving Plumbing [Not operative until January 1, 2017]

■ (a) (1) The seller of residential real property subject to this article shall disclose, in writing, that Section 1101.4 of the Civil Code requires that California single-family residences be equipped with water-conserving plumbing fixtures on or before January 1, 2017, and shall disclose whether the property includes any noncompliant plumbing fixtures.

(2) The seller shall affirm that this representation is that of the seller and not a representation of any agent, and that this disclosure is not intended to be part of any contract between the buyer and the seller. The seller shall further affirm that this disclosure is not a warranty of any kind by the seller or any agent representing any principal in the transaction and is not a substitute for any inspections that or warranties any principal may wish to obtain.

(b) This section shall become operative on January 1, 2017.
[2009]

§1102.6. Mandatory Real Estate Transfer Disclosure Statement

■ (a) The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 20____. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- Inspection reports completed pursuant to the contract of sale or receipt for deposit.
- Additional inspection reports or disclosures:

II
SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER:

Seller ___ is ___ is not occupying the property.

A. The subject property has the items checked below (read across): *

- | | | |
|--|--|---|
| <input type="checkbox"/> Range | <input type="checkbox"/> Oven | <input type="checkbox"/> Microwave |
| <input type="checkbox"/> Dishwasher | <input type="checkbox"/> Trash Compactor | <input type="checkbox"/> Garbage Disposal |
| <input type="checkbox"/> Washer/Dryer | | <input type="checkbox"/> Rain Gutters |
| <input type="checkbox"/> Hookups | | |
| <input type="checkbox"/> Burglar Alarms | <input type="checkbox"/> Carbon Monoxide Device(s) | <input type="checkbox"/> Fire Alarm |
| <input type="checkbox"/> TV Antenna | <input type="checkbox"/> Satellite Dish | <input type="checkbox"/> Intercom |
| <input type="checkbox"/> Central Heating | <input type="checkbox"/> Central Air Cndtng. | <input type="checkbox"/> Evaporator Cooler(s) |
| <input type="checkbox"/> Wall/Window Air Cndtng. | <input type="checkbox"/> Sprinklers | <input type="checkbox"/> Public Sewer System |
| <input type="checkbox"/> Septic Tank | <input type="checkbox"/> Sump Pump | <input type="checkbox"/> Water Softener |
| <input type="checkbox"/> Patio/Decking | <input type="checkbox"/> Built-in Barbecue | <input type="checkbox"/> Gazebo |
| <input type="checkbox"/> Sauna | | |
| <input type="checkbox"/> Hot Tub | <input type="checkbox"/> Pool | <input type="checkbox"/> Spa |
| <input type="checkbox"/> Locking Safety Cover | <input type="checkbox"/> Child Resistant Barrier | <input type="checkbox"/> Locking Safety Cover |
| <input type="checkbox"/> Security Gate(s) | <input type="checkbox"/> Automatic Garage Door Opener(s) | <input type="checkbox"/> Number Remote Controls |
| Garage: <input type="checkbox"/> Attached | <input type="checkbox"/> Not Attached | <input type="checkbox"/> Carport |
| Pool/Spa Heater: <input type="checkbox"/> Gas | <input type="checkbox"/> Solar | <input type="checkbox"/> Electric |
| Water Heater: <input type="checkbox"/> Gas | | <input type="checkbox"/> Private Utility or Other _____ |
| Water Supply: <input type="checkbox"/> City | <input type="checkbox"/> Well | <input type="checkbox"/> Water-conserving plumbing fixtures |
| Gas Supply: <input type="checkbox"/> Utility | <input type="checkbox"/> Bottled | |
| <input type="checkbox"/> Window Screens | <input type="checkbox"/> Window Security Bars | <input type="checkbox"/> Quick Release Mechanism on Bedroom Windows |

Exhaust Fan(s) in _____ 220 Volt Wiring in _____
 Fireplace (s) in _____ Gas Starter _____
 Roof (s): Type: _____ Age: _____ (approx.)
 Other: _____

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ____Yes ____No. If yes, then describe. (Attach additional sheets if necessary): _____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ____Yes ____No. If yes, check appropriate space(s) below.

- | | | |
|--|---|--|
| <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Ceilings | <input type="checkbox"/> Floors |
| <input type="checkbox"/> Exterior Walls | <input type="checkbox"/> Insulation | <input type="checkbox"/> Roof(s) |
| <input type="checkbox"/> Windows | <input type="checkbox"/> Doors | <input type="checkbox"/> Foundation |
| <input type="checkbox"/> Slab(s) | <input type="checkbox"/> Driveways | <input type="checkbox"/> Sidewalks |
| <input type="checkbox"/> Walls/Fences | <input type="checkbox"/> Electrical Systems | <input type="checkbox"/> Plumbing/Sewers/
Septics |
| <input type="checkbox"/> Other Structural Components (Describe: _____) | | |

If any of the above is checked, explain. (Attach additional sheets if necessary): _____

*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with Section 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. Section 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with Section 1101.4 of the Civil Code.

C. Are you (Seller) aware of any of the following:
 1. ...Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos,

- formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property..... Yes No
- 2...Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property..... Yes No
- 3. Any encroachments, easements or similar matters that may affect your interest in the subject property..... Yes No
- 4. Room additions, structural modifications, or other alterations or repairs made without necessary permits..... Yes No
- 5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes..... Yes No
- 6. Fill (compacted or otherwise) on the property or any portion thereof..... Yes No
- 7. Any settling from any cause, or slippage, sliding, or other soil problems..... Yes No
- 8. Flooding, drainage or grading problems Yes No
- 9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides..... Yes No
- 10. Any zoning violations, nonconforming uses, violations of "setback" requirements..... Yes No
- 11. Neighborhood noise problems or other nuisances Yes No
- 12. CC&Rs or other deed restrictions or obligations Yes No
- 13. Homeowners' Association which has any authority over the subject property..... Yes No
- 14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others..... Yes No
- 15. Any notices of abatement or citations against the property..... Yes No
- 16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to Section 910 or 914 of the Civil Code threatening to or affecting this real property, claims for breach of warranty pursuant to Section 900 of the Civil Code threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to Section 903 of the Civil Code threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to Section 910 or 914 of the Civil Code alleging a defect or deficiency in this real property or "common areas" facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others..... Yes No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 13113.8 of the Health and Safety Code by having operable smoke detectors(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.

2. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____
Seller _____ Date _____

III
AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

- Agent notes no items for disclosure.
- Agent notes the following items:

Agent (Broker
Representing Seller) _____ By _____ Date _____
(Please Print) (Associate Licensee
or Broker Signature)

IV
AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

- Agent notes no items for disclosure.
- Agent notes the following items:

Agent (Broker
Obtaining the Offer) _____ By _____ Date _____
(Please Print) (Associate Licensee
or Broker Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER(S) AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/ DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____
Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker
Representing Seller) _____ By _____ Date _____
(Please Print) (Associate Licensee
or Broker Signature)

Agent (Broker
Obtaining the Offer) _____ By _____ Date _____
(Please Print) (Associate Licensee
or Broker Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

(b) The amendments to this section by the act adding this subdivision shall become operative on July 1, 2014. [2012]

§1102.6c. Mandatory Disclosure Notice-Property Taxes

■ (a) In addition to any other disclosure required pursuant to this article, it shall be the sole responsibility of the seller of any real property subject to this article, or his or her agent, to deliver to the prospective purchaser a disclosure notice that includes both of the following:

(1) A notice, in at least 12-point type¹⁰ or a contrasting color, as follows:

“California property tax law requires the Assessor to revalue real property at the time the ownership of the property changes. Because of this law, you may receive one or two supplemental tax bills, depending on when your loan closes.

The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay these supplemental bills directly to the Tax Collector.

If you have any question concerning this matter, please call your local Tax Collector’s Office.”

(2) A title, in at least 14-point type¹¹ or a contrasting color, that reads as follows: “Notice of Your ‘Supplemental’ Property Tax Bill.”

(b) The disclosure notice requirements of this section may be satisfied by delivering a disclosure notice pursuant to Section 1102.6b that satisfies the requirements of subdivision (a). [2005]

§1134. Required Disclosure before Sale of Newly Converted Condominium

■ (a) As soon as practicable before transfer of title for the first sale of a unit in a residential condominium, ■ community apartment project, or ■ stock cooperative which was converted from an existing dwelling to a condominium project, community apartment project, or stock cooperative, the owner or subdivider, or agent of the owner or subdivider, shall deliver to a prospective buyer a written statement listing all substantial defects or malfunctions in the major systems in the unit and common areas of the premises, or a written statement disclaiming knowledge of any such substantial defects or malfunctions. The disclaimer may be delivered only after the owner or subdivider has inspected the unit and the common areas and has not discovered a substantial defect or malfunction which a reasonable inspection would have disclosed.

(b) If any disclosure required to be made by this section is delivered after the execution of an agreement to purchase, the buyer shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate his or her agreement by delivery of written notice of that

¹⁰ See example in footnote 30, page 208 in Civil Code §5300.

¹¹ See example in footnote 30, page 208 in Civil Code §5300.

termination to the owner, subdivider, or agent. Any disclosure delivered after the execution of an agreement to purchase shall contain a statement describing the buyer's right, method and time to rescind as prescribed by this subdivision.

(c) For the purposes of this section:

(1) "Major systems" includes, but is not limited to, the roof, walls, floors, heating, air conditioning, plumbing, electrical systems or components of a similar or comparable nature, and recreational facilities.

(2) Delivery to a prospective buyer of the written statement required by this section shall be deemed effected when delivered personally or by mail to the prospective buyer or to an agent thereof, or to a spouse unless the agreement provides to the contrary. Delivery shall also be made to additional prospective buyers who have made a request therefor in writing.

(3) "Prospective buyer" includes any person who makes an offer to purchase a unit in the condominium, community apartment project, or stock cooperative.

(d) Any person who willfully fails to carry out the requirements of this section shall be liable in the amount of actual damages suffered by the buyer.

(e) Nothing in this section shall preclude the injured party from pursuing any remedy available under any other provision of law.

(f) No transfer of title to a unit subject to the provisions of this chapter shall be invalid solely because of the failure of any person to comply with the requirements of this section.

(g) The written statement required by this section shall not abridge or limit any other obligation of disclosure created by any other provision of law or which is or may be required to avoid fraud, deceit or misrepresentation in the transaction. [1981]

§1217. Validity of Unrecorded Instrument

An unrecorded instrument is valid as between the parties thereto and those who have notice thereof. [1872]

§1466. Breach of Covenant before Acquisition of Real Property

■ No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits. [1872]

§1479. Application of Payments by Debtor

Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

One - If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

Two - If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of

any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of (the) debtor.

Three - If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

1. Of interest due at the time of the performance.
2. Of principal due at that time.
3. Of the obligation earliest in date of maturity.
4. Of an obligation not secured by a lien or collateral

undertaking.

5. Of an obligation secured by a lien or collateral undertaking. [1874]

§1526. Tender of Check as Payment in Full of Disputed Claim

(a) Where a claim is disputed or unliquidated and a check or draft is tendered by the debtor in settlement thereof in full discharge of the claim, and the words "payment in full" or other words of similar meaning are notated on the check or draft, the acceptance of the check or draft does not constitute an accord and satisfaction if the creditor protests against accepting the tender in full payment by striking out or otherwise deleting that notation or if the acceptance of the check or draft was inadvertent or without knowledge of the notation.

(b) Notwithstanding subdivision (a), the acceptance of a check or draft constitutes an accord and satisfaction if a check or draft is tendered pursuant to a composition or extension agreement between a debtor and its creditors, and pursuant to that composition or extension agreement, all creditors of the same class are accorded similar treatment, and the creditor receives the check or draft with knowledge of the restriction.

A creditor shall be conclusively presumed to have knowledge of the restriction if a creditor either:

(1) Has, previous to the receipt of the check or draft, executed a written consent to the composition or extension agreement.

(2) Has been given, not less than 15 days nor more than 90 days prior to receipt of the check or draft, notice, in writing, that a check or draft will be tendered with a restrictive endorsement and that acceptance and cashing of the check or draft will constitute an accord and satisfaction.

(c) Notwithstanding subdivision (a), the acceptance of a check or draft by a creditor constitutes an accord and satisfaction when the check or draft is issued pursuant to or in conjunction with a release of a claim.

(d) For the purposes of paragraph (2) of subdivision (b), mailing the notice by first-class mail, postage prepaid, addressed to the address shown for the creditor on the debtor's books or such other address as the creditor may designate in writing constitutes notice. [1987]

§1542. Effect of General Release

■ A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor. [2004]

§1788. Rosenthal Fair Debt Collection Practices Act.

This title may be cited as the Rosenthal Fair Debt Collection Practices Act. [2000]

§1788.1. Debt Collection - Legislative Findings

(a) The Legislature makes the following findings:

(1) The banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts. Unfair or deceptive collection practices undermine the public confidence which is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers.

(2) There is need to ensure that debt collectors and debtors exercise their responsibilities to one another with fairness, honesty and due regard for the rights of the other.

(b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts, as specified in this title. [1977]

§1788.2. Debt Collection - Definitions

(a) Definitions and rules of construction set forth in this section are applicable for the purpose of this title.¹²

(b) The term “debt collection” means any act or practice in connection with the collection of consumer debts.

(c) The term “debt collector” means any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection. The term includes any person who composes and sells, or offers to compose and sell, forms, letters, and other collection media used or intended to be used for debt collection, but does not include an attorney or counselor at law.

(d) The term “debt” means money, property or their equivalent which is due or owing or alleged to be due or owing from a natural person to another person.

(e) The term “consumer credit transaction” means a transaction between a natural person and another person in which property, services or

¹² In 2006, SB 1852 and AB 2043 both made technical amendments to this section. The former deleted the introductory phrase “The term ‘___’” from each definition and began each sentence by capitalizing the definition. AB 2043 was determined to control. There may be a future amendment to correct the Legislature’s technical error resulting in SB 1852 not applying.

money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes.

(f) The terms “consumer debt” and “consumer credit” mean money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.

(g) The term “person” means a natural person, partnership, corporation, limited liability company, trust, estate, cooperative, association or other similar entity.

(h) Except as provided in Section 1788.18, the term “debtor” means a natural person from whom a debt collector seeks to collect a consumer debt which is due and owing or alleged to be due and owing from such person.

(i) The term “creditor” means a person who extends consumer credit to a debtor.

(j) The term “consumer credit report” means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (1) credit or insurance to be used primarily for person, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under any applicable federal or state law or regulation. The term does not include (a) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (b) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (c) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to that request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under any applicable federal or state law or regulation.

(k) The term “consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties, and which uses any means or facility for the purpose of preparing or furnishing consumer credit reports. [2006]

§1788.3. Effect on Credit Union Employees

Nothing contained in this title shall be construed to prohibit a credit union chartered under Division 5 (commencing with Section 14000) of the Financial Code or under the Federal Credit Union Act (Chapter 14 (commencing with Section 1751) of Title 12 of the United States Code) from providing information to an employer when the employer is ordinarily and necessarily entitled to receive such information because he is an employee, officer, committee member, or agent of such credit union. [1977]

§1788.10. Debt Collectors - Prohibited Conduct

No debt collector shall collect or attempt to collect a consumer debt by means of the following conduct:

(a) The use, or threat of use, of physical force or violence or any criminal means to cause harm to the person, or the reputation, or the property of any person;

(b) The threat that the failure to pay a consumer debt will result in an accusation that the debtor has committed a crime where such accusation, if made, would be false;

(c) The communication of, or threat to communicate to any person the fact that a debtor has engaged in conduct, other than the failure to pay a consumer debt, which the debt collector knows or has reason to believe will defame the debtor;

(d) The threat to the debtor to sell or assign to another person the obligation of the debtor to pay a consumer debt, with an accompanying false representation that the result of such sale or assignment would be that the debtor would lose any defense to the consumer debt;

(e) The threat to any person that nonpayment of the consumer debt may result in the arrest of the debtor or the seizure, garnishment, attachment or sale of any property or the garnishment or attachment of wages of the debtor, unless such action is in fact contemplated by the debt collector and permitted by the law; or

(f) The threat to take any action against the debtor which is prohibited by this title. [1977]

§1788.11. Debt Collectors - Prohibited Practices when Contacting Debtor

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

(a) Using obscene or profane language;

(b) Placing telephone calls without disclosure of the caller's identity, provided that an employee of a licensed collection agency may identify himself by using his registered alias name as long as he correctly identifies the agency he represents;

(c) Causing expense to any person for long distance telephone calls, telegram fees or charges for other similar communications, by misrepresenting to such person the purpose of such telephone call, telegram or similar communication;

(d) Causing a telephone to ring repeatedly or continuously to annoy the person called; or

(e) Communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debtor under the circumstances. [1977]

§1788.12. Debt Collectors - Prohibited Practices When Contacting Others

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

(a) Communicating with the debtor's employer regarding the debtor's consumer debt unless such a communication is necessary to the collection of the debt, or unless the debtor or his attorney has consented in writing to such communication. A communication is necessary to the collection of the debt only if it is made for the purposes of verifying the debtor's employment, locating the debtor, or effecting garnishment, after judgment, of the debtor's wages, or in the case of a medical debt for the purpose of discovering the existence of medical insurance. Any such communication, other than a communication in the case of a medical debt by a health care provider or its agent for the purpose of discovering the existence of medical insurance, shall be in writing unless such written communication receives no response within 15 days and shall be made only as many times as is necessary to the collection of the debt. Communications to a debtor's employer regarding a debt shall not contain language that would be improper if the communication were made to the debtor. One communication solely for the purpose of verifying the debtor's employment may be oral without prior written contact.

(b) Communicating information regarding a consumer debt to any member of the debtor's family, other than the debtor's spouse or the parents or guardians of the debtor who is either a minor or who resides in the same household with such parent or guardian, prior to obtaining a judgment against the debtor, except where the purpose of the communication is to locate the debtor, or where the debtor or his attorney has consented in writing to such communication;

(c) Communicating to any person any list of debtors which discloses the nature or existence of a consumer debt, commonly known as "deadbeat lists", or advertising any consumer debt for sale, by naming the debtor; or

(d) Communicating with the debtor by means of a written communication that displays or conveys any information about the consumer debt or the debtor other than the name, address and telephone number of the debtor and the debt collector and which is intended both to be seen by any other person and also to embarrass the debtor.

(e) Notwithstanding the foregoing provisions of this section, the disclosure, publication or communication by a debt collector of information relating to a consumer debt or the debtor to a consumer reporting agency or to any other person reasonably believed to have a legitimate business need for such information shall not be deemed to violate this title. [1978]

§1788.13. Debt Collectors - Prohibited Practices

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

(a) Any communication with the debtor other than in the name either of the debt collector or the person on whose behalf the debt collector is acting;

(b) Any false representation that any person is an attorney or counselor at law;

(c) Any communication with a debtor in the name of an attorney or counselor at law or upon stationery or like written instruments bearing the name of the attorney or counselor at law, unless such communication is by an attorney or counselor at law or shall have been approved or authorized by such attorney or counselor at law;

(d) The representation that any debt collector is vouched for, bonded by, affiliated with, or is an instrumentality, agent or official of any federal, state or local government or any agency of federal, state or local government, unless the collector is actually employed by the particular governmental agency in question and is acting on behalf of such agency in the debt collection matter;

(e) The false representation that the consumer debt may be increased by the addition of ■ attorney's fees, investigation fees, service fees, finance charges, or other charges if, in fact, such fees or charges may not legally be added to the existing obligation;

(f) The false representation that information concerning a debtor's failure or alleged failure to pay a consumer debt has been or is about to be referred to a consumer reporting agency;

(g) The false representation that a debt collector is a consumer reporting agency;

(h) The false representation that collection letters, notices or other printed forms are being sent by or on behalf of a claim, credit, audit or legal department;

(i) The false representation of the true nature of the business or services being rendered by the debt collector;

(j) The false representation that a legal proceeding has been, is about to be, or will be instituted unless payment of a consumer debt is made;

(k) The false representation that a consumer debt has been, is about to be, or will be sold, assigned, or referred to a debt collector for collection; or

(l) Any communication by a licensed collection agency to a debtor demanding money unless the claim is actually assigned to the collection agency. [1980]

§1788.14. Debt Collectors - Other Prohibited Practices

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

(a) Obtaining an affirmation from a debtor of a consumer debt which has been discharged in bankruptcy, without clearly and conspicuously disclosing to the debtor, in writing, at the time such affirmation is sought, the fact that the debtor is not legally obligated to make such affirmation;

(b) Collecting or attempting to collect from the debtor the whole or any part of the debt collector's fee or charge for services rendered, or other expense incurred by the debt collector in the collection of the consumer debt, except as permitted by law; or

(c) Initiating communications, other than statements of account, with the debtor with regard to the consumer debt, when the debt collector has been previously notified in writing by the debtor's attorney that the debtor is represented by such attorney with respect to the consumer debt and such notice includes the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney, unless the attorney fails to answer correspondence, return telephone calls, or discuss the obligation in question. This subdivision shall not apply where prior approval has been obtained from the debtor's attorney, or where the communication is a response in the ordinary course of business to a debtor's inquiry. [2009]

§1788.15. Debt Collectors - Prohibited Practices Involving Judicial Proceedings

(a) No debt collector shall collect or attempt to collect a consumer debt by means of judicial proceedings when the debt collector knows that service of process, where essential to jurisdiction over the debtor or his property, has not been legally effected.

(b) No debt collector shall collect or attempt to collect a consumer debt, other than one reduced to judgment, by means of judicial proceedings in a county other than the county in which the debtor has incurred the consumer debt or the county in which the debtor resides at the time such proceedings are instituted, or resided at the time the debt was incurred. [1977]

§1788.16. Debt Collectors - Use of Simulated Legal Processes

It is unlawful, with respect to attempted collection of a consumer debt, for a debt collector, creditor, or an attorney, to send a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued, or approved by a governmental agency or attorney when it is not. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500) or by both. [1980]

§1788.17. Debt Collectors - Compliance with Federal Law

Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code. However, subsection (11) of Section 1692e and Section 1692g shall not apply to any person specified in paragraphs (A) and (B) of subsection (6) of Section 1692a of Title 15 of the United States Code or that person's principal. The references to federal codes in this section refer to those codes as they read January 1, 2001. [2000]

§1788.18. Debt Collectors - When Debt Collection Activity Must Stop

(a) Upon receipt from a debtor of all of the following, a debt collector shall cease collection activities until completion of the review provided in subdivision (d):

(1) A copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, including, but not limited to, a violation of Section 530.5 of the Penal Code, for the specific debt being collected by the debt collector.

(2) The debtor's written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector.

(b) The written statement described in paragraph (2) of subdivision (a) shall consist of any of the following:

(1) A Federal Trade Commission's Affidavit of Identity Theft.

(2) A written statement that contains the content of the Identity Theft Victim's Fraudulent Account Information Request offered to the public by the California Office of Privacy Protection.

(3) A written statement that certifies that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting the certification who declares as true any material matter pursuant to this subdivision that he or she knows to be false is guilty of a misdemeanor. The statement shall contain or be accompanied by, the following, to the extent that an item listed below is relevant to the debtor's allegation of identity theft with respect to the debt in question:

(A) A statement that the debtor is a victim of identity theft.

(B) A copy of the debtor's driver's license or identification card, as issued by the state.

(C) Any other identification document that supports the statement of identity theft.

(D) Specific facts supporting the claim of identity theft, if available.

(E) Any explanation showing that the debtor did not incur the debt.

(F) Any available correspondence disputing the debt after transaction information has been provided to the debtor.

(G) Documentation of the residence of the debtor at the time of the alleged debt. This may include copies of bills and statements, such as utility bills, tax statements, or other statements from businesses sent to the debtor, showing that the debtor lived at another residence at the time the debt was incurred.

(H) A telephone number for contacting the debtor concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement.

(I) To the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible.

(J) An express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt.

(K) The certification required pursuant to this paragraph shall be sufficient if it is in substantially the following form:

"I certify the representations made are true, correct, and contain no material omissions of fact.

(Date and Place) (Signature)

(c) If a debtor notifies a debt collector orally that he or she is a victim of identity theft, the debt collector shall notify the debtor, orally or in writing, that the debtor's claim must be in writing. If a debtor notifies a debt collector in writing that he or she is a victim of identity theft, but omits information required pursuant to subdivision (a) or, if applicable, the certification required pursuant to paragraph (3) of subdivision (b), if the debt collector does not cease collection activities, the debt collector shall provide written notice to the debtor of the additional information that is required, or the certification required pursuant to paragraph (3) of subdivision (b), as applicable or send the debtor a copy of the Federal Trade Commission's Affidavit of Identity Theft form.

(d) Upon receipt of the complete statement and information described in subdivision (a), the debt collector shall review and consider all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor. The debt collector may recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question. The debt collector's determination shall be made in a manner consistent with the provisions of subsection (1) of Section 1692 of Title 15 of the United States Code, as incorporated by Section 1788.17 of this code. The debt collector shall notify the debtor in writing of that determination and the basis for that determination before proceeding with any further collection activities. The debt collector's determination shall be based on all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor.

(e) No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for the debt, shall arise if the debt collector decides after the review described in subdivision (d) to cease or recommence the debt collection activities. The exercise or nonexercise of rights under this section is not a waiver of any other right or defense of the debtor or debt collector.

(f) The statement and supporting documents that comply with subdivision (a) may also satisfy, to the extent those documents meet the requirements of, the notice requirement of paragraph (5) of subdivision (c) of Section 1798.93.

(g) A debt collector who ceases collection activities under this section and does not recommence those collection activities, shall do all of the following:

(1) If the debt collector has furnished adverse information to a consumer credit reporting agency, notify the agency to delete that information.

(2) Notify the creditor that debt collection activities have been terminated based upon the debtor's claim of identity theft.

(h) A debt collector who has possession of documents that the debtor is entitled to request from a creditor pursuant to Section 530.8 of the Penal Code is authorized to provide those documents to the debtor.

(i) Notwithstanding subdivision (h) of Section 1788.2, for the purposes of this section, "debtor" means a natural person, firm, association, organization, partnership, business trust, company, corporation, or limited liability company from which a debt collector seeks to collect a debt that is due and owing or alleged to be due and owing from the person or entity. The remedies provided by this title shall apply equally to violations of this section. [2007]

§1788.20. Prohibited Actions When Applying for Consumer Credit

In connection with any request or application for consumer credit, no person shall:

(a) Request or apply for such credit at a time when such person knows there is no reasonable probability of such person's being able, or such person then lacks the intention, to pay the obligation created thereby in accordance with the terms and conditions of the credit extension; or

(b) Knowingly submit false or inaccurate information or willfully conceal adverse information bearing upon such person's credit worthiness, credit standing, or credit capacity. [1977]

§1788.21. Debtor's Duty to Provide Change of Name, Address or Employment

(a) In connection with any consumer credit existing or requested to be extended to a person, such person shall within a reasonable time notify the creditor or prospective creditor of any change in such person's name, address, or employment.

(b) Each responsibility set forth in subdivision (a) shall apply only if and after the creditor clearly and conspicuously in writing discloses such responsibility to such person. [1977]

§1788.22. Unauthorized Use of Terminated Credit Privileges

(a) In connection with any consumer credit extended to a person under an account:

(1) No such person shall attempt to consummate any consumer credit transaction thereunder knowing that credit privileges under the account have been terminated or suspended.

(2) Each such person shall notify the creditor by telephone, telegraph, letter, or any other reasonable means that an unauthorized use of the

account has occurred or may occur as the result of loss or theft of a credit card, or other instrument identifying the account, within a reasonable time after such person's discovery thereof, and shall reasonably assist the creditor in determining the facts and circumstances relating to any unauthorized use of the account.

(b) Each responsibility set forth in subdivision (a) shall apply only if and after the creditor clearly and conspicuously in writing discloses such responsibility to such person. [1977]

§1788.30. Liability of Debt Collector for Violations

(a) Any debt collector who violates this title with respect to any debtor shall be liable to that debtor only in an individual action, and his liability therein to that debtor shall be in an amount equal to the sum of any actual damages sustained by the debtor as a result of the violation.

(b) Any debt collector who willfully and knowingly violates this title with respect to any debtor shall, in addition to actual damages sustained by the debtor as a result of the violation, also be liable to the debtor only in an individual action, and his additional liability therein to that debtor shall be for a penalty in such amount as the court may allow, which shall not be less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000).

(c) In the case of any action to enforce any liability under this title, the prevailing party shall be entitled to costs of the action. Reasonable attorney's fees, which shall be based on time necessarily expended to enforce the liability, shall be awarded to a prevailing debtor; reasonable attorney's fees may be awarded to a prevailing creditor upon a finding by the court that the debtor's prosecution or defense of the action was not in good faith.

(d) A debt collector shall have no civil liability under this title if, within 15 days either after discovering a violation which is able to be cured, or after the receipt of a written notice of such violation, the debt collector notifies the debtor of the violation, and makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor.

(e) A debt collector shall have no civil liability to which such debt collector might otherwise be subject for a violation of this title, if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation.

(f) Any action under this section may be brought in any appropriate court of competent jurisdiction in an individual capacity only, within one year from the date of the occurrence of the violation.

(g) Any intentional violation of the provisions of this title by the debtor may be raised as a defense by the debt collector, if such violation is pertinent or relevant to any claim or action brought against the debt collector by or on behalf of the debtor. [1977]

§1788.31. Severability Clause

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remaining provisions of this title, or

the application of such provisions to other persons or circumstances, shall not be affected thereby. [1977]

§1788.32. Debt Collection Remedies Cumulative

The remedies provided herein are intended to be cumulative and are in addition to any other procedures, rights, or remedies under any other provision of law. The enactment of this title shall not supersede existing administrative regulations of the Director of Consumer Affairs except to the extent that those regulations are inconsistent with the provisions of this title. [1977]

§1788.33. Waiver of Debt Collection Laws Contrary to Public Policy

Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable. [2002]

§1812.700. Mandatory Notification of Debtor Rights by Debt Collector

(a) In addition to the requirements imposed by Article 2 (commencing with Section 1788.10) of Title 1.6C, third-party debt collectors subject to the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall provide a notice to debtors that shall include the following description of debtor rights:

“The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.”

(b) The notice shall be included with the first written notice initially addressed to a California address of a debtor in connection with collecting the debt by the third-party debt collector.

(c) If a language other than English is principally used by the third-party debt collector in the initial oral contact with the debtor, a notice shall be provided to the debtor in that language within five working days. [2004]

§1812.701. Changes in Notice to Comply with Federal Law

(a) The notice required in this title may be changed only as necessary to reflect changes under the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) that would otherwise make the disclosure inaccurate.

(b) The type-size used in the disclosure shall be in at least the same type-size as that used to inform the debtor of his or her specific debt, but is not required to be larger than 12-point type.¹³ [2004]

§1812.702. Violations Subject to Debt Collection Practices Act

Any violation of this act shall be considered a violation of the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788)). [2004]

§2782. Indemnification of Builder by Subcontractor

(a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable; provided, however, that this section shall not affect the validity of any insurance contract, workers' compensation, or agreement issued by an admitted insurer as defined by the Insurance Code.

(b) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency that purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable.

(c) For all construction contracts, and amendments thereto, entered into after January 1, 2006, for residential construction, as used in Title 7 (commencing with Section 895) of Part 2 of Division 2, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any construction contract, and amendments thereto, that purport to indemnify, including the cost to defend, the builder, as defined in Section 911, by a subcontractor against liability for claims of construction defects are unenforceable to the extent the claims arise out of, pertain to, or relate to the negligence of the builder or the builder's other agents, other servants, or other independent contractors who are directly responsible to the builder, or for defects in design furnished by those persons, or to the extent the claims do not arise out of, pertain to, or relate to the scope of work in the written agreement between the parties. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties.

(d) Subdivision (c) does not prohibit a subcontractor and builder from mutually agreeing to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, so long as that

¹³ See example in footnote 30, page 208 in Civil Code §5300.

agreement, upon final resolution of the claims, does not waive or modify the provisions of subdivision (c). Subdivision (c) shall not affect the obligations of an insurance carrier under the holding of *Presley Homes, Inc. v. American States Insurance Company* (2001) 90 Cal.App.4th 571. Subdivision (c) shall not affect the builder's or subcontractor's obligations pursuant to Chapter 4 (commencing with Section 910) of Title 7 of Part 2 of Division 2.

(e) (1) For all construction contracts, and amendments thereto, entered into after January 1, 2008, for residential construction, as used in Title 7 (commencing with Section 895) of Part 2 of Division 2, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any construction contract, and amendments thereto, that purport to indemnify, including the cost to defend, the general contractor or contractor that is not affiliated with the builder, as described in subdivision (b) of Section 911, by a subcontractor against liability for claims of construction defects are unenforceable to the extent the claims arise out of, pertain to, or relate to the negligence of the nonaffiliated general contractor or nonaffiliated contractor or their other agents, other servants, or other independent contractors who are directly responsible to the nonaffiliated general contractor or nonaffiliated contractor, or for defects in design furnished by those persons, or to the extent the claims do not arise out of, pertain to, or relate to the scope of work in the written agreement between the parties. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties.

(2) Paragraph (1) does not prohibit a subcontractor and the nonaffiliated general contractor or nonaffiliated contractor from mutually agreeing to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, so long as that agreement, upon final resolution of the claims, does not waive or modify the provisions of paragraph (1). Paragraph (1) shall not affect the obligations of an insurance carrier under the holding of *Presley Homes, Inc. v. American States Insurance Company* (2001) 90 Cal.App.4th 571. Paragraph (1) shall not affect the builder's, nonaffiliated general contractor's, nonaffiliated contractor's, or subcontractor's obligations pursuant to Chapter 4 (commencing with Section 910) of Title 7 of Part 2 of Division 2. [2007]

§2897. Priority of Liens

Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia. [1872]

§2924. Exercising Power of Sale in a Mortgage or Deed of Trust

(a) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other

than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until all of the following apply:

(1) The trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default. That notice of default shall include all of the following:

(A) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property.

(B) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred.

(C) A statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default.

(D) If the default is curable pursuant to Section 2924c, the statement specified in paragraph (1) of subdivision (b) of Section 2924c.

(2) Not less than three months shall elapse from the filing of the notice of default.

(3) Except as provided in paragraph (4), after the lapse of the three months described in paragraph (2), the mortgagee, trustee, or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f.

(4) Notwithstanding paragraph (3), the mortgagee, trustee, or other person authorized to take sale may record a notice of sale pursuant to Section 2924f up to five days before the lapse of the three-month period described in paragraph (2), provided that the date of sale is no earlier than three months and 20 days after the recording of the notice of default.

(5) Until January 1, 2018, whenever a sale is postponed for a period of at least 10 business days pursuant to Section 2924g, a mortgagee, beneficiary, or authorized agent shall provide written notice to a borrower regarding the new sale date and time, within five business days following the postponement. Information provided pursuant to this paragraph shall not constitute the public declaration required by subdivision (d) of Section 2924g. Failure to comply with this paragraph shall not invalidate any sale that would otherwise be valid under Section 2924f. This paragraph shall be inoperative on January 1, 2018.

(6) No entity shall record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest. No agent of the holder of the beneficial interest under the mortgage or deed of trust, original trustee or substituted trustee under the deed of trust may record a notice of default or otherwise commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.

(b) In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage. In performing the acts required by this article, a trustee shall not be subject to Title 1.6c (commencing with Section 1788) of Part 4.

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(d) All of the following shall constitute privileged communications pursuant to Section 47:

(1) The mailing, publication, and delivery of notices as required by this section.

(2) Performance of the procedures set forth in this article.

(3) Performance of the functions and procedures set forth in this article if those functions and procedures are necessary to carry out the duties described in Sections 729.040, 729.050, and 729.080 of the Code of Civil Procedure.

(e) There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

(f) With respect to residential real property containing no more than four dwelling units, a separate document containing a summary of the notice of default information in English and the languages described in Section 1632 shall be attached to the notice of default provided to the mortgagor or trustor pursuant to Section 2923.3. [2012]

§2924.1. Duty to Record Deed after Foreclosure

(a) Notwithstanding any other law, the transfer, following the sale, of property in a common interest development, as defined by Section 1351, executed under the power of sale in any deed of trust or mortgage, shall be

recorded within 30 days after the date of sale in the office of the county recorder where the property or a portion of the property is located.

(b) Any failure to comply with the provisions of this section shall not affect the validity of a trustee's sale or a sale in favor of a bona fide purchaser. [2012]

§2924a. Attorney Acting as Trustee

If by the terms of any trust or deed of trust a power of sale is conferred upon the trustee, the attorney for the trustee, or any duly authorized agent, may conduct the sale and act in the sale as the auctioneer for the trustee. [2006]

§2924b. Persons Entitled to Notice of Default or Sale; Notice Procedure

(a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:

“In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, _____, in Book _____ page _____ records of _____ County, (or filed for record with recorder's serial number _____, _____ County) California, executed by _____ as trustor (or mortgagor) in which _____, is named as beneficiary (or mortgagee) and _____ as trustee be mailed to _____ at _____

Name

Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature _____”

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagors) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the “last known address” of each trustor or mortgagor means the last business or residence physical address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. For the purposes of this subdivision, an address is “actually known” if it is contained in the original deed of trust or mortgage, or in any subsequent written notification of a change of physical address from the trustor or mortgagor pursuant to the deed of trust or mortgage. For the purposes of this subdivision, “physical address” does not include an email or any form of electronic address for a trustor or mortgagor. The beneficiary shall inform the trustee of the trustor’s last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(4) A “person authorized to record the notice of default or the notice of sale” shall include an agent for the mortgagee or beneficiary, an agent of the named trustee, any person designated in an executed substitution of trustee, or an agent of that substituted trustee.

(c) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof that is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and

provided the instrument as so recorded sets forth a mailing address that the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed that is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a "Notice of Lien for Postponed Property Taxes" has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, that has recorded, subsequent to the deed of trust or mortgage being foreclosed, a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if a "Notice of Federal Tax Lien under Internal Revenue Laws" has been recorded, subsequent to the deed of trust or mortgage being foreclosed, against the real property to which the notice of sale applies. The failure to provide the Internal Revenue Service with a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind the trustee's sale and invalidate the trustee's deed, at the option of either the successful bidder at the trustee's sale or the trustee, and in either case with the

consent of the beneficiary. Any option to rescind the trustee's sale pursuant to this paragraph shall be exercised prior to any transfer of the property by the successful bidder to a bona fide purchaser for value. A rescission of the trustee's sale pursuant to this paragraph may be recorded in a notice of rescission pursuant to Section 1058.5.

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a mailing address of the trustor or mortgagor therein named, and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor or mortgagor.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of that person, that he or she is over 18 years of age, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f) (1) Notwithstanding subdivision (a), with respect to separate interests governed by an association, as defined in Section 4080 or 6528, the

association may cause to be filed in the office of the recorder in the county in which the separate interests are situated a request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of those separate interests mail to the association a copy of any trustee's deed upon sale concerning a separate interest. The request shall include a legal description or the assessor's parcel number of all the separate interests. A request recorded pursuant to this subdivision shall include the name and address of the association and a statement that it is an association as defined in Section 4080 or 6528. Subsequent requests of an association shall supersede prior requests. A request pursuant to this subdivision shall be recorded before the filing of a notice of default. The mortgagee, trustee, or other authorized person shall mail the requested information to the association within 15 business days following the date of the trustee's sale. Failure to mail the request, pursuant to this subdivision, shall not affect the title to real property.

(2) A request filed pursuant to paragraph (1) does not, for purposes of Section 27288.1 of the Government Code, constitute a document that either effects or evidences a transfer or encumbrance of an interest in real property or that releases or terminates any interest, right, or encumbrance of an interest in real property.

(g) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

(h) "Business day," as used in this section, has the meaning specified in Section 9. [2013]

§2924c. Curing Default; Reinstatement of Obligation; Authorized Fees and Costs

(a) (1) Whenever all or a portion of the principal sum of any obligation secured by deed of trust or mortgage on real property or an estate for years therein hereafter executed has, prior to the maturity date fixed in that obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of trustor or mortgagor to pay, in accordance with the terms of that obligation or of the deed of trust or mortgage, taxes, assessments, premiums for insurance, or advances made by beneficiary or mortgagee in accordance with the terms of that obligation or of the deed of trust or mortgage, the trustor or mortgagor or his or her successor in interest in the mortgaged or trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any other person having a subordinate lien or encumbrance of record thereon, at any time within the period specified in subdivision (e), if the power of sale therein is to be exercised, or, otherwise at any time prior to entry of the decree of foreclosure, may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount due, at the time payment is tendered, with respect to (A) all amounts of principal, interest, taxes, assessments, insurance premiums, or

advances actually known by the beneficiary to be, and that are, in default and shown in the notice of default, under the terms of the deed of trust or mortgage and the obligation secured thereby, (B) all amounts in default on recurring obligations not shown in the notice of default, and (c) all reasonable costs and expenses, subject to subdivision (c), which are actually incurred in enforcing the terms of the obligation, deed of trust, or mortgage, and trustee's or attorney's fees, subject to subdivision (d), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred. This section does not apply to bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility subject to the Public Utilities Code. For the purposes of this subdivision, the term "recurring obligation" means all amounts of principal and interest on the loan, or rents, subject to the deed of trust or mortgage in default due after the notice of default is recorded; all amounts of principal and interest or rents advanced on senior liens or leaseholds which are advanced after the recordation of the notice of default; and payments of taxes, assessments, and hazard insurance advanced after recordation of the notice of default. If the beneficiary or mortgagee has made no advances on defaults which would constitute recurring obligations, the beneficiary or mortgagee may require the trustor or mortgagor to provide reliable written evidence that the amounts have been paid prior to reinstatement.

(2) If the trustor, mortgagor, or other person authorized to cure the default pursuant to this subdivision does cure the default, the beneficiary or mortgagee or the agent for the beneficiary or mortgagee shall, within 21 days following the reinstatement, execute and deliver to the trustee a notice of rescission which rescinds the declaration of default and demand for sale and advises the trustee of the date of reinstatement. The trustee shall cause the notice of rescission to be recorded within 30 days of receipt of the notice of rescission and of all allowable fees and costs.

No charge, except for the recording fee, shall be made against the trustor or mortgagor for the execution and recordation of the notice which rescinds the declaration of default and demand for sale.

(b) (1) The notice, of any default described in this section, recorded pursuant to Section 2924, and mailed to any person pursuant to Section 2924b, shall begin with the following statement, printed or typed thereon:

"IMPORTANT NOTICE (14-point boldface type¹⁴ if printed or in capital letters if typed)

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, (14-point boldface type if printed or in capital letters if typed) and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and

¹⁴ See example in footnote 30, page 208 in Civil Code §5300.

expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____ (date) and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than three months after this notice of default is recorded) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

(Name of beneficiary or mortgagee)

(Mailing address)

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** (14-point boldface type if printed or in capital letters if typed)”

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface¹⁵ type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or (4) of subdivision (a) of Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, including certified and express mail charges, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section 2924g not to exceed fifty dollars (\$50) per postponement and a fee for a trustee’s sale guarantee or, in the event of judicial foreclosure, a litigation guarantee. For purposes of this subdivision, a trustee or beneficiary may purchase a trustee’s sale guarantee at a rate meeting the standards contained in Sections 12401.1 and 12401.3 of the Insurance Code.

(d) Trustee’s or attorney’s fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in a base amount that does not exceed three hundred dollars (\$300) if the unpaid principal sum secured is one hundred fifty thousand dollars (\$150,000) or less, or two hundred fifty dollars (\$250) if the unpaid principal sum secured exceeds one hundred fifty thousand dollars (\$150,000), plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000) up to and including one hundred fifty thousand dollars (\$150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars

¹⁵ See example in footnote 30, page 208 in Civil Code §5300.

(\$150,000) up to and including five hundred thousand dollars (\$500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars (\$500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale.

In the event the sale does not take place on the date set forth in the initial recorded notice of sale or a subsequent recorded notice of sale is required to be given, the right of reinstatement shall be revived as of the date of recordation of the subsequent notice of sale, and shall continue from that date until five business days prior to the date of sale set forth in the subsequently recorded notice of sale.

In the event the date of sale is postponed on the date of sale set forth in either an initial or any subsequent notice of sale, or is postponed on the date declared for sale at an immediately preceding postponement of sale, and, the postponement is for a period which exceeds five business days from the date set forth in the notice of sale, or declared at the time of postponement, then the right of reinstatement is revived as of the date of postponement and shall continue from that date until five business days prior to the date of sale declared at the time of the postponement.

Nothing contained herein shall give rise to a right of reinstatement during the period of five business days prior to the date of sale, whether the date of sale is noticed in a notice of sale or declared at a postponement of sale.

Pursuant to the terms of this subdivision, no beneficiary, trustee, mortgagee, or their agents or successors shall be liable in any manner to a trustor, mortgagor, their agents or successors or any beneficiary under a subordinate deed of trust or mortgage or any other person having a subordinate lien or encumbrance of record thereon for the failure to allow a reinstatement of the obligation secured by a deed of trust or mortgage during the period of five business days prior to the sale of the security property, and no such right of reinstatement during this period is created by this section. Any right of reinstatement created by this section is terminated five business days prior to the date of sale set forth in the initial date of sale, and is revived only as prescribed herein and only as of the date set forth herein.

As used in this subdivision, the term "business day" has the same meaning as specified in Section 9. [2010]

§2924d. Fees and Costs Authorized after Recording Notice of Sale

(a) Commencing with the date that the notice of sale is deposited in the mail, as provided in Section 2924b, and until the property is sold pursuant

to the power of sale contained in the mortgage or deed of trust, a beneficiary, trustee, mortgagee, or his or her agent or successor in interest, may demand and receive from a trustor, mortgagor, or his or her agent or successor in interest, or any beneficiary under a subordinate deed of trust, or any other person having a subordinate lien or encumbrance of record those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee's or ■ attorney's fees which are hereby authorized to be in a base amount which does not exceed four hundred twenty-five dollars (\$425) if the unpaid principal sum secured is one hundred fifty thousand dollars (\$150,000) or less, or three hundred sixty dollars(\$360) if the unpaid principal sum secured exceeds one hundred fifty thousand dollars (\$150,000), plus 1 percent of any portion of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000) up to and including one hundred fifty thousand dollars (\$150,000), plus one-half of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars (\$150,000) up to and including five hundred thousand dollars (\$500,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars (\$500,000). For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded. Any charge for trustee's or ■ attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amounts authorized herein. Any charge for trustee's or attorney's fees made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (d) of Section 2924c.

(b) Upon the sale of property pursuant to a power of sale, a trustee, or his or her agent or successor in interest, may demand and receive from a beneficiary, or his or her agent or successor in interest, or may deduct from the proceeds of the sale, those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, which are actually incurred in enforcing the terms of the obligation and trustee's or ■ attorney's fees which are hereby authorized to be in an amount which does not exceed four hundred twenty-five dollars (\$425) or one percent of the unpaid principal sum secured, whichever is greater. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded. Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amount authorized herein. Any charges for trustee's or attorney's fees made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (a) of this section and subdivision (d) of Section 2924c.

(c) (1) No person shall pay or offer to pay or collect any rebate or kickback for the referral of business involving the performance of any act required by this article.

(2) Any person who violates this subdivision shall be liable to the trustor for three times the amount of any rebate or kickback, plus reasonable ■ attorney's fees and costs, in addition to any other remedies provided by law.

(3) No violation of this subdivision shall affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value without notice.

(d) It shall not be unlawful for a trustee to pay or offer to pay a fee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust. Any payment of a fee by a trustee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust shall be conclusively presumed to be lawful and valid if the fee, when combined with other fees of the trustee, does not exceed in the aggregate the trustee's fee authorized by subdivision (d) of Section 2924c or subdivision (a) or (b) of this section.

(e) When a court issues a decree of foreclosure, it shall have discretion to award ■ attorney's fees, costs, and expenses as are reasonable, if provided for in the note, deed of trust, or mortgage, pursuant to Section 580c of the Code of Civil Procedure. [2001]

§2924e. Providing Notice to Junior Lienholders

(a) The beneficiary or mortgagee of any deed of trust or mortgage on real property either containing one to four residential units or given to secure an original obligation not to exceed three hundred thousand dollars (\$300,000) may, with the written consent of the trustor or mortgagor that is either effected through a signed and dated agreement which shall be separate from other loan and security documents or disclosed to the trustor or mortgagor in at least 10-point type,¹⁶ submit a written request by certified mail to the beneficiary or mortgagee of any lien which is senior to the lien of the requester, for written notice of any or all delinquencies of four months or more, in payments of principal or interest on any obligation secured by that senior lien notwithstanding that the loan secured by the lien of the requester is not then in default as to payments of principal or interest.

The request shall be sent to the beneficiary or mortgagee, or agent which it might designate for the purpose of receiving loan payments, at the address specified for the receipt of these payments, if known, or, if not known, at the address shown on the recorded deed of trust or mortgage.

(b) The request for notice shall identify the ownership or security interest of the requester, the date on which the interest of the requester will terminate as evidenced by the maturity date of the note of the trustor or mortgagor in favor of the requester, the name of the trustor or mortgagor and the name of the current owner of the security property if different from the trustor or mortgagor, the street address or other description of the security property, the loan number (if available to the requester) of the loan secured by the senior lien, the name and address to which notice is to be sent, and shall include or be accompanied by the signed written consent of the trustor or mortgagor, and a fee of forty dollars (\$40). For obligations secured by residential properties, the request shall remain valid until withdrawn in writing and shall be applicable to

¹⁶ See example in footnote 30, page 208 in Civil Code §5300.

all delinquencies as provided in this section, which occur prior to the date on which the interest of the requester will terminate as specified in the request or the expiration date, as appropriate. For obligations secured by nonresidential properties, the request shall remain valid until withdrawn in writing and shall be applicable to all delinquencies as provided in this section, which occur prior to the date on which the interest of the requester will terminate as specified in the request or the expiration date, as appropriate. The beneficiary or mortgagee of obligations secured by nonresidential properties that have sent five or more notices prior to the expiration of the effective period of the request may charge a fee up to fifteen dollars (\$15) for each subsequent notice. A request for notice shall be effective for five years from the mailing of the request or the recording of that request, whichever occurs later, and may be renewed within six months prior to its expiration date by sending the beneficiary or mortgagee, or agent, as the case may be, at the address to which original requests for notice are to be sent, a copy of the earlier request for notice together with a signed statement that the request is renewed and a renewal fee of fifteen dollars (\$15). Upon timely submittal of a renewal request for notice, the effectiveness of the original request is continued for five years from the time when it would otherwise have lapsed. Succeeding renewal requests may be submitted in the same manner. The request for notice and renewals thereof shall be recorded in the office of the county recorder of the county in which the security real property is situated. The rights and obligations specified in this section shall inure to the benefit of, or pass to, as the case may be, successors in interest of parties specified in this section. Any successor in interest of a party entitled to notice under this section shall file a request for that notice with any beneficiary or mortgagee of the senior lien and shall pay a processing fee of fifteen dollars (\$15). No new written consent shall be required from the trustor or mortgagor.

(c) Unless the delinquency has been cured, within 15 days following the end of four months from any delinquency in payments of principal or interest on any obligation secured by the senior lien which delinquency exists or occurs on or after 10 days from the mailing of the request for notice or the recording of that request, whichever occurs later, the beneficiary or mortgagee shall give written notice to the requester of the fact of any delinquency and the amount thereof.

The notice shall be given by personal service, or by deposit in the mail, first-class postage paid. Following the recording of any notice of default pursuant to Section 2924 with respect to the same delinquency, no notice or further notice shall be required pursuant to this section.

(d) If the beneficiary or mortgagee of any such senior lien fails to give notice to the requester as required in subdivision (c), and a subsequent foreclosure or trustee's sale of the security property occurs, the beneficiary or mortgagee shall be liable to the requester for any monetary damage due to the failure to provide notice within the time period specified in subdivision (c) which the requester has sustained from the date on which notice should have been given to the earlier of the date on which the notice is given or the date of the recording of the notice of default under Section 2924, and shall also forfeit to the requester the sum of three hundred dollars (\$300). A showing by the

beneficiary or mortgagee by a preponderance of the evidence that the failure to provide timely notice as required by subdivision (c) resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error shall be a defense to any liability for that failure.

(e) If any beneficiary or mortgagee, or agent which it had designated for the purpose of receiving loan payments, has been succeeded in interest by any other person, any request for notice received pursuant to this section shall be transmitted promptly to that person.

(f) Any failure to comply with the provisions of this section shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(g) Upon satisfaction of an obligation secured by a junior lien with respect to which a notice request was made pursuant to this section, the beneficiary or mortgagee that made the request shall communicate that fact in writing to the senior lienholder to whom the request was made. The communication shall specify that provision of notice pursuant to the prior request under this section is no longer required. [1990]

§2924f. Requirements for Notice of Sale

(a) As used in this section and Sections 2924g and 2924h, “property” means real property or a leasehold estate therein, and “calendar week” means Monday through Saturday, inclusive.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks.

(2) The first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that is contiguous to the county in which the property or some part thereof is situated and has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census.

(3) A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community.

(4) The notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 20 days prior to the date of sale.

(5) The notice of sale shall contain the name, street address in this state, which may reflect an agent of the trustee, and either a toll-free telephone number or telephone number in this state of the trustee, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted.

(6) The term "newspaper of general circulation," as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

(7) The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount, including any amount provided in good faith by or on behalf of the beneficiary. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the

failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(8) (A) On and after April 1, 2012, if the deed of trust or mortgage containing a power of sale is secured by real property containing from one to four single-family residences, the notice of sale shall contain substantially the following language, in addition to the language required pursuant to paragraphs (1) to (7), inclusive:

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee's sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

(B) A mortgagee, beneficiary, trustee, or authorized agent shall make a good faith effort to provide up-to-date information regarding sale dates and postponements to persons who wish this information. This information shall be made available free of charge. It may be made available via an Internet Web site, a telephone recording that is accessible 24 hours a day, seven days a week, or through any other means that allows 24 hours a day, seven days a week, no-cost access to updated information. A disruption of any of these

methods of providing sale date and postponement information to allow for reasonable maintenance or due to a service outage shall not be deemed to be a violation of the good faith standard.

(C) Except as provided in subparagraph (B), nothing in the wording of the notices required by subparagraph (A) is intended to modify or create any substantive rights or obligations for any person providing, or specified in, either of the required notices. Failure to comply with subparagraph (A) or (B) shall not invalidate any sale that would otherwise be valid under Section 2924f.

(D) Information provided pursuant to subparagraph (A) does not constitute the public declaration required by subdivision (d) of Section 2924g.

(9) If the sale of the property is to be a unified sale as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9108 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the

trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A _____,

(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars (\$50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

(d) With respect to residential real property containing no more than four dwelling units, a separate document containing a summary of the notice of sale information in English and the languages described in Section 1632 shall be attached to the notice of sale provided to the mortgagor or trustor pursuant to Section 2923.3. [2012]

§2924g. Procedure for Handling Trustee's Sale of Property

(a) All sales of property under the power of sale contained in any deed of trust or mortgage shall be held in the county where the property or some part thereof is situated, and shall be made at auction, to the highest bidder, between the hours of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

The sale shall commence at the time and location specified in the notice of sale. Any postponement shall be announced at the time and location specified in the notice of sale for commencement of the sale or pursuant to paragraph (1) of subdivision (c).

If the sale of more than one parcel of real property has been scheduled for the same time and location by the same trustee, (1) any postponement of any of the sales shall be announced at the time published in the

notice of sale, (2) the first sale shall commence at the time published in the notice of sale or immediately after the announcement of any postponement, and (3) each subsequent sale shall take place as soon as possible after the preceding sale has been completed.

(b) When the property consists of several known lots or parcels, they shall be sold separately unless the deed of trust or mortgage provides otherwise. When a portion of the property is claimed by a third person, who requires it to be sold separately, the portion subject to the claim may be thus sold. The trustor, if present at the sale, may also, unless the deed of trust or mortgage otherwise provides, direct the order in which property shall be sold, when the property consists of several known lots or parcels which may be sold to advantage separately, and the trustee shall follow that direction.

After sufficient property has been sold to satisfy the indebtedness no more can be sold.

If the property under power of sale is in two or more counties the public auction sale of all of the property under the power of sale may take place in any one of the counties where the property or a portion thereof is located.

(c) (1) There may be a postponement or postponements of the sale proceedings, including a postponement upon instruction by the beneficiary to the trustee that the sale proceedings be postponed, at any time prior to the completion of the sale for any period of time not to exceed a total of 365 days from the date set forth in the notice of sale. The trustee shall postpone the sale in accordance with any of the following:

(A) Upon the order of any court of competent jurisdiction.

(B) If stayed by operation of law.

(C) By mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee.

(D) At the discretion of the trustee.

(2) In the event that the sale proceedings are postponed for a period or periods totaling more than 365 days, the scheduling of any further sale proceedings shall be preceded by giving a new notice of sale in the manner prescribed in Section 2924f. New fees incurred for the new notice of sale shall not exceed the amounts specified in Sections 2924c and 2924d, and shall not exceed reasonable costs that are necessary to comply with this paragraph.

(d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for sale. A public declaration of postponement shall also set forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than on the seventh day after the earlier of (1) dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay (that required postponement of the sale), whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. For

purposes of this subdivision, the seven-day period shall not include the day on which the action is dismissed, or the day on which the injunction, restraining order, or stay expires or is terminated. If the sale had been scheduled to occur, but this subdivision precludes its conduct during that seven-day period, a new notice of postponement shall be given if the sale had been scheduled to occur during that seven-day period. The trustee shall maintain records of each postponement and the reason therefor.

(e) Notwithstanding the time periods established under subdivision (d), if postponement of a sale is based on a stay imposed by Title 11 of the United States Code (bankruptcy), the sale shall be conducted no sooner than the expiration of the stay imposed by that title and the seven-day provision of subdivision (d) shall not apply. [2005]

§2924h. Bidding Procedures at Trustee’s Sale

(a) Each and every bid made by a bidder at a trustee’s sale under a power of sale contained in a deed of trust or mortgage shall be deemed to be an irrevocable offer by that bidder to purchase the property being sold by the trustee under the power of sale for the amount of the bid. Any second or subsequent bid by the same bidder or any other bidder for a higher amount shall be a cancellation of the prior bid.

(b) At the trustee’s sale the trustee shall have the right (1) to require every bidder to show evidence of the bidder’s ability to deposit with the trustee the full amount of his or her final bid in cash, a cashier’s check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee prior to, and as a condition to, the recognizing of the bid, and to conditionally accept and hold these amounts for the duration of the sale, and (2) to require the last and highest bidder to deposit, if not deposited previously, the full amount of the bidder’s final bid in cash, a cashier’s check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, immediately prior to the completion of the sale, the completion of the sale, being so announced by the fall of the hammer or in another customary manner. The present beneficiary of the deed of trust under foreclosure shall have the right to offset his or her bid or bids only to the extent of the total amount due the beneficiary including the trustee’s fees and expenses.

(c) In the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee’s deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash

equivalent until funds become available to the payee or endorsee as a matter of right.

For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 15 calendar days after the sale, or the next business day following the 15th day if the county recorder in which the property is located is closed on the 15th day. However, the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not "available for withdrawal" as defined in Section 12413.1 of the Insurance Code. The trustee shall send a notice of rescission for a failure of consideration to the last and highest bidder submitting the check or alternative instrument, if the address of the last and highest bidder is known to the trustee.

If a sale results in an automatic right of rescission for failure of consideration pursuant to this subdivision, the interest of any lienholder shall be reinstated in the same priority as if the previous sale had not occurred.

(d) If the trustee has not required the last and highest bidder to deposit the cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee in the manner set forth in paragraph (2) of subdivision (b), the trustee shall complete the sale. If the last and highest bidder then fails to deliver to the trustee, when demanded, the amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, that bidder shall be liable to the trustee for all damages which the trustee may sustain by the refusal to deliver to the trustee the amount of the final bid, including any court costs and reasonable attorneys' fees.

If the last and highest bidder willfully fails to deliver to the trustee the amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, or if the last and highest bidder cancels a cashiers [*sic*] check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent that has been designated in the notice of sale as acceptable to the trustee, that bidder shall be guilty of a misdemeanor punishable by a fine of not more than two thousand five hundred dollars (\$2,500).

In the event the last and highest bidder cancels an instrument submitted to the trustee as a cash equivalent, the trustee shall provide a new notice of sale in the manner set forth in Section 2924f and shall be entitled to recover the costs of the new notice of sale as provided in Section 2924c.

(e) Any postponement or discontinuance of the sale proceedings shall be a cancellation of the last bid.

(f) In the event that this section conflicts with any other statute, then this section shall prevail.

(g) It shall be unlawful for any person, acting alone or in concert with others, (1) to offer to accept or accept from another, any consideration of any type not to bid, or (2) to fix or restrain bidding in any manner, at a sale of property conducted pursuant to a power of sale in a deed of trust or mortgage. However, it shall not be unlawful for any person, including a trustee, to state that a property subject to a recorded notice of default or subject to a sale conducted pursuant to this chapter is being sold in an "as-is" condition.

In addition to any other remedies, any person committing any act declared unlawful by this subdivision or any act which would operate as a fraud or deceit upon any beneficiary, trustor, or junior lienor shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned in the county jail for not more than one year, or be punished by both that fine and imprisonment. [2004]

§2924i. Notice Required on Balloon Payment Loan

(a) This section applies to loans secured by a deed of trust or mortgage on real property containing one to four residential units at least one of which at the time the loan is made is or is to be occupied by the borrower if the loan is for a period in excess of one year and is a balloon payment loan.

(b) This section shall not apply to (1) open end credit as defined in Regulation Z, whether or not the transaction is otherwise subject to Regulation Z, (2) transactions subject to Section 2956, or (3) loans made for the principal purpose of financing the construction of one or more residential units.

(c) At least 90 days but not more than 150 days prior to the due date of the final payment on a loan that is subject to this section, the holder of the loan shall deliver or mail by first-class mail, with a certificate of mailing obtained from the United States Postal Service, to the trustor, or his or her successor in interest, at the last known address of that person, a written notice which shall include all of the following:

(1) A statement of the name and address of the person to whom the final payment is required to be paid.

(2) The date on or before which the final payment is required to be paid.

(3) The amount of the final payment, or if the exact amount is unknown, a good faith estimate of the amount thereof, including unpaid principal, interest and any other charges, such amount to be determined assuming timely payment in full of all scheduled installments coming due between the date the notice is prepared and the date when the final payment is due.

(4) If the borrower has a contractual right to refinance the final payment, a statement to that effect.

If the due date of the final payment of a loan subject to this section is extended prior to the time notice is otherwise required under this subdivision, this notice requirement shall apply only to the due date as extended (or as subsequently extended).

(d) For purposes of this section:

(1) A "balloon payment loan" is a loan which provides for a final payment as originally scheduled which is more than twice the amount of any of the immediately preceding six regularly scheduled payments or which contains a call provision; provided, however, that if the call provision is not exercised by the holder of the loan, the existence of the unexercised call provision shall not cause the loan to be deemed to be a balloon payment loan.

(2) "Call provision" means a loan contract term that provides the holder of the loan with the right to call the loan due and payable either after a specified period has elapsed following closing or after a specified date.

(3) "Regulation Z" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System under the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.), and any interpretation or approval thereof issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, as amended, to issue such interpretations or approvals.

(e) Failure to provide notice as required by subdivision (a) does not extinguish any obligation of payment by the borrower, except that the due date for any balloon payment shall be the date specified in the balloon payment note, or 90 days from the date of delivery or mailing of the notice required by subdivision (a), or the due date specified in the notice required by subdivision (a), whichever date is later. If the operation of this section acts to extend the term of any note, interest shall continue to accrue for the extended term at the contract rate and payments shall continue to be due at any periodic interval and on any payment schedule specified in the note and shall be credited to principal or interest under the terms of the note. Default in any extended periodic payment shall be considered a default under terms of the note or security instrument.

(f) (1) The validity of any credit document or of any security document subject to the provisions of this section shall not be invalidated solely because of the failure of any person to comply with this section. However, any person who willfully violates any provision of this section shall be liable in the amount of actual damages suffered by the debtor as the proximate result of the violation, and, if the debtor prevails in any suit to recover that amount, for reasonable ■ attorney's fees.

(2) No person may be held liable in any action under this section if it is shown by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(g) The provisions of this section shall apply to any note executed on or after January 1, 1984. [1986]

§2924j. Disposition of Excess Funds after Trustee’s Sale

(a) Unless an interpleader action has been filed, within 30 days of the execution of the trustee’s deed resulting from a sale in which there are proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k, the trustee shall send written notice to all persons with recorded interests in the real property as of the date immediately prior to the trustee’s sale who would be entitled to notice pursuant to subdivisions (b) and (c) of Section 2924b. The notice shall be sent by first-class mail in the manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform each entitled person of each of the following:

(1) That there has been a trustee’s sale of the described real property.

(2) That the noticed person may have a claim to all or a portion of the sale proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k.

(3) The noticed person may contact the trustee at the address provided in the notice to pursue any potential claim.

(4) That before the trustee can act, the noticed person may be required to present proof that the person holds the beneficial interest in the obligation and the security interest therefor. In the case of a promissory note secured by a deed of trust, proof that the person holds the beneficial interest may include the original promissory note and assignment of beneficial interests related thereto. The noticed person shall also submit a written claim to the trustee, executed under penalty of perjury, stating the following:

(A) The amount of the claim to the date of trustee’s sale.

(B) An itemized statement of the principal, interest, and other charges.

(C) That claims must be received by the trustee at the address stated in the notice no later than 30 days after the date the trustee sends notice to the potential claimant.

(b) The trustee shall exercise due diligence to determine the priority of the written claims received by the trustee to the trustee’s sale surplus proceeds from those persons to whom notice was sent pursuant to subdivision (a). In the event there is no dispute as to the priority of the written claims submitted to the trustee, proceeds shall be paid within 30 days after the conclusion of the notice period. If the trustee has failed to determine the priority of written claims within 90 days following the 30-day notice period, then within 10 days thereafter the trustee shall deposit the funds with the clerk of the court pursuant to subdivision (c) or file an interpleader action pursuant to subdivision (e). Nothing in this section shall preclude any person from pursuing other remedies or claims as to surplus proceeds.

(c) If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee’s sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior court of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any

fees charged by the clerk pursuant to this subdivision. The declaration shall specify the date of the trustee's sale, a description of the property, the names and addresses of all persons sent notice pursuant to subdivision (a), a statement that the trustee exercised due diligence pursuant to subdivision (b), that the trustee provided written notice as required by subdivisions (a) and (d) and the amount of the sales proceeds deposited by the trustee with the court. Further, the trustee shall submit a copy of the trustee's sales guarantee and any information relevant to the identity, location, and priority of the potential claimants with the court and shall file proof of service of the notice required by subdivision (d) on all persons described in subdivision (a).

The clerk shall deposit the amount with the county treasurer or, if a bank account has been established for moneys held in trust under paragraph (2) of subdivision (a) of Section 77009 of the Government Code, in that account, subject to order of the court upon the application of any interested party. The clerk may charge a reasonable fee for the performance of activities pursuant to this subdivision equal to the fee for filing an interpleader action pursuant to Chapter 5.8 (commencing with Section 70600) of Title 8 of the Government Code. Upon deposit of that portion of the sale proceeds that cannot be distributed by due diligence, the trustee shall be discharged of further responsibility for the disbursement of sale proceeds. A deposit with the clerk of the court pursuant to this subdivision may be either for the total proceeds of the trustee's sale, less any fees charged by the clerk, if a conflict or conflicts exist with respect to the total proceeds, or that portion that cannot be distributed after due diligence, less any fees charged by the clerk.

(d) Before the trustee deposits the funds with the clerk of the court pursuant to subdivision (c), the trustee shall send written notice by first-class mail, postage prepaid, to all persons described in subdivision (a) informing them that the trustee intends to deposit the funds with the clerk of the court and that a claim for the funds must be filed with the court within 30 days from the date of the notice, providing the address of the court in which the funds were deposited, and a telephone number for obtaining further information.

Within 90 days after deposit with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustee's declaration at the addresses specified therein. Where the amount of the deposit is twenty-five thousand dollars (\$25,000) or less, a proceeding pursuant to this section is a limited civil case. The court shall distribute the deposited funds to any and all claimants entitled thereto.

(e) Nothing in this section restricts the ability of a trustee to file an interpleader action in order to resolve a dispute about the proceeds of a trustee's sale. Once an interpleader action has been filed, thereafter the provisions of this section do not apply.

(f) "Due diligence," for the purposes of this section means that the trustee researched the written claims submitted or other evidence of conflicts and determined that a conflict of priorities exists between two or more claimants which the trustee is unable to resolve.

(g) To the extent required by the Unclaimed Property Law, a trustee in possession of surplus proceeds not required to be deposited with the court pursuant to subdivision (b) shall comply with the Unclaimed Property Law (Chapter 7 (commencing with section 1500) of Title 10 of Part 3 of the Code of Civil Procedure).

(h) The trustee, beneficiary, or counsel to the trustee or beneficiary, is not liable for providing to any person who is entitled to notice pursuant to this section, information set forth in, or a copy of, subdivision (h) of Section 2945.3. [2005]

§2924k. Distribution of Excess Funds by Trustee or Court Clerk

(a) The trustee, or the clerk of the court upon order to the clerk pursuant to subdivision (d) of Section 2924j, shall distribute the proceeds, or a portion of the proceeds, as the case may be, of the trustee's sale conducted pursuant to Section 2924h in the following order of priority:

(1) To the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and attorney's fees permitted pursuant to subdivision (b) of Section 2924d and subdivision (b) of this section.

(2) To the payment of the obligations secured by the deed of trust or mortgage which is the subject of the trustee's sale.

(3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority.

(4) To the trustor or the trustor's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale.

(b) A trustee may charge costs and expenses incurred for such items as mailing and a reasonable fee for services rendered in connection with the distribution of the proceeds from a trustee's sale, including, but not limited to, the investigation of priority and validity of claims and the disbursement of funds. If the fee charged for services rendered pursuant to this subdivision does not exceed one hundred dollars (\$100), or one hundred twenty-five dollars (\$125) where there are obligations specified in paragraph (3) of subdivision (a), the fee is conclusively presumed to be reasonable. [1999]

§2924l. Trustee's Declaration of Nonmonetary Status in Action Involving Deed of Trust

(a) In the event that a trustee under a deed of trust is named in an action or proceeding in which that deed of trust is the subject, and in the event that the trustee maintains a reasonable belief that it has been named in the action or proceeding solely in its capacity as trustee, and not arising out of any wrongful acts or omissions on its part in the performance of its duties as trustee, then, at any time, the trustee may file a declaration of nonmonetary status. The declaration shall be served on the parties in the manner set forth in Chapter 5 (commencing with Section 1010) of Title 14 of the Code of Civil Procedure.

(b) The declaration of nonmonetary status shall set forth the status of the trustee as trustee under the deed of trust that is the subject of the action or

proceeding, that the trustee knows or maintains a reasonable belief that it has been named as a defendant in the proceeding solely in its capacity as a trustee under the deed of trust, its reasonable belief that it has not been named as a defendant due to any acts or omissions on its part in the performance of its duties as trustee, the basis for that knowledge or reasonable belief, and that it agrees to be bound by whatever order or judgment is issued by the court regarding the subject deed of trust.

(c) The parties who have appeared in the action or proceeding shall have 15 days from the service of the declaration by the trustee in which to object to the nonmonetary judgment status of the trustee. Any objection shall set forth the factual basis on which the objection is based and shall be served on the trustee.

(d) In the event that no objection is served within the 15-day objection period, the trustee shall not be required to participate any further in the action or proceeding, shall not be subject to any monetary awards as and for damages, attorneys' fees or costs, shall be required to respond to any discovery requests as a nonparty, and shall be bound by any court order relating to the subject deed of trust that is the subject of the action or proceeding.

(e) In the event of a timely objection to the declaration of nonmonetary status, the trustee shall thereafter be required to participate in the action or proceeding.

Additionally, in the event that the parties elect not to, or fail to, timely object to the declaration of nonmonetary status, but later through discovery, or otherwise, determine that the trustee should participate in the action because of the performance of its duties as a trustee, the parties may file and serve on all parties and the trustee a motion pursuant to Section 473 of the Code of Civil Procedure that specifies the factual basis for the demand. Upon the court's granting of the motion, the trustee shall thereafter be required to participate in the action or proceeding, and the court shall provide sufficient time prior to trial for the trustee to be able to respond to the complaint, to conduct discovery, and to bring other pretrial motions in accordance with the Code of Civil Procedure.

(f) Upon the filing of the declaration of nonmonetary status, the time within which the trustee is required to file an answer or other responsive pleading shall be tolled for the period of time within which the opposing parties may respond to the declaration. Upon the timely service of an objection to the declaration on nonmonetary status, the trustee shall have 30 days from the date of service within which to file an answer or other responsive pleading to the complaint or cross-complaint.

(g) For purposes of this section, "trustee" includes any agent or employee of the trustee who performs some or all of the duties of a trustee under this article, and includes substituted trustees and agents of the beneficiary or trustee. [2004]

§2938. Enforcement of an Assignment of Rent

■ (a) A written assignment of an interest in leases, rents, issues, or profits of real property made in connection with an obligation secured by real

property, irrespective of whether the assignment is denoted as absolute, absolute conditioned upon default, additional security for an obligation, or otherwise, shall, upon execution and delivery by the assignor, be effective to create a present security interest in existing and future leases, rents, issues, or profits of that real property. As used in this section, “leases, rents, issues, and profits of real property” includes the cash proceeds thereof. “Cash proceeds” means cash, checks, deposit accounts, and the like.

(b) An assignment of an interest in leases, rents, issues, or profits of real property may be recorded in the records of the county recorder in the county in which the underlying real property is located in the same manner as any other conveyance of an interest in real property, whether the assignment is in a separate document or part of a mortgage or deed of trust, and when so duly recorded in accordance with the methods, procedures, and requirements for recordation of conveyances of other interests in real property, (1) the assignment shall be deemed to give constructive notice of the content of the assignment with the same force and effect as any other duly recorded conveyance of an interest in real property and (2) the interest granted by the assignment shall be deemed fully perfected as of the time of recordation with the same force and effect as any other duly recorded conveyance of an interest in real property, notwithstanding a provision of the assignment or a provision of law that would otherwise preclude or defer enforcement of the rights granted the assignee under the assignment until the occurrence of a subsequent event, including, but not limited to, a subsequent default of the assignor, or the assignee’s obtaining possession of the real property or the appointment of a receiver.

(c) Upon default of the assignor under the obligation secured by the assignment of leases, rents, issues, and profits, the assignee shall be entitled to enforce the assignment in accordance with this section. On and after the date the assignee takes one or more of the enforcement steps described in this subdivision, the assignee shall be entitled to collect and receive all rents, issues, and profits that have accrued but remain unpaid and uncollected by the assignor or its agent or for the assignor’s benefit on that date, and all rents, issues, and profits that accrue on or after the date. The assignment shall be enforced by one or more of the following:

- (1) The appointment of a receiver.
- (2) Obtaining possession of the rents, issues, or profits.
- (3) Delivery to any one or more of the tenants of a written

demand for turnover of rents, issues, and profits in the form specified in subdivision (k), a copy of which demand shall also be delivered to the assignor; and a copy of which shall be mailed to all other assignees of record of the leases, rents, issues, and profits of the real property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording.

(4) Delivery to the assignor of a written demand for the rents, issues, or profits, a copy of which shall be mailed to all other assignees of record of the leases, rents, issues, and profits of the real property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording. Moneys received by the

assignee pursuant to this subdivision, net of amounts paid pursuant to subdivision (g), if any, shall be applied by the assignee to the debt or otherwise in accordance with the assignment or the promissory note, deed of trust, or other instrument evidencing the obligation, provided, however, that neither the application nor the failure to so apply the rents, issues, or profits shall result in a loss of any lien or security interest that the assignee may have in the underlying real property or any other collateral, render the obligation unenforceable, constitute a violation of Section 726 of the Code of Civil Procedure, or otherwise limit a right available to the assignee with respect to its security.

(d) If an assignee elects to take the action provided for under paragraph (3) of subdivision (c), the demand provided for therein shall be signed under penalty of perjury by the assignee or an authorized agent of the assignee and shall be effective as against the tenant when actually received by the tenant at the address for notices provided under the lease or other contractual agreement under which the tenant occupies the property or, if no address for notices is so provided, at the property. Upon receipt of this demand, the tenant shall be obligated to pay to the assignee all rents, issues, and profits that are past due and payable on the date of receipt of the demand, and all rents, issues, and profits coming due under the lease following the date of receipt of the demand, unless either of the following occurs:

(1) The tenant has previously received a demand that is valid on its face from another assignee of the leases, issues, rents, and profits sent by the other assignee in accordance with this subdivision and subdivision (c).

(2) The tenant, in good faith and in a manner that is not inconsistent with the lease, has previously paid, or within 10 days following receipt of the demand notice pays, the rent to the assignor.

Payment of rent to an assignee following a demand under an assignment of leases, rents, issues, and profits shall satisfy the tenant's obligation to pay the amounts under the lease. If a tenant pays rent to the assignor after receipt of a demand other than under the circumstances described in this subdivision, the tenant shall not be discharged of the obligation to pay rent to the assignee, unless the tenant occupies the property for residential purposes. The obligation of a tenant to pay rent pursuant to this subdivision and subdivision (c) shall continue until receipt by the tenant of a written notice from a court directing the tenant to pay the rent in a different manner or receipt by the tenant of a written notice from the assignee from whom the demand was received canceling the demand, whichever occurs first. This subdivision does not affect the entitlement to rents, issues, or profits as between assignees as set forth in subdivision (h).

(e) An enforcement action of the type authorized by subdivision (c), and a collection, distribution, or application of rents, issues, or profits by the assignee following an enforcement action of the type authorized by subdivision (c), shall not do any of the following:

(1) Make the assignee a mortgagee in possession of the property, except if the assignee obtains actual possession of the real property, or an agent of the assignor.

(2) Constitute an action, render the obligation unenforceable, violate Section 726 of the Code of Civil Procedure, or, other than with respect to marshaling requirements, otherwise limit any rights available to the assignee with respect to its security.

(3) Be deemed to create a bar to a deficiency judgment pursuant to a provision of law governing or relating to deficiency judgments following the enforcement of any encumbrance, lien, or security interest, notwithstanding that the action, collection, distribution, or application may reduce the indebtedness secured by the assignment or by a deed of trust or other security instrument. The application of rents, issues, or profits to the secured obligation shall satisfy the secured obligation to the extent of those rents, issues, or profits, and, notwithstanding any provisions of the assignment or other loan documents to the contrary, shall be credited against any amounts necessary to cure any monetary default for purposes of reinstatement under Section 2924c.

(f) If cash proceeds of rents, issues, or profits to which the assignee is entitled following enforcement as set forth in subdivision (c) are received by the assignor or its agent for collection or by another person who has collected such rents, issues, or profits for the assignor's benefit, or for the benefit of a subsequent assignee under the circumstances described in subdivision (h), following the taking by the assignee of either of the enforcement actions authorized in paragraph (3) or (4) of subdivision (c), and the assignee has not authorized the assignor's disposition of the cash proceeds in a writing signed by the assignee, the rights to the cash proceeds and to the recovery of the cash proceeds shall be determined by the following:

(1) The assignee shall be entitled to an immediate turnover of the cash proceeds received by the assignor or its agent for collection or any other person who has collected the rents, issues, or profits for the assignor's benefit, or for the benefit of a subsequent assignee under the circumstances described in subdivision (h), and the assignor or other described party in possession of those cash proceeds shall turn over the full amount of cash proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee in writing. The assignee shall have a right to bring an action for recovery of the cash proceeds, and to recover the cash proceeds, without the necessity of bringing an action to foreclose a security interest that it may have in the real property. This action shall not violate Section 726 of the Code of Civil Procedure or otherwise limit a right available to the assignee with respect to its security.

(2) As between an assignee with an interest in cash proceeds perfected in the manner set forth in subdivision (b) and enforced in accordance with paragraph (3) or (4) of subdivision (c) and another person claiming an interest in the cash proceeds, other than the assignor or its agent for collection or one collecting rents, issues, and profits for the benefit of the assignor, and subject to subdivision (h), the assignee shall have a continuously perfected security interest in the cash proceeds to the extent that the cash proceeds are identifiable. For purposes hereof, cash proceeds are identifiable if they are either (A) segregated or (B) if commingled with other funds of the assignor or its agent or one acting on its behalf, can be traced using the lowest intermediate balance

principle, unless the assignor or other party claiming an interest in proceeds shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case. The provisions of this paragraph are subject to any generally applicable law with respect to payments made in the operation of the assignor's business.

(g) (1) If the assignee enforces the assignment under subdivision (c) by means other than the appointment of a receiver and receives rents, issues, or profits pursuant to this enforcement, the assignor or another assignee of the affected real property may make written demand upon the assignee to pay the reasonable costs of protecting and preserving the property, including payment of taxes and insurance and compliance with building and housing codes, if any.

(2) On and after the date of receipt of the demand, the assignee shall pay for the reasonable costs of protecting and preserving the real property to the extent of any rents, issues, or profits actually received by the assignee, provided, however, that no such acts by the assignee shall cause the assignee to become a mortgagee in possession and the assignee's duties under this subdivision, upon receipt of a demand from the assignor or any other assignee of the leases, rents, issues, and profits pursuant to paragraph (1), shall not be construed to require the assignee to operate or manage the property, which obligation shall remain that of the assignor.

(3) The obligation of the assignee hereunder shall continue until the earlier of (A) the date on which the assignee obtains the appointment of a receiver for the real property pursuant to application to a court of competent jurisdiction, or (B) the date on which the assignee ceases to enforce the assignment.

(4) This subdivision does not supersede or diminish the right of the assignee to the appointment of a receiver.

(h) The lien priorities, rights, and interests among creditors concerning rents, issues, or profits collected before the enforcement by the assignee shall be governed by subdivisions (a) and (b). Without limiting the generality of the foregoing, if an assignee who has recorded its interest in leases, rents, issues, and profits prior to the recordation of that interest by a subsequent assignee seeks to enforce its interest in those rents, issues, or profits in accordance with this section after any enforcement action has been taken by a subsequent assignee, the prior assignee shall be entitled only to the rents, issues, and profits that are accrued and unpaid as of the date of its enforcement action and unpaid rents, issues, and profits accruing thereafter. The prior assignee shall have no right to rents, issues, or profits paid prior to the date of the enforcement action, whether in the hands of the assignor or any subsequent assignee. Upon receipt of notice that the prior assignee has enforced its interest in the rents, issues, and profits, the subsequent assignee shall immediately send a notice to any tenant to whom it has given notice under subdivision (c). The notice shall inform the tenant that the subsequent assignee cancels its demand that the tenant pay rent to the subsequent assignee.

(i) (1) This section shall apply to contracts entered into on or after January 1, 1997.

(2) Sections 2938 and 2938.1, as these sections were in effect prior to January 1, 1997, shall govern contracts entered into prior to January 1, 1997, and shall govern actions and proceedings initiated on the basis of these contracts.

(j) "Real property," as used in this section, means real property or any estate or interest therein.

(k) The demand required by paragraph (3) of subdivision (c) shall be in the following form:

DEMAND TO PAY RENT
TO PARTY OTHER THAN LANDLORD
(SECTION 2938 OF THE CIVIL CODE)

Tenant: [Name of Tenant]

Property Occupied by Tenant: [Address]

Landlord: [Name of Landlord]

Secured Party: [Name of Secured Party]

Address: [Address for Payment of Rent to Secured Party and for Further Information]:

The secured party named above is the assignee of leases, rents, issues, and profits under [name of document] dated _____, and recorded at [recording information] in the official records of _____ County, California. You may request a copy of the assignment from the secured party at ____ [address].

THIS NOTICE AFFECTS YOUR LEASE OR RENTAL AGREEMENT RIGHTS AND OBLIGATIONS. YOU ARE THEREFORE ADVISED TO CONSULT AN ATTORNEY CONCERNING THOSE RIGHTS AND OBLIGATIONS IF YOU HAVE ANY QUESTIONS REGARDING YOUR RIGHTS AND OBLIGATIONS UNDER THIS NOTICE.

IN ACCORDANCE WITH SUBDIVISION (C) OF SECTION 2938 OF THE CIVIL CODE, YOU ARE HEREBY DIRECTED TO PAY TO THE SECURED PARTY, ____ [NAME OF SECURED PARTY] AT ____ [ADDRESS], ALL RENTS UNDER YOUR LEASE OR OTHER RENTAL AGREEMENT WITH THE LANDLORD OR PREDECESSOR IN INTEREST OF LANDLORD, FOR THE OCCUPANCY OF THE PROPERTY AT ____ [ADDRESS OF RENTAL PREMISES] WHICH ARE PAST DUE AND PAYABLE ON THE DATE YOU RECEIVE THIS DEMAND, AND ALL RENTS COMING DUE UNDER THE LEASE OR OTHER RENTAL AGREEMENT FOLLOWING THE DATE YOU RECEIVE THIS DEMAND UNLESS YOU HAVE ALREADY PAID THIS RENT TO THE LANDLORD IN GOOD FAITH AND IN A MANNER NOT INCONSISTENT WITH THE AGREEMENT BETWEEN YOU AND THE LANDLORD. IN THIS CASE, THIS DEMAND NOTICE SHALL REQUIRE YOU TO PAY TO THE SECURED PARTY, ____ [NAME OF THE SECURED PARTY], ALL RENTS THAT COME DUE

FOLLOWING THE DATE OF THE PAYMENT TO THE LANDLORD.

IF YOU PAY THE RENT TO THE UNDERSIGNED SECURED PARTY, ____ [NAME OF SECURED PARTY], IN ACCORDANCE WITH THIS NOTICE, YOU DO NOT HAVE TO PAY THE RENT TO THE LANDLORD. YOU WILL NOT BE SUBJECT TO DAMAGES OR OBLIGATED TO PAY RENT TO THE SECURED PARTY IF YOU HAVE PREVIOUSLY RECEIVED A DEMAND OF THIS TYPE FROM A DIFFERENT SECURED PARTY.

[For other than residential tenants] IF YOU PAY RENT TO THE LANDLORD THAT BY THE TERMS OF THIS DEMAND YOU ARE REQUIRED TO PAY TO THE SECURED PARTY, YOU MAY BE SUBJECT TO DAMAGES INCURRED BY THE SECURED PARTY BY REASON OF YOUR FAILURE TO COMPLY WITH THIS DEMAND, AND YOU MAY NOT BE DISCHARGED FROM YOUR OBLIGATION TO PAY THAT RENT TO THE SECURED PARTY. YOU WILL NOT BE SUBJECT TO THOSE DAMAGES OR OBLIGATED TO PAY THAT RENT TO THE SECURED PARTY IF YOU HAVE PREVIOUSLY RECEIVED A DEMAND OF THIS TYPE FROM A DIFFERENT ASSIGNEE.

Your obligation to pay rent under this demand shall continue until you receive either (1) a written notice from a court directing you to pay the rent in a manner provided therein, or (2) a written notice from the secured party named above canceling this demand.

The undersigned hereby certifies, under penalty of perjury, that the undersigned is an authorized officer or agent of the secured party and that the secured party is the assignee, or the current successor to the assignee, under an assignment of leases, rents, issues, or profits executed by the landlord, or a predecessor in interest, that is being enforced pursuant to and in accordance with Section 2938 of the Civil Code.

Executed at _____, California, this ____ day of _____, ____.

[Secured Party)

Name: _____

Title: _____

§3342. Liability for Dog Bites

■ (a) The owner of any dog is liable for the damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place, including the property of the owner of the dog, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness. A person is lawfully upon the private property of such owner within the meaning of this section when he is on such property in the performance of any duty imposed upon him by the laws of this state or by the laws or postal regulations of the United States, or when he is on such property upon the invitation, express or implied, of the owner.

(b) Nothing in this section shall authorize the bringing of an action pursuant to subdivision (a) against any governmental agency using a dog in military or police work if the bite or bites occurred while the dog was defending itself from an annoying, harassing, or provoking act, or assisting an employee of the agency in any of the following:

(1) In the apprehension or holding of a suspect where the employee has a reasonable suspicion of the suspect's involvement in criminal activity.

(2) In the investigation of a crime or possible crime.

(3) In the execution of a warrant.

(4) In the defense of a peace officer or another person.

(c) Subdivision (b) shall not apply in any case where the victim of the bite or bites was not a party to, nor a participant in, nor suspected to be a party to or a participant in, the act or acts that prompted the use of the dog in the military or police work.

(d) Subdivision (b) shall apply only where a governmental agency using a dog in military or police work has adopted a written policy on the necessary and appropriate use of a dog for the police or military work enumerated in subdivision (b). [1988]

§3342.5. Dog Owner Duties; Civil Actions Authorized

■ (a) The owner of any dog that has bitten a human being shall have the duty to take such reasonable steps as are necessary to remove any danger presented to other persons from bites by the animal.

(b) Whenever a dog has bitten a human being on at least two separate occasions, any person, the district attorney, or city attorney may bring an action against the owner of the animal to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bites have been changed so as to remove the danger to other persons presented by the animal. This action shall be brought in the county where a bite occurred. The court, after hearing, may make any order it deems appropriate to prevent the recurrence of such an incident, including, but not limited to, the removal of the animal from the area or its destruction if necessary.

(c) Whenever a dog trained to fight, attack, or kill has bitten a human being, causing substantial physical injury, any person, including the district attorney, or city attorney may bring an action against the owner of the animal to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bites have been changed so as to remove the danger to other persons presented by the animal. This action shall be brought in the county where a bite occurred. The court, after hearing, may make any order it deems appropriate to prevent the recurrence of such an incident, including, but not limited to, the removal of the animal from the area or its destruction if necessary.

(d) Nothing in this section shall authorize the bringing of an action pursuant to subdivision (b) based on a bite or bites inflicted upon a trespasser, or by a dog used in military or police work if the bite or bites occurred while the dog was actually performing in that capacity.

(e) Nothing in this section shall be construed to prevent legislation in the field of dog control by any city, county, or city and county.

(f) Nothing in this section shall be construed to affect the liability of the owner of a dog under Section 3342 or any other provision of the law.

(g) A proceeding under this section is a limited civil case. [1998]

§3479. Nuisance Defined

■ Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.¹⁷ [1996]

§3480. Public Nuisance

■ A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. [1874]

§3481. Private Nuisance

■ Every nuisance not included in the definition of the last section is private. [1872]

¹⁷ See Code of Civil Procedure §731 regarding actions for damages or to abate nuisances.

DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT

PART 5. COMMON INTEREST DEVELOPMENTS

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 1. PRELIMINARY PROVISIONS

§4000. Title - Davis-Stirling Common Interest Development Act

■ 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. [2012 - Based on former §1350]

§4005. Effect of Topic Headings

■ Division, part, title, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of this act. [2012 - Based on former §1350.5; also amended in 2013 by SB 745]

§4010. Applicability; Construction

■ 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. [2012 - New language]

§4020. Effect of Local Zoning Ordinances

■ 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. [2012 - Based on former §1372]

§4035. Document Delivery Methods

(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. [2012 - New language; also amended in 2013 by SB 745]

§4040. Individual Document Delivery

(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. [2012 - Based on former §§1350.7, 1365.1(c) & 1367.1(k)]

§4045. General Document Delivery

(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. [2012 - Based on former §1350.7]

§4050. Completion of Document Delivery

(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. [2012 - Based on former §1350.7(b) (2) & (3)]

§4055. Electronic Delivery

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. [2012 - Based on former §1350.7(b)(3)]

§4065. Approval by Majority of All Members

■ 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. [2012 - cf. Corp. Code §5033]

§4070. Approval by Majority of a Quorum of Members

■ 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. [2012 - cf. Corp. Code §5034; also amended in 2013 by SB 745]

ARTICLE 2. DEFINITIONS

§4075. Defined Terms Govern Construction of Act

■ The definitions in this article govern the construction of this act. [2012 - Based on former §1351]

§4076. “Annual Budget Report” – Defined

■ “Annual budget report” means the report described in Section 5300. [2012 - New language]

§4078. “Annual Policy Statement” – Defined

■ “Annual policy statement” means the statement described in Section 5310. [2012 - New language]

§4080. “Association” – Defined

■ “Association” means a nonprofit corporation or ■ unincorporated association created for the purpose of managing a common interest development. [2012 - Based on former §1351(a)]

§4085. “Board” – Defined

■ “Board” means the board of directors of the association. [2012 - New language, but cf. Corp. Code §5038]

§4090. “Board Meeting” – Defined

■ “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. [2012 - Based on former §1363.05(k)(2); also amended in 2013 by SB 745]

§4095. “Common Area” – Defined

■ (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. [2012 - Based on former §1351(b)]

§4100. “Common Interest Development” – Defined

■ “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. [2012 - Based on former §1351(c)]

§4105. “Community Apartment Project” – Defined

■ “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. [2012 - Based on former §1351(d)]

§4110. “Community Service Organization” – Defined

■ (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. [2012 - Based on former §1368(c)(3)]

§4120. “Condominium Plan” – Defined

■ “Condominium plan” means a plan described in Section 4285. [2012 - Based on former §1351(e)]

§4125. “Condominium Project” – Defined

■ (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. [2012 - Based on former §1351(f)]

§4130. “Declarant” – Defined

■ “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. [2012 - Based on former §1351(g)]

§4135. “Declaration” – Defined

■ “Declaration” means the document, however denominated, that contains the information required by Sections 4250 and 4255. [2012 - Based on former §1351(h)]

§4140. “Director” – Defined

■ “Director” means a natural person who serves on the board. [2012 - New language, but cf. Corp. Code §5047]

§4145. “Exclusive Use Common Area” – Defined

■ (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. [2012 - Based on former §1351(i)]

§4148. “General Notice” – Defined

■ “General notice” means the delivery of a document pursuant to Section 4045. [2012 – New Language]

§4150. “Governing Documents” – Defined

■ “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. [2012 - Based on former §1351(j)]

§4153. “Individual Notice” – Defined

■ “Individual notice” means the delivery of a document pursuant to Section 4040. [2012 - New Language]

§4155. “Item of Business” – Defined

■ “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. [2012 - Based on former §1363.05(k)(1)]

§4158. “Managing Agent” – Defined

■ (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. [2012 - Based on former §§1363.1(b) & 1363.2(f)]

§4160. “Member” – Defined

■ “Member” means an owner of a separate interest. [2012 - New language, but cf. Corp. Code §5056]

§4170. “Person” – Defined

■ “Person” means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity. [2012 - New language, but cf. Corp. Code §5065]

§4175. “Planned Development” – Defined

■ “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. [2012 - Based on former §1351(k)]

§4177. “Reserve Accounts” – Defined

■ “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). [2012 - Based on former §1365.5(f)]

§4178. “Reserve Account Requirements” – Defined

■ “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. [2012 - Based on former §1365.5(g)]

§4185. “Separate Interest” – Defined

■ (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. [2012 - Based on former §1351(l)]

§4190. “Stock Cooperative” – Defined

■ (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. [2012 - Based on former §1351(m)]

CHAPTER 2. APPLICATION OF ACT

§4200. Creating a Common Interest Development

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. [2012 - Based on former §1352]

§4201. Act Applies Only to Developments with Common Area

■ 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. [2012 - Based on former §1374]

§4202. Sections Not Applicable to Industrial or Commercial CIDs

■ This part does not apply to a commercial or industrial common interest development as defined in Section 6531. [2012 - Based on former §1373; also amended in 2013 by SB 752 (primarily deletions)]

CHAPTER 3. GOVERNING DOCUMENTS

ARTICLE 1. GENERAL PROVISIONS

§4205. Hierarchy of Governing Documents and the Law

■ (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. [2012 – New language; also amended in 2013 by SB 745]

§4210. Recorded Assessment Information Statement

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. [2012 - Based on former §1366.2(a)]

§4215. Liberal Construction of Governing Documents; Severability

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.¹⁸ [2012 - Based on former §1370]

§4220. Presumption Regarding Unit Boundaries

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. [2012 - Based on former §1371]

§4225. Mandatory Removal of Discriminatory Covenants

■ (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

¹⁸ ■ These statutes deal with the maximum term of leases.

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. [2012 - Based on former §§1352.5 & 1355(b)]

§4230. Amending Declaration to Delete Developer References

■ (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. [2012 - Based on former §1355.5]

§4235. Correction of Statutory Cross-References; Changes Arising from Recodification

(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. [2012 – New Language]

ARTICLE 2. DECLARATION

§4250. Contents of Declaration

(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. [2012 - Based on former §1353(a)(1)]

§4255. Disclosures; Airport Influence Area; San Francisco Bay Conservation and Development Commission

(a) If a common interest development is located within an airport influence area,¹⁹ 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-

¹⁹ Under Business and Professions Code §11010(b), an “airport influence area” is any area within two statute miles of an existing airport or one proposed on the general plan of any city or county.

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. [2012 - Based on former §1353(a)(1)-(4)]

§4260. Amending Declaration

■ 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. [2012 - Based on former §1355(b)]

§4265. Extending Term of Declaration

■ (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. [2012 - Based on former §1357]

§4270. Declaration Amendment Requirements

■ (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. [2012 - Based on former §1355]

§4275. Amending Declaration by Court Petition

■ (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

recording 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. [2012 - Based on former §1356]

ARTICLE 3. ARTICLES OF INCORPORATION

§4280. Association Articles of Incorporation

■ (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. [2012 - Based on former §1363.5; also amended in 2013 by SB 752]

ARTICLE 4. CONDOMINIUM PLAN

§4285. Condominium Plan Contents

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 recording of the condominium plan pursuant to this act that is signed and acknowledged as provided in Section 4290. [2012 - Based on former §1351(e)]

§4290. Condominium Plan – Consent to Recordation

(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. [2012 - Based on former §1351(e); also amended in 2013 by SB 745]

§4295. Amending or Revoking Condominium Plan

■ 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. [2012 - Based on former §1351(e)]

ARTICLE 5. OPERATING RULES

§4340. Operating Rule; Rule Change – Defined

■ 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. [2012 - Based on former §1357.100]

§4350. Operating Rule Enforceability Requirements

■ 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. [2012 - Based on former §1357.110; also amended in 2013 by SB 745]

§4355. Operating Rules Subject to Rule-Making Procedures

■ (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. [2012 - Based on former §1357.120]

§4360. Rule-Making Procedures

■ (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. [2012 - Based on former §1357.130]

§4365. Member Vote to Reverse Rule Change

■ (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. [2012 - Based on former §1357.140]

§4370. Effective Date of Operating Rule Article

■ (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. [2012 - Based on former §1357.150]

CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS

ARTICLE 1. OWNERSHIP RIGHTS AND INTERESTS

§4500. Ownership of Common Area

■ 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. [2012 - Based on former §1362]

§4505. Ingress, Egress and Support

■ 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. [2012 - Based on former §1361]

§4510. No Denial of Access Rights

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. [2012 - Based on former §1361.5]

ARTICLE 2. TRANSFER DISCLOSURE

§4525. Disclosure Documents Provided to Prospective Purchaser

■ (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 2985:²⁰

²⁰ ■ Under Health and Safety Code Section 25915.2, the association must also give notice about any asbestos known to exist in the development. You should

■ (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 6.²¹

■ (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

consult legal counsel for assistance in preparing this disclosure to make sure you comply with the requirements of the Health and Safety Code. NOTE HOWEVER: This disclosure is not dependent on whether the prospective purchaser requests the normal pre-closing disclosure information; it is always applicable, but only if the association has knowledge of the transfer.

In addition, sellers are obligated to make certain written disclosures to purchasers, as required by Civil Code Sections 1102 *et seq.* Sellers must also provide certain documentation and make disclosures about the earthquake worthiness in residential buildings of one to four units, built before January 1, 1960, but only if they were built using "conventional light frame construction," as defined in Chapter 25 of the 1991 edition of the Uniform Building Code. It does not apply to buildings without foundations or those which have concrete slab foundations. Under Health and Safety Code Section 19211, sellers must also certify, in writing, that all water heaters are strapped properly to minimize the risk of movement during earthquakes.

²¹ These are the normal required annual reports, disclosures and policy statements.

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.²² [2012 - Based on former §1368(a); also amended in 2013 by SB 745 (word deletions only)]

§4528. Form for Billing Disclosures

■ The form for billing disclosures required by Section 4530 shall be in at least 10-point²³ type and substantially the following form:

CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY SECTION 4525*²⁴

Property Address
Owner of Property
Owner's Mailing Address (If known or different from property address.)

²² Section 11018.6 pertains to developers who are selling homes under a Final Subdivision Public Report issued by the Bureau of Real Estate ("BRE").

²³ See example in footnote 30, page 208 in Civil Code §5300.

²⁴ Note: The table borders shown in this section do not appear in the statute, but we have added them to make the section easier to read and the form easier to complete.

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	Fee for Document ²⁵	Not Available (N/A), or Not Applicable (N/App), or Directly Provided by Seller and confirmed in writing by Seller as a current document (DP)
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)		

²⁵ Because Civil Code §4530 prohibits bundling of documents, a separate fee probably needs to be charged for each original document and each separate amendment to that document. Thus a separate line or row would need to be added for each separate document, and it would be best to identify them by recording date and document number for CC&Rs and effective date or filing date for other documents.

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.

[2014 - Based on former §1368.2]

§4530. Disclosure Documents Provided by Association

■ (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 all 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 from the seller based upon the association’s actual cost for the procurement, preparation, reproduction, and delivery of the documents requested pursuant to this section. An additional fee shall not be charged for the electronic delivery in lieu of a hard copy 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 prior to processing the request in paragraph (1) of subdivision (a).

(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, separately stated, and separately billed from, all other fees, ■ fines, or assessments billed as part of the transfer or sales transaction.

(5) Any documents not expressly required by Section 4525 to be provided to a prospective purchaser by the seller shall not be included in the document disclosure required by this section. Bundling of documents required to be provided pursuant to this section with other documents relating to the transaction is prohibited.

■ (6) A seller shall provide to the prospective purchaser, at no cost, current copies of any documents specified by Section 4525 that are in the possession of the seller.

(7) The fee for each document provided to the seller for the purpose of transmission to the prospective purchaser shall be individually itemized in the statement required to be provided by the seller to the prospective purchaser.

(8) It is the responsibility of the seller to compensate the association, person, or entity that provides the documents required to be provided by Section 4525 to the prospective purchaser.

(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. [2014 - based on former §1368(b)]

§4535. Title Transfer – Additional Owner Compliance Requirements

In addition to the requirements of this article, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133²⁶ and 1134.²⁷ [2012 – based on former§1368(f)]

§4540. Transfer Disclosure; Enforcement

■ 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

²⁶ Civil Code §1133 relates primarily to developers or anyone else who is selling separate interests in a subdivision where there is a blanket mortgage or encumbrance on more than the separate interest being sold.

²⁷ Civil Code §1134 relates to statutory disclosures required in conversions to a common interest development from a prior use or occupancy.

prevailing party shall be awarded reasonable ■ attorney's fees. [2012 - Based on former §1368(d)]

§4545. Validity of Title

Nothing in this article affects the validity of title to real property transferred in violation of this article. [2012 - Based on former §1368(e)]

ARTICLE 3. TRANSFER FEE

§4575. Limitation on Amount

■ 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. [2012 - Based on former §1368(c)(1)]

§4580. Exemption from Transfer Fee Limitation

■ 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:

(a). (1) It is not an organization or entity described by subdivision

(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. [2012 - Based on former §1368(c)(2)]

ARTICLE 4. RESTRICTIONS ON TRANSFER

§4600. Granting Exclusive Use of Common Area

■ (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. [2012 - Based on former §1363.07]

§4605. Enforcing Requirements for Granting Exclusive Use of Common Area

■ (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. [2012 - Based on former §1363.09(a), (b)]

§4610. Partition Actions in Condominium Projects

■ (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. [2012 - Based on former §1359]

§4615. Mechanics' Liens; Emergency Repairs

■ (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. [2012 - Based on former §1369]

ARTICLE 5. TRANSFER OF SEPARATE INTEREST

§4625. Separate Interest Transfer in Community Apartment Project

■ 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. [2012 - Based on former §1358(a)]

§4630. Separate Interest Transfer in Condominium Project

■ 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. [2012 - Based on former §1358(b)]

§4635. Separate Interest Transfer in Planned Development

■ 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. [2012 - Based on former §1358(c)]

§4640. Separate Interest Transfer in Stock Cooperative

■ 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. [2012 - Based on former §1358(d)]

§4645. Transfer of Exclusive Use Common Areas

■ 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. [2012 - Based on former §1358]

§4650. Severability of Property Interests

■ 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. [2012 - Based on former §1358]

CHAPTER 5. PROPERTY USE AND MAINTENANCE

ARTICLE 1. PROTECTED USES

§4700. Regulation of Separate Interests – Application of Article

■ 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. [2012 – New language]

§4705. Display of United States Flag

- (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. [2012 - Based on former §1353.5]

§4710. Display of Noncommercial Signs

■ (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. [2012 - Based on former §1353.6]

§4715. Pet Restrictions

■ (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. [2012 - Based on former §1360.5]

§4720. Fire Retardant Roof Covering Allowed

■ (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. [2012 - Based on former §1353.7]

§4725. Television Antennas; Satellite Dishes

■ (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. [2012 - Based on former §1376]

§4730. Unreasonable Restrictions on Marketing Separate Interests Prohibited

■ (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. [2012 - Based on former §1368.1]

§4735. Architectural Guidelines; Artificial Turf; Low Water-Using Plants

■ (a) Notwithstanding any other law, a provision of the governing documents or architectural or landscaping guidelines or policies 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 or as a replacement of existing turf.

(2) Prohibits, or includes conditions that have the effect of prohibiting, the use of artificial turf or any other synthetic surface that resembles grass.

(3) 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 subdivision (a).

(c) Notwithstanding any other provision of this part, except as provided in subdivision (d), an association, shall not impose a ■ fine or assessment against an owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during any period for which either of the following have occurred:

■ (1) The Governor has declared a state of emergency due to drought pursuant to subdivision (b) of Section 8558 of the Government Code.

(2) A local government has declared a local emergency due to drought pursuant to subdivision (c) of Section 8558 of the Government Code.

(d) Subdivision (c) shall not apply to an owner of a separate interest that, prior to the imposition of a fine or assessment described in subdivision (c), receives recycled water, as defined in Section 13050 of the Water Code, from a retail water supplier, as defined in Section 13575 of the Water Code, and fails to use that recycled water for landscaping irrigation.

(e) An owner of a separate interest upon which water-efficient landscaping measures have been installed in response to a declaration of a state of emergency described in subdivision (c) shall not be required to reverse or remove the water-efficient landscaping measures upon the conclusion of the state of emergency. [2015]

§4736. Pressure Washing

■ (a) A provision of the governing documents shall be void and unenforceable if it requires pressure washing the exterior of a separate interest and any exclusive use common area appurtenant to the separate interest during a state or local government declared drought ■ emergency.

(b) For purposes of this section, “pressure washing” means the use of a high-pressure sprayer or hose and potable water to remove loose paint, mold, grime, dust, mud, and dirt from surfaces and objects, including buildings, vehicles, and concrete surfaces. [2014]

§4740. Effect of Rental Prohibitions in Governing Documents

■ (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 1102.6.²⁸

(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. [2012 - Based on former §1360.2]

§4745. Electric Vehicle Charging Stations

■ (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.

²⁸ Civil Code §1102.6 is an extensive disclosure statement that sellers of residential property and real estate agents must complete. We have a copy of it only on our Digital Version of the Resource Book.

(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. [2012 - Based on former §1353.9]

§4750. Use of Separate Interest for Personal Agriculture

■ (a) For the purposes of this section, "personal agriculture" has the same definition as in Section 1940.10. 29

(b) Any provision of a governing document, as defined in Section 4150, shall be void and unenforceable if it effectively prohibits or unreasonably restricts the use of a homeowner's backyard for personal agriculture.

(c) (1) This section does not apply to provisions that impose reasonable restrictions on the use of a homeowner's yard for personal agriculture.

²⁹ Civil Code §1940.10(b) defines "personal agriculture" as "a use of land where an individual cultivates edible plant crops for personal use or donation."

(2) For purposes of this section, “reasonable restrictions” are restrictions that do not significantly increase the cost of engaging in personal agriculture or significantly decrease its efficiency.

(d) This section applies only to yards that are designated for the exclusive use of the homeowner.

(e) This section shall not prohibit a homeowners’ association from applying rules and regulations requiring that dead plant material and weeds, with the exception of straw, mulch, compost, and other organic materials intended to encourage vegetation and retention of moisture in the soil, are regularly cleared from the backyard. [2014]

§4750.10. Clotheslines and Drying Racks; Where Permitted

■ **(a) For purposes of this section, “clothesline” includes a cord, rope, or wire from which laundered items may be hung to dry or air. A balcony, railing, awning, or other part of a structure or building shall not qualify as a clothesline.**

(b) For purposes of this section, “drying rack” means an apparatus from which laundered items may be hung to dry or air. A balcony, railing, awning, or other part of a structure or building shall not qualify as a drying rack.

(c) Any provision of a governing document, as defined in Section 4150, shall be void and unenforceable if it effectively prohibits or unreasonably restricts an owner’s ability to use a clothesline or drying rack in the owner’s backyard.

(d) (1) This section does not apply to provisions that impose reasonable restrictions on an owner’s backyard for the use of a clothesline or drying rack.

(2) For purposes of this section, “reasonable restrictions” are restrictions that do not significantly increase the cost of using a clothesline or drying rack.

(3) This section applies only to backyards that are designated for the exclusive use of the owner.

(e) Nothing in this section shall prohibit an association from establishing and enforcing reasonable rules governing clotheslines or drying racks. [2015]

ARTICLE 2. MODIFICATION OF SEPARATE INTEREST

§4760. Owner’s Right to Improve or Modify Separate Interest

■ (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. [2012 - Based on former §1360]

§4765. Architectural Review Procedures

■ (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. [2012 - Based on former §1378]

ARTICLE 3. MAINTENANCE

§4775. General Maintenance Obligations [operative until January 1, 2017, when this section will be repealed and replaced]

■ (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. [2012 - Based on former §1364(a)&(c)]

(c) This section shall be repealed on January 1, 2017. [2014]

§4775. General Maintenance Obligations [Not operative until January 1, 2017]

■ (a) (1) Except as provided in paragraph (3), unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, and maintaining the common area.

(2) Unless otherwise provided in the declaration of a common interest development, the owner of each separate interest is responsible for repairing, replacing, and maintaining that separate interest.

(3) Unless otherwise provided in the declaration of a common interest development, the owner of each separate interest is responsible for maintaining the exclusive use common area appurtenant to that separate interest and the association is responsible for repairing and replacing the exclusive use common area.

(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.

(c) This section shall become operative on January 1, 2017.

[2014]

§4780. Default Maintenance Obligations in Specific Developments

(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. [2012 - Based on former §1364(b)]

§4785. Removal of Occupants to Perform Maintenance

(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. [2012 - Based on former §1364(d) & (e)]

§4790. Member Access to Maintain Telephone Wiring

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. [2012 - Based on former §1364(f)]

CHAPTER 6. ASSOCIATION GOVERNANCE

ARTICLE 1. ASSOCIATION EXISTENCE AND POWER

§4800. Common Interest Development Managed by Association

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. [2012 - Based on former §1363(a)]

§4805. Association May Exercise Powers of Nonprofit Mutual Benefit Corporation

■ (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. [2012 - Based on former §1363(c)]

§4820. Consolidating under Joint Neighborhood Association

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. [2012 - Based on former §1363(h)]

ARTICLE 2. BOARD MEETING

§4900. Open Meeting Act

■ This article shall be known and may be cited as the Common Interest Development Open Meeting Act. [2012 - Based on former §1363.05(a)]

§4910. Board Meetings Required for Actions; Exceptions

■ (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. [2012 - Based on former §1363.05(j)]

§4920. Board Meeting Notices and Agenda; Timing

■ (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. [2012 - Based on former §1363.05(f); also amended in 2013 by SB 745]

§4923. Emergency Board Meeting

■ 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. [2012 - Based on former §1363.05(g)]

§4925. Right to Attend and Speak at Board and Member Meetings

■ (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. [2012 - Based on former § 1363.05(b)&(h)]

§4930. Agenda Required for Board Discussion and Action; Exceptions

■ (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. [2012 - Based on former §1363.05(i)]

§4935. Board Executive Sessions

■ (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. [2012 - Based on former §1363.05(c) & (c)]

§4950. Board Minutes

■ (a) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any board meeting, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member upon request and upon reimbursement of the association's costs for making that distribution.

(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. [2012 - Based on former §1363.05(d) & (e)]

§4955. Civil Action to Enforcing Meeting Requirements

■ (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. [2012 - Based on former §1363.09(a) & (b)]

ARTICLE 3. MEMBER MEETING

§5000. Parliamentary Procedure and Right to Speak at Member Meetings

■ (a) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.

(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. [2012 - Based on former §1363(d) & 1363.05(h)]

ARTICLE 4. MEMBER ELECTION

§5100. Applicability of Article to Elections

(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.

■ (f) Directors shall not be required to be elected pursuant to this article if the governing documents provide that one member from each separate interest is a director. [2014 - Based on former §1363.03(b),(l),(m)&(n)]

§5105. Election Rules Required

■ (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. [2012 - Based on former §1363.03(a) & (j)]

§5110. Inspector(s) of Elections

■ (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. [2012 - Based on former §1363.03(c)]

§5115. Secret Ballot, Double Envelope Voting Procedures

■ (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. [2012 - Based on former §§1363.03(b), (e)&(k) & 1355(b)(1)]

§5120. Tabulation and Reporting of Votes

(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. [2012 - Based on former §1363.03(f) & (g)]

§5125. Custody of Ballots, Challenges and Recounts

■ 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. [2012 - Based on former §1363.03(h)&(i)]

§5130. Procedures for Use of Proxies in Elections

■ (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. [2012 - Based on former §1363.03(d)]

§5135. Association Funds for Campaign Purposes Prohibited

■ (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. [2012 - Based on former §1363.04]

§5145. Civil Actions to Enforce Election Rights

■ (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. [2012 - Based on former §1363.09]

ARTICLE 5. RECORD INSPECTION

§5200. Association Records and Enhanced Association Records Defined

■ 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. [2012 - Based on former §1365.2(a)]

§5205. Procedures Concerning Availability of Association Records

■ (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. [2012 - Based on former §1365.2(a),(b),(c)&(h)]

§5210. Time Periods Concerning Availability of Association Records

■ (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. [2012 - Based on former §1365.2(i),(j)&(k)]

§5215. Withholding and Redacting Association Records

■ (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. [2012 - Based on former §1365.2(d)]

§5220. Member’s Right to Opt out of Sharing Contact Information

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. [2012 - Based on former §1365.2(a)(1)(I)]

§5225. Member’s Reasons for Requesting Membership List and Association Options

■ 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. [2012 - Based on former §1365.2(a)(1)(I)]

§5230. Protecting Association Records from Improper Uses

■ (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. [2012 - Based on former §1365.2(e)]

§5235. Enforcement Options Concerning Inspection Rights

■ (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. [2012 - Based on former §1365.2(f)]

§5240. Applicability and Nonapplicability of Inspection Rights

■ (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. [2012 - Based on former §§1365.2(g), (l)&(m) & 1363(e); also amended in 2013 by AB 1317]

ARTICLE 6. RECORDKEEPING

§5260. Member Delivery of Requests to Association

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. [2012 - Based on former §§1350.7, 1365(d), 1365.2(a)(1)(I)(iii) & 1367.1(k)]

ARTICLE 7. ANNUAL REPORTS

§5300. Annual Budget, Reserves and Other Required Disclosures (Inoperative on July 1, 2016; Repealed as of January 1, 2017)

■ (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,³⁰ 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

³⁰ ■ 10-point means 10/72 of an inch high. This is **10-point bold Times New Roman Type**. This is 12-point normal and **12-point boldface Times New Roman type**. This is 14-point normal and **14-point boldface Times New Roman type**.

report or summary of the annual budget report that is delivered pursuant to this article.

(f) This section shall become inoperative on July 1, 2016, and, as of January 1, 2017, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2017, deletes or extends the dates on which it becomes inoperative and is repealed. [2015- Based on former §§1365 & 1365.2.5(b)(2)]

§5300. Annual Budget, Reserves and Other Required Disclosures (Added and Operative on July 1, 2016)

■ (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,³¹ the following statement:

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

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

“Certification by the Federal Housing Administration may provide benefits to members of an association, including an improvement in an owner’s ability to refinance a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest. This common interest development [is/is not (circle one)] a condominium project. The association of this common interest

³¹ ■ 10-point means 10/72 of an inch high. This is **10-point bold Times New Roman Type**. This is 12-point normal and **12-point boldface Times New Roman type**. This is 14-point normal and **14-point boldface Times New Roman type**.

development [is/is not (circle one)] certified by the Federal Housing Administration.”

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

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

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

(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.

(f) This section shall become operative on July 1, 2016. [2015- Based on former §§1365 & 1365.2.5(b)(2)]

§5305. Annual Review of Association Financial Statement by CPA

■ 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. [2012 - Based on former §1365(c)]

§5310. Distribution of Annual Policy Statement to Members

■ (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. [2012 - Based on former §§1350.7, 1363(f)&(g), 1363.05(d)&(f), 1363.850, 1365(a), 1365.1(c), 1367.1(b)&(k), 1369.590 & 1378(c)]

§5320. Right to Distribute either Full or Summary of Reports

(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 type³² 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

³² See example in footnote 30, page 208 in Civil Code §5300.

member, rather than a summary of the report. [2012 - Based on former §§1363.005, 1365(a), (b)&(f) & 1365.2.5]

ARTICLE 8. CONFLICT OF INTEREST

§5350. Conflict of Interest Issues for Board and Committee Members

■ (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. [2012 – New language]

ARTICLE 9. MANAGING AGENT

§5375. Managing Agent Disclosures and Timing

■ 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. [2012 - Based on former §1363.1(a)]

§5380. Managing Agent Duties in Handling Association Client Funds

■ (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. [2012 - Based on former §1363.2(a)-(e) & (g)]

§5385. A Full-Time Employee is not a Managing Agent

For the purposes of this article, ■ “managing agent” does not include a full-time employee of the association. [2012 - Based on former §§1363.1(b)(1) & 1363.2(f)]

ARTICLE 10. GOVERNMENT ASSISTANCE

§5400. On-line Education Course for Boards

■ 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. [2012 - Based on former §1363.001; also amended in 2013 by AB 1317]

§5405. Required Filing of Biennial Statement

■ (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. [2012 - Based on former §1363.6; also amended in 2013 by SB 820]

CHAPTER 7. FINANCES

ARTICLE 1. ACCOUNTING

§5500. Board's Duty to Review Financial Statements and Accounts

■ 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. [2012 - Based on former §1365.5(a)]

ARTICLE 2. USE OF RESERVE FUNDS

§5510. Signatures on and Limitation on Use of Reserve Funds

■ (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. [2012 - Based on former §1365.5(b & (c)(1)]

§5515. Transfer or Borrowing from Reserve Funds

■ (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. [2012 - Based on former §1365.5(c)(2)]

§5520. Using Reserve Funds for Litigation; Notice; Accounting

■ (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. [2012 - Based on former §1365.5(d)]

ARTICLE 3. RESERVE PLANNING

§5550. Reserve Study Inspection Frequency; Contents; Funding Plan

■ (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. [2012 - Based on former §1365.5(e)]

§5560. Reserve Funding Plan Adoption; Assessments Needed for Adequate Funding

■ (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. [2012 - Based on former §1365.5(e)]

§5565. Contents of Association’s Reserve Summary

■ 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. [2012 - Based on former §1365(a)(2)]

§5570. Required Assessment and Reserve Funding Disclosure Summary

■ (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 *funded*. 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 *funded*.

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[*sic*].³³ 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. *[2015]*

§5580. Community Service Association Disclosure Requirements

■ (a) Unless the governing documents impose more stringent standards, any community service organization whose funding from the

³³ *Presumably this should be section 5550 in subparagraph (b), not 55530. The typo was in the original enactment of the re-codified Davis-Stirling Act in 2012.*

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. [2012 - Based on former §1365.3]

CHAPTER 8. ASSESSMENTS AND ASSESSMENT COLLECTION

ARTICLE 1. ESTABLISHMENT AND IMPOSITION OF ASSESSMENTS

§5600. Duty to Levy Assessments; Excessive Assessments or Fees

■ (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. [2012 - Based on former §§1366(a) & 1366.1]

§5605. Prerequisites to Levying Assessment Increases and Maximum Limits on Board-Approved Increases

(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. [2012 - Based on former §§1365 & 1366(b)]

§5610. Authority to Levy Emergency Assessments

■ 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. [2012 - Based on former §1366(b)]

§5615. Notice to Members of Assessment Increases

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. [2012 - Based on former §1366(d)]

§5620. Assessments Exempt from Execution by Creditors

■ (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. [2012 - Based on former §1366(c)]

§5625. Assessments not to be Based on Taxable Value; Exceptions

■ (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. [2012 - Based on former §1366.4]

ARTICLE 2. ASSESSMENT PAYMENT AND DELINQUENCY

§5650. Assessments as Debts; Permissible Charges and Interest

(a) A regular or special assessment and any ■ late charges, reasonable fees and costs of collection, reasonable ■ attorney’s fees, if any, and ■ interest, if any, as determined in accordance with subdivision (b), shall be a debt of the owner of the separate interest at the time the assessment 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. [2012 - Based on former §§1366(e)&(f) & 1367.1(a)]

§5655. Assessment Payments by Owners and How Applied to Debt

(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. [2012 - Based on former §1367.1(b)]

§5658. Disputed Charges and Payment under Protest

■ (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). [2012 - Based on former §§1367.6]

§5660. Pre-lien Notice Requirements

■ 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,³⁴ 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.

³⁴ See example in footnote 30, page 208 in Civil Code §5300.

■ (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. [2012 - Based on former §1367.1(a)]

§5665. Assessment Payment Plans, Effect and Defaults

■ (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 11211.7³⁵ 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. [2012 - Based on former §1367.1(c)(3)]

§5670. Assessment Dispute Resolution and IDR

■ 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. [2012 - Based on former §1367.1(c)(1)]

§5673. Decision to Record Assessment Lien

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

³⁵ The Bus. & Prof. Code references pertain to time-share interests.

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. [2012 - Based on former §1367.1(c)(2)]

§5675. Contents and Effect of Assessment Lien

■ (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. [2012 - Based on former §1367.1(d)]

§5680. Priority of Assessment Lien

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. [2012 - Based on former §1367.1(f)]

§5685. Payment and Rescission of Assessment Lien; Liens Recorded in Error

■ (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. [2012 - Based on former §§1367.1(i) & 1367.5]

§5690. Failure to Comply with Assessment Lien Procedures; Effect

■ 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. [2012 - Based on former §1367.1(l)]

ARTICLE 3. ASSESSMENT COLLECTION

§5700. Assessments Collection Using Liens and Lawsuits

■ (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. [2012 - Based on former §1367.1(g) & (h)]

§5705. Prerequisites to Initiating Lien Foreclosures (Liens Recorded after January 1, 1996)

■ (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, and 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. [2012 - Based on former §§1367.1(c)(1)(B) & 1367.4(a)&(c)]

§5710. Requirements Applicable to Nonjudicial Foreclosure Sales

■ (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. [2012 - Based on former §1367.1(g)&(j)]

§5715. Right of Redemption after Nonjudicial Foreclosure Sale

■ (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. [2012 - Based on former §1367.4(a),(c)&(c)(4)]

§5720. Permissible Collection Actions for Assessment Debts Less than \$1,800

■ (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. [2012 - Based on former §1367.4(a), (b) & (d)]

§5725. Effect of Common Area Damage and Monetary Penalties on the Right to Lien

■ (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. [2012 - Based on former §1367.1(d) & (e)]

§5730. Mandatory Assessment Disclosure Notice

■ (a) The annual policy statement, prepared pursuant to Section 5310, shall include the following notice, in at least ■ 12-point type:³⁶

“NOTICE
ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the

³⁶ See example in footnote 30, page 208 in Civil Code §5300.

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 11211.7³⁷ of the Business and Professions Code may delete from the notice described in subdivision (a) the portion regarding meetings and payment plans. [2012 - Based on former §1365.1]

§5735. Assigning or Pledging the Right to Collect Assessments

■ (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. [2012 - Based on former §1367.1(g)]

§5740. Assessment Liens Created before or after January 1, 2003

(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. [2012 - Based on former §1367(g) & 1367.1(m)]

CHAPTER 9. INSURANCE AND LIABILITY

§5800. Limitations on Officer and Director Liability

■ (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.

³⁷ The Bus. & Prof. Code references pertain to time-share 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. [2012 - Based on former §1365.7]

§5805. Limitations on Owner Liability Arising from Common Area Ownership

■ (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. [2012 - Based on former §1365.9]

§5810. Notice to Owners if an Insurance Policy Lapses

■ 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. [2012 - Based on former §1365(f)(2)]

CHAPTER 10. DISPUTE RESOLUTION AND ENFORCEMENT

ARTICLE 1. DISCIPLINE AND COST REIMBURSEMENT

§5850. Monetary Penalties and Fine Schedules

■ (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. [2012 - Based on former §1363(f)]

§5855. Hearings and Notices Regarding Member Discipline

■ (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. [2012 - Based on former §1363(g)]

§5865. No Statutory Creation or Expansion of Right to Levy Fines

■ 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. [2012 - Based on former §1363(i)]

ARTICLE 2. INTERNAL DISPUTE RESOLUTION (IDR)

§5900. Applicability of IDR to Association-Member Disputes

■ (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. [2012 - Based on former §1363.810]

§5905. Fair, Reasonable and Expeditious IDR Procedure Required

■ (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). [2012 - Based on former §1363.820]

§5910. IDR Procedure to Satisfy Specific, Minimum Criteria

■ 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 written resolution, signed by both parties, of a dispute pursuant to the procedure, that is not in conflict with the law or the governing documents, binds the association and is judicially enforceable. A written agreement, signed by both parties, reached pursuant to the procedure, that is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.

(f) The procedure shall provide a means by which the member and the association may explain their positions. The member and association may be assisted by an attorney or another person in explaining their position at their own cost.

(g) A member of the association shall not be charged a fee to participate in the process. [2015]

§5915. Default IDR Procedure

■ (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 *shall* 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. The parties may be assisted by an attorney or another person at their own cost when conferring.

(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) A written agreement reached under this section binds the parties and is judicially enforceable if it is signed by both parties and 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 shall not be charged a fee to participate in the process. [2015]

§5920. Notice to Members Describing IDR Procedure Used

■ The annual policy statement prepared pursuant to Section 5310 shall include a description of the internal dispute resolution process provided pursuant to this article. [2012 - Based on former §1363.850]

ARTICLE 3. ALTERNATIVE DISPUTE RESOLUTION (ADR) PREREQUISITE TO CIVIL ACTION

§5925. ADR Definitions

■ 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. [2012 - Based on former §1369.510]

§5930. ADR Required Before Filing Certain Actions

■ (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. [2012 - Based on former §1369.520]

§5935. Initiating ADR by Request for Resolution

■ (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. [2012 - Based on former §1369.530]

§5940. Time for Completing ADR Process and Cost Splitting

■ (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. [2012 - Based on former §1369.540]

§5945. Effect of ADR on Statutes of Limitation

■ 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. [2012 - Based on former §§1369.550]

§5950. Filing ADR Certificate when Filing Court Action

■ (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. [2012 - Based on former §1369.560]

§5955. Referral to ADR and Stay of Court Action by Stipulation

■ (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. [2012 - Based on former §1369.570]

§5960. Refusal to Participate in ADR; Effect on Award of Fees and Costs

■ 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. [2012 - Based on former §1369.580]

§5965. Annual Disclosure of ADR Procedures to Members

■ (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. [2012 - Based on former §1369.590]

ARTICLE 4. CIVIL ACTION

§5975. CC&Rs Are Enforceable Equitable Servitudes

(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. [2012 - Based on former §1354]

§5980. Association's Standing in Litigation or Other Proceedings

■ 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. [2012 - Based on former §1368.3]

§5985. Comparative Fault to Apply in Specified Cases

■ (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. [2012 - Based on former §1368.4]

CHAPTER 11. CONSTRUCTION DEFECT LITIGATION

§6000. Procedures Regarding Developer Defect Litigation (operative until July 1, 2017)

■ (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 pre-filing dispute resolution process and in any subsequent litigation. When any document is deposited in the document depository, the party depositing the document shall provide written notice identifying the document to all other parties. The costs of maintaining the document depository shall be apportioned among the parties in the same manner as the costs of the dispute resolution facilitator.

(2) Provision of a more detailed ■ list of defects by the association to the respondent after the association completes a visual inspection of the project. This list of defects shall provide sufficient detail for the respondent to ensure that all potentially responsible subcontractors and design

professionals are provided with notice of the dispute resolution process. If not already completed prior to the case management meeting, the Notice of Commencement of Legal Proceedings shall be served by the respondent on all additional subcontractors and design professionals whose potential responsibility appears on the face of the more detailed list of defects within seven days of receipt of the more detailed list. The respondent shall serve a copy of the case management statement, including the name, address, and telephone number of the dispute resolution facilitator, to all the potentially responsible subcontractors and design professionals at the same time.

(3) Nonintrusive visual inspection of the project by the respondent, subcontractors, and design professionals.

(4) Invasive testing conducted by the association, if the association deems appropriate. All parties may observe and photograph any testing conducted by the association pursuant to this paragraph, but may not take samples or direct testing unless, by mutual agreement, costs of testing are shared by the parties.

(5) Provision by the association of a comprehensive demand which provides sufficient detail for the parties to engage in meaningful dispute resolution as contemplated under this section.

(6) Invasive testing conducted by the respondent, subcontractors, and design professionals, if they deem appropriate.

(7) Allowance for modification of the demand by the association if new issues arise during the testing conducted by the respondent, subcontractor, or design professionals.

(8) Facilitated dispute resolution of the claim, with all parties, including peripheral parties, as appropriate, and insurers, if any, present and having settlement authority. The dispute resolution facilitators shall endeavor to set specific times for the attendance of specific parties at dispute resolution sessions. If the dispute resolution facilitator does not set specific times for the attendance of parties at dispute resolution sessions, the dispute resolution facilitator shall permit those parties to participate in dispute resolution sessions by telephone.

(i) In addition to the foregoing elements of the case management statement described in subdivision (h), upon mutual agreement of the parties, the dispute resolution facilitator may include any or all of the following elements in a case management statement: the exchange of consultant or expert photographs; expert presentations; expert meetings; or any other mechanism deemed appropriate by the parties in the interest of resolving the dispute.

(j) The dispute resolution facilitator, with the guidance of the parties, shall at the time the case management statement is established, set deadlines for the occurrence of each event set forth in the case management statement, taking into account such factors as the size and complexity of the case, and the requirement of this section that this dispute resolution process not exceed 180 days absent agreement of the parties to an extension of time.

(k) (1) (A)³⁸ 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

³⁸ Note: There is no subparagraph (k)(2) in this section.

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.

(l) 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. [2012 - Based on former § 1375]

§6100. Notice to Members of Construction Defect Settlement

■ (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. [2012 - Based on former §1375.1]

§6150. Notice to Members before Filing Construction Defect Action

■ (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. [2012 - Based on former §1368.5]

§20. Electronic Transmission by the Corporation

■ “Electronic transmission by the corporation” means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to this code, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission under this code by a corporation to an individual shareholder or member of the corporation who is a natural person, and if an officer or director of the corporation, only if communicated to the recipient in that person’s capacity as a shareholder or member, is not authorized unless, in addition to satisfying the requirements of this section, the consent to the transmission has been preceded by or includes a clear written statement to the recipient as to (a) any right of the recipient to have the record provided or made available on paper or in nonelectronic form, (b) whether the consent applies only to that transmission, to specified categories of communications, or to all communications from the corporation, and (c) the procedures the recipient must use to withdraw consent. [2009]

§21. Electronic Transmission to the Corporation

■ “Electronic transmission to the corporation” means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the corporation has provided from time to time to shareholders or members and directors for sending communications to the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the corporation has placed in effect reasonable measures to verify that the sender is the shareholder or member (in person or by proxy) or director purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. [2004]

§5008.6. Failure to File Biennial Corporate Statement

■ (a) A corporation that (1) fails to file a statement pursuant to Section 6210, 8210, or 9660 for an applicable filing period, (2) has not filed a statement pursuant to Section 6210, 8210, or 9660 during the preceding 24

months, and (3) was certified for penalty pursuant to Section 6810, 8810, or 9690 for the same filing period, shall be subject to suspension pursuant to this section rather than to penalty under Section 6810 or 8810.

(b) When subdivision (a) is applicable, the Secretary of State shall provide a notice to the corporation informing the corporation that its corporate powers, rights, and privileges will be suspended 60 days from the date of the notice if the corporation does not file the statement required by Section 6210, 8210, or 9660.

(c) If the 60-day period expires without the delinquent corporation filing the required statement, the Secretary of State shall notify the Franchise Tax Board of the suspension, and provide a notice of the suspension to the corporation. Thereupon, except for the purpose of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name, the corporate powers, rights, and privileges of the corporation are suspended.

(d) A statement required by Section 6210, 8210, or 9660 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 Section 6210, 8210, or 9660, 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 because of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code. [2012]

§5009. Mailing Defined

■ Except as otherwise required, any reference in this part, Part 2, Part 3, Part 4 or Part 5 to mailing means first-, second-, or third-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail. [1978]

§5010. Computing Majority with other than Whole Number Votes; Effect of Suspension on Quorum

■ If the articles or bylaws provide for more or less than one vote for any membership on any matter, the references in Sections 5033 and 5034 to a majority or other proportion of memberships mean, as to those matters, a majority or other proportion of the votes entitled to be cast. Whenever in Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) members are disqualified from voting on any matter, their memberships shall not be counted for the determination of a quorum at any meeting to act upon, or the required vote to approve action upon, that matter under any other provision of Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) or the articles or bylaws. [1978]

§5012. Financial Statements of a Corporation

All references in this part, Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110) to

financial statements of a corporation mean statements prepared in conformity with generally accepted ■ accounting principles or some other basis of accounting which reasonably sets forth the assets and liabilities and the income and expenses of the corporation and discloses the accounting basis used in their preparation. [1983]

§5013. Independent Accountant Defined

As used in this part, Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110), “independent accountant” means a certified public accountant or public accountant who is independent of the corporation, as determined in accordance with generally accepted auditing standards, and who is engaged to audit financial statements of the corporation or perform other accounting services. [1983]

§5014. Vote of Each Class

■ Any requirement in Part 3 (commencing with Section 7110) for a vote of each class of members means such a vote regardless of limitations or restrictions upon the voting rights thereof, unless expressly limited to voting memberships. [1983]

§5015. Time of Giving Notice

■ Any reference in this part, Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), Part 4 (commencing with Section 9110), or Part 5 (commencing with Section 9910) to the time a notice is given or sent means, unless otherwise expressly provided, (a) the time a written notice by mail is deposited in the United States mails, postage prepaid; or (b) the time any other written notice, including facsimile, telegram, or other ■ electronic mail message is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient; or (c) the time any oral notice is communicated, in person or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, or wireless, to the recipient, including the recipient’s designated voice mailbox or address on such a system, or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient. [1995]

§5016. Written Notice; Notice or Report as Part of Newsletter

■ A notice or report mailed or delivered as part of a newsletter, magazine or other organ regularly sent to members shall constitute written notice or report pursuant to this division when addressed and mailed or delivered to the member, or in the case of members who are residents of the same household and who have the same address on the books of the corporation, when addressed and mailed or delivered to one of such members, at the address appearing on the books of the corporation. [1979]

§5030. Acknowledged

“Acknowledged” means that an instrument is either:

(a) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code; or

(b) Accompanied by a declaration in writing signed by the persons executing the same that they are such persons and that the instrument is the act and deed of the person or persons executing the same. Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated. [1978]

§5032. Approved by the Board

■ “Approved by (or approval of) the board” means approved or ratified by the vote of the board or by the vote of a committee authorized to exercise the powers of the board, except as to matters not within the competence of the committee under Section 5212, Section 7212, or Section 9212. [1979]

§5033. Approval by a Majority of All Members

■ “Approval by (or approval of) a majority of all members” means approval by an affirmative vote (or written ballot in conformity with Section 5513, Section 7513, or Section 9413) of a majority of the votes entitled to be cast. Such approval shall include the affirmative vote of a majority of the outstanding memberships of each class, unit, or grouping of members entitled, by any provision of the articles or bylaws or of Part 2, Part 3, Part 4 or Part 5 to vote as a class, unit, or grouping of members on the subject matter being voted upon and shall also include the affirmative vote of such greater proportion, including ■ all, of the votes of the memberships of any class, unit, or grouping of members if such greater proportion is required by the bylaws (subdivision (e) of Section 5151, subdivision (e) of Section 7151, or subdivision (e) of Section 9151) or Part 2, Part 3, Part 4 or Part 5. [1979]

§5034. Approval by the Members

■ “Approval by (or approval of) the members” means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or written ballot in conformity with Section 5513, 7513, or 9413 or by the affirmative vote or written ballot of such greater proportion, including all of the votes of the memberships of any class, unit, or grouping of members as may be provided in the bylaws (subdivision (e) of Section 5151, subdivision (e) of Section 7151, or subdivision (e) of Section 9151) or in Part 2, Part 3, Part 4 or Part 5 for all or any specified member action. [1979]

§5035. Articles

“Articles” includes the articles of incorporation, amendments thereto, amended articles, restated articles, and certificates of incorporation. [1978]

§5036. Authorized Number

■ (a) Except as provided in subdivision (b) or (c), “authorized number” means 5 percent of the voting power.

(b) Where (disregarding any provision for cumulative voting which would otherwise apply) the total number of votes entitled to be cast for a director is 1,000 or more, but less than 5,000 the authorized number shall be 21/2 percent of the voting power, but not less than 50.

(c) Where (disregarding any provision for cumulative voting which would otherwise apply) the total number of votes entitled to be cast for a director is 5,000 or more, the authorized number shall be one-twentieth of 1 percent of the voting power, but not less than 125.

(d) Any right under Part 2, Part 3, or Part 4 which may be exercised by the authorized number, or some multiple thereof, may be exercised by a member with written authorizations obtained within any 11-month period from members who, in the aggregate, hold the equivalent voting power. Any such authorization shall specify the right to be exercised thereunder and the duration thereof (which shall not exceed three years).

(e) Where any provision of Part 2, Part 3, or Part 4 specifies twice the authorized number, that means two times the number calculated according to subdivision (a), (b) or (c). [1979]

§5037. Bylaws

“Bylaws” includes amendments thereto and amended bylaws. [1978]

§5038. Board

“Board” means the board of directors of the corporation. [1978]

§5040. Chapter

“Chapter” refers to a chapter of Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110) unless otherwise expressly stated. [1983]

§5041. Class

“Class” refers to those memberships which: (a) are identified in the articles or bylaws as being a different type of membership; or (b) have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly. [1979]

§5045. Control

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation. [1978]

§5046. Corporation

(a) “Corporation” as used in this part and Part 5 (commencing with Section 9910), refers to corporations defined in subdivisions (b), (c), and (d).

(b) “Corporation,” as used in Part 2 (commencing with Section 5110), means a nonprofit public benefit corporation as defined in Section 5060.

(c) “Corporation,” as used in Part 3 (commencing with Section 7110) means a nonprofit mutual benefit corporation as defined in Section 5059.

(d) “Corporation,” as used in Part 4 (commencing with Section 9110), including those provisions of Part 2 (commencing with Section 5110) made applicable pursuant to Chapter 6 (commencing with Section 9610) of Part 4, means a nonprofit religious corporation as defined in Section 5061. [1983]

§5047. Directors

■ Except as otherwise expressly provided, “directors” means natural persons, designated in the articles or bylaws or elected by the incorporators, and their successors and natural persons designated, elected, or appointed by any other name or title to act as members of the governing body of the corporation. If the articles or bylaws designate that a natural person is a director or a member of the governing body of the corporation by reason of occupying a specified position within the corporation or outside the corporation, without limiting that person’s right to vote as a member of the governing body, that person shall be a director for all purposes and shall have the same rights and obligations, including voting rights, as the other directors. A person who does not have authority to vote as a member of the governing body of the corporation, is not a director as that term is used in this division regardless of title. [2015]

§5047.5. Liability of Directors Who Are Volunteers

■ (a) The Legislature finds and declares that the services of directors and officers of ■ nonprofit corporations who serve without compensation are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of volunteers to offer their services has been deterred by a perception that their personal assets are at risk for these activities. The unavailability and unaffordability of appropriate liability insurance makes it difficult for these corporations to protect the personal assets of their volunteer decisionmakers with adequate insurance. It is the public policy of this state to provide incentive and protection to the individuals who perform these important functions.

(b) Except as provided in this section, no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a ■ nonprofit corporation subject to Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or

Part 4 (commencing with Section 9110) of this division on account of any negligent act or omission occurring (1) within the scope of that person's duties as a director acting as a board member, or within the scope of that person's duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to be in the best interest of the corporation; and (4) is in the exercise of his or her policymaking judgment.

(c) This section shall not limit the liability of a director or officer for any of the following:

(1) Self-dealing transactions, as described in Sections 5233 and 9243.

(2) Conflicts of interest, as described in Section 7233.

(3) Actions described in Sections 5237, 7236, and 9245.

(4) In the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of that trust.

(5) Any action or proceeding brought by the Attorney General.

(6) Intentional, wanton, or reckless acts, gross negligence, or an action based on fraud, oppression, or malice.

(7) Any action brought under Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(d) This section only applies to ■ nonprofit corporations organized to provide religious, charitable, literary, educational, scientific, social, or other forms of public service that are exempt from federal income ■ taxation under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code.

(e) This section applies only if the ■ nonprofit corporation maintains a liability ■ insurance policy with an amount of coverage of at least the following amounts:

(1) If the corporation's annual budget is less than fifty thousand dollars (\$50,000), the minimum required amount is five hundred thousand dollars (\$500,000).

(2) If the corporation's annual budget equals or exceeds fifty thousand dollars (\$50,000), the minimum required amount is one million dollars (\$1,000,000).

This section applies only if the claim against the director or officer can also be made directly against the corporation and a liability insurance policy is applicable to the claim. If that policy is found to cover the damages caused by the director or officer, no cause of action as provided in this section shall be maintained against the director or officer.

(f) For the purposes of this section, the payment of actual expenses incurred in attending meetings or otherwise in the execution of the duties of a director or officer shall not constitute compensation.

(g) Nothing in this section shall be construed to limit the liability of a nonprofit corporation for any negligent act or omission of a director, officer, employee, agent, or servant occurring within the scope of his or her duties.

(h) This section does not apply to any corporation that unlawfully restricts membership, services, or benefits conferred on the basis of political

affiliation, age, or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

(i) This section does not apply to any volunteer director or officer who receives compensation from the corporation in any other capacity, including, but not limited to, as an employee. [2009]

§5049. Distribution

“Distribution” means the distribution of any gains, profits or dividends to any member as such. As used in this section, “member” means any person who is a member as defined in Section 5056 and any person who is referred to as a member as authorized by subdivision (a) of Sections 5332, 7333 and 9332. [1979]

§5050. Domestic Corporation

“Domestic corporation” means a corporation formed under the laws of this state. [1978]

§5051. Filed

“Filed,” unless otherwise expressly provided, means filed in the office of the Secretary of State. [1978]

§5056. Member

■ (a) “Member” means any person who, pursuant to a specific provision of a corporation’s articles or bylaws, has the right to vote for the election of a director or directors or on a disposition of all or substantially all of the assets of a corporation or on a merger or on a dissolution unless the provision granting such right to vote is only effective as a result of paragraph (2) of subdivision (a) of Section 7132. “Member” also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of a corporation’s articles or bylaws, has the right to vote on changes to the articles or bylaws.

(b) The articles or bylaws may confer some or all of the rights of a member, set forth in this part and in Parts 2 through 5 of this division, upon any person or persons who do not have any of the ■ voting rights referred to in subdivision (a).

(c) Where a member of a corporation is not a natural person, such member may authorize ■ in writing one or more natural persons to vote on its behalf on any or all matters which may require a vote of the members.

(d) A person is not a member by virtue of any of the following:

(1) Any rights such person has as a delegate.

(2) Any rights such person has to designate or select a director or directors.

(3) Any rights such person has as a director. [1982]

§5057. Membership

A “membership” refers to the rights a member has pursuant to a corporation’s articles, bylaws and this division. [1979]

§5058. Membership Certificate

“Membership certificate,” as used in Part 3 (commencing with Section 7110), means a document evidencing a transferable property interest in a corporation. [1983]

§5059. Nonprofit Mutual Benefit Corporation

■ “Nonprofit mutual benefit corporation” or “mutual benefit corporation” means a corporation which is organized under Part 3 (commencing with Section 7110), or subject to Part 3 under the provisions of subdivision (a) of Section 5003. [1979]

§5060. Nonprofit Public Benefit Corporation

“Nonprofit public benefit corporation” or “public benefit corporation” means a corporation which is organized under Part 2 (commencing with Section 5110) or subject to Part 2 under the provisions of subdivision (a) of Section 5003. [1979]

§5061. Nonprofit Religious Corporation

“Nonprofit religious corporation” or “religious corporation” means a corporation which is organized under Part 4 (commencing with Section 9110) or subject to Part 4 pursuant to subdivision (a) of Section 5003. [1979]

§5062. Officers’ Certificate

“Officers’ certificate” means a certificate signed and verified by the chair of the board, the president or any vice president and by the secretary, the chief financial officer, the treasurer or any assistant secretary or assistant treasurer. [2009]

§5063.5. Other Business Entity

“Other business entity” means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association, or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, “general partnership” means a “partnership” as defined in subdivision (9) of Section 16101; “business trust” means a business organization formed as a trust; “real estate investment trust” means a “real estate investment trust” as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and “unincorporated association” has the meaning set forth in Section 18035. [2009]

§5065. Person

■ “Person,” in addition to those entities specified in Section 18 and unless otherwise expressly provided, includes any association, business corporation, company, corporation, corporation sole, domestic corporation, estate, foreign corporation, foreign business corporation, individual, joint stock company, joint venture, mutual benefit corporation, public benefit corporation,

religious corporation, partnership, government or political subdivision, agency or instrumentality of a government [1978]

§5068. Proper County

“Proper county” means the county where the corporation’s principal office in this state is located or, if the corporation has no such office, the County of Sacramento. [1979]

§5069. Proxy; Signed

■ “Proxy” means a written authorization signed by a member or the member’s attorney in fact giving another person or persons power to vote on behalf of such member. “Signed” for the purpose of this section means the placing of the member’s name on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the member or such member’s attorney in fact. [1978]

§5070. Proxyholder

■ “Proxyholder” means the person or persons to whom a proxy is given. [1978]

§5071. Shareholder

“Shareholder,” as used in Part 3 (commencing with Section 7110), means one who is a holder of record of shares. [1983]

§5072. Shares

“Shares,” as used in Part 3 (commencing with Section 7110), means the units into which the proprietary interests in a business corporation or foreign business corporation are divided in the articles. [1983]

§5075. Vacancy

■ “Vacancy” when used with respect to the board means any authorized position of director which is not then filled, whether the vacancy is caused by death, resignation, removal, change in the number of directors authorized in the articles or bylaws (by the board or the members) or otherwise. [1979]

§5076. Verified

■ “Verified” means that the statements contained in a certificate or other document are declared to be true of the own knowledge of the persons executing the same in either:

(a) An affidavit signed by them under oath before an officer authorized by the laws of this state or of the place where it is executed to administer oaths; or

(b) A declaration in writing executed by them under penalty of perjury and stating the date and place (whether within or without this state) of execution. Any affidavit sworn to without this state before a notary public or a

judge or clerk of a court of record having an official seal need not be further authenticated. [1978]

§5077. Vote

■ “Vote” includes, but is not limited to, authorization by written consent pursuant to subdivision (b) of Section 5211, subdivision (b) of Section 7211, or subdivision (b) of Section 9211 and authorization by written ballot pursuant to Section 5513, Section 7513, or Section 9413. [1978]

§5078. Voting Power

■ “Voting power” means the power to vote for the election of directors at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event which has not yet occurred. In any case where different ■ classes of memberships are entitled to vote as separate classes for different members of the board, the determination of percentage of voting power shall be made on the basis of the percentage of the total number of authorized directors which the memberships in question (whether of one or more classes) have the power to elect in an election at which all memberships then entitled to vote for the election of any directors are voted. [1979]

§5079. Written or In Writing

■ “Written” or ■ “in writing” includes facsimile, ■ telegraphic, and other electronic communication as authorized by this code, including an electronic transmission by a corporation that satisfies the requirements of Section 20. [2004]

§5080. Written Ballot

■ “Written ballot” does not include a ballot distributed at a special or regular meeting of members. [1978]

§7110. Nonprofit Mutual Benefit Corporation Law

This part shall be known and may be cited as the Nonprofit Mutual Benefit Corporation Law. [1978]

§7111. Formation; Purposes

■ Subject to any other provision of law of this state applying to the particular class of corporation or line of activity, a corporation may be formed under this part for any lawful purpose; provided that a corporation all of the assets of which are irrevocably dedicated to charitable, religious, or public purposes and which as a matter of law or according to its articles or bylaws must, upon dissolution, distribute its assets to a person or persons carrying on a charitable, religious, or public purpose or purposes may not be formed under this part. [1981]

§7120. Execution and Filing of Articles of Incorporation

■ (a) One or more persons may form a corporation under this part by executing and filing articles of incorporation.

(b) If ■ initial directors are named in the articles, each director named in the articles shall sign and acknowledge the articles; if initial directors are not named in the articles, the articles shall be ■ signed by one or more persons who thereupon are the ■ incorporators of the corporation.

(c) The corporate existence begins upon the filing of the articles and continues ■ perpetually, unless otherwise expressly provided by law or in the articles. [1983]

§7121. Incorporating Unincorporated Association; Creditors' Rights

■ (a) In the case of an existing unincorporated association, the association may change its status to that of a corporation upon a proper authorization for such by the association in accordance with its rules and procedures.

(b) In addition to the matters required to be set forth in the articles pursuant to Section 7130, the articles in the case of an incorporation authorized by subdivision (a) shall set forth that an existing unincorporated association, stating its name, is being incorporated by the filing of the articles.

(c) The articles filed pursuant to this section shall be accompanied by a verified statement of any two officers or governing board members of the association stating that the incorporation of the association by means of the articles to which the verified statement is attached has been approved by the association in accordance with its rules and procedures.

(d) Upon the change of status of an unincorporated association to a corporation pursuant to subdivision (a), the property of the association becomes the property of the corporation and the members of the association who had any ■ voting rights of the type referred to in Section 5056 become members of the corporation.

(e) The filing for record in the office of the county recorder of any county in this state in which any of the real property of the association is located, of a copy of the articles of incorporation filed pursuant to this section, certified by the Secretary of State, shall evidence record ownership in the corporation of all interests of the association in and to the real property located in that county.

(f) All rights of creditors and all liens upon the property of the association shall be preserved unimpaired. Any action or proceeding pending by or against the unincorporated association may be prosecuted to judgment, which shall bind the corporation, or the corporation may be proceeded against or substituted in its place.

(g) If a corporation is organized by a person who is or was an officer, director or member of an unincorporated association and such corporation is not organized pursuant to subdivision (a), the unincorporated association may continue to use its name and the corporation may not use a name which is the same as or similar to the name of the unincorporated association. [1981]

§7130. Contents of Articles

■ The articles of incorporation of a corporation formed under this part shall set forth the following:

(a) The name of the corporation.

■ (b) (1) Except as provided in paragraph (2), the following statement: “This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The ■ purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.”

(2) In the case of a corporation formed under this part that is subject to the California Credit Union Law (Chapter 1 (commencing with Section 14000) of Division 5 of the Financial Code), the articles shall set forth a statement of purpose that is prescribed in the applicable provisions of the California Credit Union Law.

(3) The articles may include a further definition of the corporation’s purposes.

(c) The name and street address in this state of the corporation’s initial ■ agent for service of process in accordance with subdivision (b) of Section 8210.

(d) The initial street address of the corporation.

(e) The initial mailing address of the corporation, if different from the initial street address. [2012]

§7131. Articles; Statement Limiting Purposes or Powers of Corporation

■ The articles of incorporation may set forth a further statement limiting the purposes or powers of the corporation. [1978]

§7132. Articles; Authorized Provisions

■ (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) A provision limiting the duration of the ■ corporation’s existence to a specified date.

(2) A provision conferring upon the holders of any evidences of indebtedness, issued or to be issued by a corporation the right to vote in the election of directors and on any other matters on which members may vote under this part even if the corporation does not have members.

(3) A provision conferring upon members the right to determine the ■ consideration for which memberships shall be issued.

(4) In the case of a subordinate corporation instituted or created under the authority of a head organization, a provision setting forth either or both of the following:

(A) That the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it.

(B) That in the event of its dissolution pursuant to an article provision allowed by subparagraph (A) or in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 15 (commencing with Section 8510), 16 (commencing with Section 8610), and 17 (commencing with Section 8710) shall be distributed to the head organization.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions:

(1) The names and addresses of the persons appointed to act as ■ initial directors.

(2) Provisions concerning the transfer of memberships, in accordance with Section 7320.

(3) The ■ classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(4) A provision which would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.

(5) A provision that requires an amendment to the articles, as provided in subdivision (a) of Section 7812, or to the bylaws, and any amendment or repeal of that amendment, to be approved in writing by a specified person or persons other than the board or the members. However, this approval requirement, unless the articles specify otherwise, shall not apply if any of the following circumstances exist:

(A) The specified person or persons have died or ceased to exist.

(B) If the right of the specified person or persons to approve is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(C) If the corporation has a specific proposal for amendment or repeal, and the corporation has provided written notice of that proposal, including a copy of the proposal, to the specified person or persons at the most recent address for each of them, based on the corporation's records, and the corporation has not received written approval or nonapproval within the period specified in the notice, which shall not be less than 10 nor more than 30 days commencing at least 20 days after the notice has been provided.

(6) Any other provision, not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this part to be stated in the bylaws. [2009]

§7133. Articles as Prima Facie Evidence of Corporate Existence

■ For all purposes other than an action in the nature of quo warranto, a copy of the articles of a corporation duly certified by the Secretary of State is

conclusive evidence of the formation of the corporation and prima facie evidence of its corporate existence. [1978]

§7140. Powers of Corporation

■ Subject to any ■ limitations contained in the articles or bylaws and to compliance with other provisions of this division and any other applicable laws, a corporation, in carrying out its activities, shall have all of the powers of a natural person, including, without limitation, the power to:

(a) Adopt, use, and at will alter a corporate seal, but failure to affix a seal does not affect the validity of any instrument.

■ (b) Adopt, amend, and repeal bylaws.

(c) Qualify to conduct its activities in any other state, territory, dependency, or foreign country.

(d) Issue, purchase, redeem, receive, take or otherwise acquire, own, sell, lend, exchange, transfer or otherwise dispose of, pledge, use, and otherwise deal in and with its own memberships, bonds, debentures, notes, and debt securities.

(e) Pay pensions, and establish and carry out pension, deferred compensation, saving, thrift and other retirement, incentive, and benefit plans, trusts, and provisions for any or all of its directors, officers, employees, and persons providing services to it or any of its subsidiary or related or associated corporations, and to indemnify and purchase and ■ maintain insurance on behalf of any fiduciary of such plans, trusts, or provisions.

(f) Issue ■ certificates evidencing membership in accordance with the provisions of Section 7313 and issue identity cards.

(g) Levy dues, assessments, and admission and ■ transfer fees.

(h) Make donations for the public welfare or for community funds, hospital, charitable, educational, scientific, civic, religious, or similar purposes.

(i) Assume obligations, enter into contracts, including contracts of guarantee or suretyship, incur liabilities, borrow or lend money or otherwise use its credit, and secure any of its obligations, contracts or liabilities by mortgage, pledge or other ■ encumbrance of all or any part of its property and income.

(j) Participate with others in any partnership, joint venture, or other association, transaction, or arrangement of any kind whether or not such participation involves sharing or delegation of control with or to others.

(k) Act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, exchange, and expend funds and property subject to such trust.

(l) Carry on a business at a profit and apply any profit that results from the business activity to any activity in which it may lawfully engage.

(m) (1) In anticipation of or during an emergency, take either or both of the following actions necessary to conduct the corporation's ordinary business operations and affairs, unless emergency bylaws provide otherwise pursuant to subdivision (g) of Section 7151:

(A) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from the emergency.

(B) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency, take either or both of the following actions necessary to conduct the corporation's ordinary business operations and affairs, unless emergency bylaws provide otherwise pursuant to subdivision (g) of Section 7151:

(A) Give notice to a director or directors in any practicable manner under the circumstances, including, but not limited to, by publication and radio, when notice of a meeting of the board cannot be given to that director or directors in the manner prescribed by the bylaws or Section 7211.

(B) Deem that one or more officers of the corporation present at a board meeting is a director, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum for that meeting.

(3) In anticipation of or during an emergency, the board may not take any action that requires the vote of the members or is not in the corporation's ordinary course of business, unless the required vote of the members was obtained prior to the emergency.

(4) Any actions taken in good faith in anticipation of or during an emergency under this subdivision bind the corporation and may not be used to impose liability on a corporate director, officer, employee, or agent.

(5) For purposes of this subdivision, "emergency" means any of the following events or circumstances as a result of which, and only so long as, a quorum of the corporation's board of directors cannot be readily convened for action:

(A) A natural catastrophe, including, but not limited to, a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or, regardless of cause, any fire, flood, or explosion.

(B) An attack on this state or nation by an enemy of the United States of America, or upon receipt by this state of a warning from the federal government indicating that an enemy attack is probable or imminent.

(C) An act of terrorism or other manmade disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the infrastructure, environment, economy, government functions, or population, including, but not limited to, mass evacuations.

(D) A state of emergency proclaimed by a governor or by the President. [2013]

§7141. Limitations on Corporate Powers; Binding Effect of Contracts

■ Subject to Section 7142.³⁹

³⁹ Section 7142 pertains to assets held in a charitable trust.

(a) No limitation upon the activities, purposes, or powers of the corporation or upon the powers of the members, officers, or directors, or the manner of exercise of such powers, contained in or implied by the articles or by Chapters 15 (commencing with Section 8510), 16 (commencing with Section 8610), and 17 (commencing with Section 8710) shall be asserted as between the corporation or member, officer or director and any third person, except in a proceeding: (1) by a member or the state to enjoin the doing or continuation of unauthorized activities by the corporation or its officers, or both, in cases where third parties have not acquired rights thereby, (2) to dissolve the corporation, or (3) by the corporation or by a member suing in a representative suit against the officers or directors of the corporation for violation of their authority.

■ (b) Any contract or conveyance made in the name of a corporation which is authorized or ratified by the board, or is done within the scope of authority, actual or apparent, conferred by the board or within the agency power of the officer executing it, except as the board's authority is limited by law other than this part, ■ binds the corporation, and the corporation acquires rights thereunder whether the contract is executed or wholly or in part executory. [1979]

§7150. Bylaws; Manner of Adoption, Amendment, or Repeal

■ (a) Except as provided in subdivision (c) and Sections 7151, 7220, 7224, 7512, 7613, and 7615, bylaws may be adopted, amended or repealed by the board unless the action would:

■ (1) Materially and adversely affect the rights of members as to voting, dissolution, redemption, or transfer;

(2) Increase or decrease the number of members authorized in total or for any class;

(3) Effect an exchange, reclassification or cancellation of all or part of the memberships; or

(4) Authorize a new class of membership.

■ (b) Bylaws may be adopted, amended or repealed by approval of the members (Section 5034); provided, however, that such adoption, amendment or repeal also requires approval by the members of a class if such action would:

(1) Materially and adversely affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption, or transfer in a manner different than such action affects another class;

(2) Materially and adversely affect such class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(3) Increase or decrease the number of memberships authorized for such class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification or cancellation of all or part of the memberships of such class; or

(6) Authorize a new class of memberships.

■ (c) The articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws, subject to subdivision (e) of Section 7151.

■ (d) Bylaws may also provide that the repeal or amendment of those bylaws, or the repeal or amendment of specified portions of those bylaws, may occur only with the approval in writing of a specified person or persons other than the board or members. However, this approval requirement, unless the bylaws specify otherwise, shall not apply if any of the following circumstances exist:

(1) The specified person or persons have died or ceased to exist.

(2) If the right of the specified person or persons to approve is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(3) If the corporation has a specific proposal for amendment or repeal, and the corporation has provided written notice of that proposal, including a copy of the proposal, to the specified person or persons at the most recent address for each of them, based on the corporation's records, and the corporation has not received written approval or nonapproval within the period specified in the notice, which shall not be less than 10 nor more than 30 days commencing at least 20 days after the notice has been provided. [2009]

§7151. Bylaws; Contents; Limitations

■ (a) The bylaws shall set forth (unless such provision is contained in the articles, in which case it may only be changed by an amendment of the articles) the ■ number of directors of the corporation, or the method of determining the number of directors of the corporation, or that the number of directors shall be not less than a stated minimum nor more than a stated maximum with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Section 5034), in the manner provided in the bylaws, subject to subdivision (e). The number or minimum number of directors may be one or more.

(b) Once members have been admitted, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the members (Section 5034).

(c) The bylaws may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, including but not limited to:

(1) Any provision referred to in subdivision (c) of Section 7132.

(2) The time, place, and manner of calling, conducting, and giving notice of members', directors', and ■ committee meetings, or of conducting ■ mail ballots.

(3) The qualifications, duties, and compensation of directors; the time of their election; and the requirements of a quorum for directors' and ■ committee meetings.

■ (4) The appointment of committees, composed of directors or nondirectors, or both, by the board or any officer and the ■ authority of any such committees.

(5) The appointment, duties, compensation, and tenure of officers.

(6) The mode of determination of members of record.

(7) The making of reports and financial statements to members.

(8) Setting, imposing, and collecting dues, ■ assessments, and admission and ■ transfer fees.

(d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members, consistent with the requirements of Section 7341.

(e) The bylaws may require, for any or all corporate actions (except as provided in paragraphs (1) and (2) of subdivision (a) of Section 7222, subdivision (c) of Section 7615, and Section 8610) the vote of a larger proportion of, or all of, the members or the members of any class, unit, or grouping of members or the vote of a larger proportion of, or all of, the directors, than is otherwise required by this part. Such a provision in the bylaws requiring such greater vote shall not be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws.

(f) The bylaws may contain a provision limiting the number of members, in total or of any class, which the corporation is authorized to admit.

(g) (1) The bylaws may contain any provision, not in conflict with the articles, to manage and conduct the ordinary business affairs of the corporation effective only in an emergency as defined in Section 7140, including, but not limited to, procedures for calling a board meeting, quorum requirements for a board meeting, and designation of additional or substitute directors.

(2) During an emergency, the board may not take any action that requires the vote of the members or otherwise is not in the corporation's ordinary course of business, unless the required vote of the members was obtained prior to the emergency.

(3) All provisions of the regular bylaws consistent with the emergency bylaws shall remain effective during the emergency, and the emergency bylaws shall not be effective after the emergency ends.

(4) Corporate action taken in good faith in accordance with the emergency bylaws binds the corporation, and may not be used to impose liability on a corporate director, officer, employee, or agent. [2013]

§7152. Bylaws; Delegates

■ A corporation may provide in its bylaws for delegates having some or all of the authority of members. Where delegates are provided for, the bylaws shall set forth delegates' terms of office, any reasonable method for delegates' selection and removal, and any reasonable method for calling, noticing and holding meetings of delegates and may set forth the manner in which delegates may act by written ballot similar to Section 7513 for written ballot of members.

Delegates may only act personally at a ■ meeting or by written ballot and may not act by ■ proxy. Delegates may be given a name other than “delegates.” [1983]

§7153. Bylaws; Voting on Chapter or Regional Basis

■ A corporation may provide in its bylaws for voting by its members or delegates on the basis of chapter or other organizational unit, or by region or other geographic grouping. [1979]

§7160. Articles and Bylaws; Inspection

■ Every corporation shall keep at its ■ principal office in this state the original or a copy of its articles and bylaws as amended to date, which shall be open to inspection by the members at all reasonable times during office hours. If the corporation has no office in this state, it shall upon the written request of any member furnish to such member a copy of the articles or bylaws as amended to date. [1978]

§7210. Corporate Activities under Board Direction; Delegation

■ Each corporation shall have a board of directors. Subject to the provisions of this part and any ■ limitations in the articles or bylaws relating to action required to be ■ approved by the members (Section 5034), or by a ■ majority of all members (Section 5033), the activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board. The board may ■ delegate the management of the activities of the corporation to any person or persons, management company, or ■ committee however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board. [1996]

§7211. Board Meetings

■ (a) Unless otherwise provided in the articles or in the bylaws all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. ■ Special meetings of the board shall be held upon four days’ ■ notice by first-class ■ mail or 48 hours’ notice delivered personally or by telephone, including a voice messaging system or by ■ electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

■ (3) Notice of a meeting need not be given to a director who provided a waiver of notice or ■ consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the

lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, designated in the bylaws or by resolution of the board.

(6) Directors may participate in a meeting through use of conference telephone, electronic video screen communication, or ■ electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each director participating in the meeting can communicate with all of the other members concurrently.

(B) Each director is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

■ (7) A majority of the number of directors authorized in or pursuant to the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may require the presence of one or more specified directors in order to constitute a quorum of the board to transact business, as long as the death or nonexistence of a specified director or the death or nonexistence of the person or persons otherwise authorized to appoint or designate that director does not prevent the corporation from transacting business in the normal course of events. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in or pursuant to the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in or pursuant to the articles or bylaws is one, in which case one director constitutes a quorum.

■ (8) Subject to the provisions of Sections 7212, 7233, 7234, and subdivision (e) of Section 7237 and Section 5233, insofar as it is made applicable pursuant to Section 7238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is

approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or the bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all directors individually or collectively consent in writing to that action and if, subject to subdivision (a) of Section 7224, the number of directors then in office constitutes a quorum. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For purpose of this subdivision only, “all directors” does not include an ■ “interested director”⁴⁰ as defined in subdivision (a) of Section 5233, insofar as it is made applicable pursuant to Section 7238 or described in subdivision (a) of Section 7233, or a “common director” as described in subdivision (b) of Section 7233 who abstains in writing from providing consent, where (1) the facts described in paragraph (2) or (3) of subdivision (d) of Section 5233 are established or the provisions of paragraph (1) or (2) of subdivision (a) of Section 7233 or in paragraph (1) or (2) of subdivision (b) of Section 7233 are satisfied, as appropriate, at or prior to execution of the written consent or consents; (2) the establishment of those facts or satisfaction of those provisions, as applicable, is included in the written consent or consents executed by the noninterested directors or noncommon directors or in other records of the corporation; and (3) the noninterested directors or noncommon directors, as applicable, approve the action by a vote that is sufficient without counting the votes of the interested directors or common directors.

■ (c) Each director shall have one vote on each matter presented to the board of directors for action. No director may vote by proxy.

(d) This section applies also to incorporators, to ■ committees of the board, and to action by those incorporators or committees mutatis mutandis. [2011]

§7212. Creation of Committees to Exercise Board Powers

■ (a) The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. ■ Appointments to such committees shall be by a majority vote of the directors then in office, unless the articles or bylaws require a majority vote of the number of directors authorized in or pursuant to the articles or bylaws. The bylaws may authorize one or more such committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of such committee or committees. The board may appoint one or more directors as alternate members of such committee, who may replace any absent member

⁴⁰ Section 5233, not in the Resource Book, states that a self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest and which does not fall within some other exceptions found in Section 5233. Such a director is an “interested director” for the purpose of this section.”

at any meeting of the committee. Such committee, to the extent provided in the resolution of the board or in the bylaws, shall have all the ■ authority of the board, except with respect to:

■ (1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a ■ majority of all members (Section 5033), regardless of whether the corporation has members.

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of bylaws or the adoption of new bylaws.

(5) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.

(6) The appointment of committees of the board or the members thereof.

(7) The expenditure of ■ corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

(8) With respect to any assets held in charitable trust, the approval of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233.

(b) A committee exercising the authority of the board ■ shall not include as members persons who are not directors. However, the board may create other committees that do not exercise the authority of the board and these other committees may include persons regardless of whether they are directors.

(c) Unless the bylaws otherwise provide, the board may delegate to any committee, appointed pursuant to paragraph (4) of subdivision (c) of Section 7151 or otherwise, powers as authorized by Section 7210, but may not delegate the powers set forth in paragraphs (1) to (8), inclusive, of subdivision (a). [2011]

§7213. Required Corporate Officers; Appointment of Officers

■ (a) A corporation shall have (1) a chair of the board, who may be given the title chair, chairperson, chairman, chairwoman, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or a president or both, (2) a secretary, (3) a treasurer or a chief financial officer or both, (4) and any other officers with any titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president the chair of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise. Where a corporation holds assets in charitable trust, any compensation of the president or chief executive officer and the chief financial officer or treasurer shall be

determined in accordance with subdivision (g) of Section 12586 of the Government Code, if applicable.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. ■ Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. [2015]

§7214. Authority of Officers to Bind Corporation

■ Subject to the provisions of subdivision (a) of Section 7141 and Section 7142,⁴¹ any note, mortgage, evidence of indebtedness, contract, conveyance or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between any corporation and any other person, when signed by any one of the chairman of the board, the president or any vice president and by any one of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation, is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. [1996]

§7215. Bylaws, Minutes, and Resolutions; Evidence of Adoption

■ The original or a copy in writing or in any other form capable of being converted into clearly legible tangible form of the bylaws or of the minutes of any incorporators', members', directors', ■ committee or other meeting or of any resolution adopted by the board or a committee thereof, or members, certified to be a true copy by a person purporting to be the secretary or an assistant secretary of the corporation, is prima facie evidence of the adoption of such bylaws or resolution or of the due holding of such meeting and of the matters stated therein. [2004]

§7220. Election and Selection of Directors; Term of Office

■ (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than four years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the

⁴¹ Section 7142 pertains to assets held in a charitable trust.

expiration of the term for which elected and until a successor has been elected and qualified, unless the director has been removed from office.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) For the purposes of this subdivision, “designator” means one or more designators. Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection by a specified designator as provided by the articles or bylaws rather than by election. Such directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (e) of Section 7222. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 5034), except as provided in subdivision (d) of Section 7150. Unless otherwise provided in the articles or bylaws, the entitlement to designate or select a director or directors shall cease if any of the following circumstances exist:

(1) The specified designator of that director or directors has died or ceased to exist.

(2) If the entitlement of the specified designator of that director or directors to designate is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation’s initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the ■ superior court of any county may appoint directors of the corporation upon application by any party in interest. [2009]

§7221. Grounds for Vacating Office of Director

■ (a) The board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or, in the case of a corporation holding assets in charitable trust, has been found by a final order or judgment of any court to have breached any duty arising as a result of Section 7238, or, if at the time a director is elected, the bylaws provide that a director may be removed for missing a specified number of board meetings, fails to attend the specified number of meetings.

(b) As provided in paragraph (3) of subdivision (c) of Section 7151, the articles or bylaws may prescribe the qualifications of the directors. The board, by a majority vote of the directors who meet all of the required qualifications to be a director, may declare vacant the office of any director who fails or ceases to meet any required qualification that was in effect at the beginning of that director’s current term of office. [1996]

§7222. Removal of Directors without Cause

■ (a) Subject to subdivisions (b) and (f), any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a ■ majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members, pursuant to Section 7310:

(1) In a corporation in which the articles or bylaws authorize members to ■ cumulate their votes pursuant to subdivision (a) of Section 7615, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

■ (c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office unless the reduction or amendment also provides for the removal of one or more specified directors.

(d) Except as provided in this section and Sections 7221 and 7223, a director may not be removed prior to the expiration of the director's term of office.

(e) Where a director removed under this section or Section 7221 or 7223 was chosen by designation pursuant to subdivision (d) of Section 7220, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made.

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) For the purposes of this subdivision, "designator" means one or more designators. If by the provisions of the articles or bylaws a designator is entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designator of that director.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designator of that director.

(3) Unless otherwise provided in the articles or bylaws, the right to remove shall not apply if any of the following circumstances exist:

(A) The designator entitled to that right has died or ceased to exist.

(B) If that right is in the capacity of an officer, trustee, or other status, and the office, trust, or status has ceased to exist. [2009]

§7223. Removal of Director by Court Order; Grounds

■ (a) The superior court of the proper county may, at the suit of one of the parties specified in subdivision (b), remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the corporation or breach of any duty arising as a result of Section 7238 and may bar from reelection any director so removed for a period prescribed by the court. The corporation shall be made a party to such action.

(b) An action under subdivision (a) may be instituted by any of the following:

(1) A director.

(2) In the case of a corporation where the total number of votes entitled to be cast for a director is less than 5,000, twice the ■ authorized number (Section 5036) of members, or 20 members, whichever is less.

(3) In the case of a corporation where the total number of votes entitled to be cast for a director is 5,000 or more, twice the ■ authorized number (Section 5036) of members, or 100 members, whichever is less.

(c) In the case of a corporation holding assets in charitable trust, the Attorney General may bring an action under subdivision (a), may intervene in such an action brought by any other party and shall be given notice of any such action brought by any other party. [1981]

§7224. Filling Vacancies on Board; Resignation of Directors

■ (a) Unless otherwise provided in the articles or bylaws and except for a vacancy created by the removal of a director, vacancies on the board may be filled by approval of the board (Section 5032) or, if the number of directors then in office is less than a ■ quorum, by (1) the unanimous written consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or waivers of notice complying with Section 7211, or (3) a sole remaining director. Unless the articles or a bylaw approved by the members (Section 5034) provide that the board may fill vacancies occurring in the board by reason of the removal of directors, or unless the corporation has no members pursuant to Section 7310, such vacancies may be filled only by approval of the members (Section 5034).

■ (b) The members may elect a director at any time to fill any vacancy not filled by the directors.

(c) Any director may ■ resign effective upon giving written notice to the chairman of the board, the president, the secretary or the board of directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective. [1985]

§7225. Director Deadlock; Appointment of Provisional Director

■ (a) If a corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its activities can no longer be conducted to advantage or so that there is danger that its property, activities, or business will be impaired or lost, the superior court of the proper county may, notwithstanding any provisions of the articles or bylaws and whether or not an action is pending for an involuntary winding up or dissolution of the corporation, appoint a provisional director pursuant to this section. Action for such appointment may be brought by any director or by members holding not less than 33⅓ percent of the voting power.

(b) If the members of a corporation are deadlocked so that they cannot elect the directors to be elected at the time prescribed therefor, the superior court of the proper county may, notwithstanding any provisions of the articles or bylaws, upon petition of members holding 50 percent of the voting power, appoint a provisional director or directors pursuant to this section or order such other equitable relief as the court deems appropriate.

(c) In the case of a corporation holding assets in charitable trust:

(1) Any person bringing an action under subdivision (a) or (b) shall give notice to the ■ Attorney General, who may intervene; and

(2) The Attorney General may bring an action under subdivision (a) or (b).

(d) A provisional director shall be an impartial person, who is neither a member nor a creditor of the corporation, nor related by consanguinity or affinity within the third degree according to the common law to any of the other directors of the corporation or to any judge of the court by which such provisional director is appointed. A provisional director shall have all the rights and powers of a director until the deadlock in the board or among members is broken or until such provisional director is removed by order of the court or by approval of a ■ majority of all members (Section 5033). Such person shall be entitled to such compensation as shall be fixed by the court unless otherwise agreed with the corporation. [1995]

§7230. Effect of Compensation Immaterial on Director Duties

(a) Any duties and liabilities set forth in this article shall apply without regard to whether a director is ■ compensated by the corporation.

(b) Part 4 (commencing with Section 16000) of Division 9 of the Probate Code does not apply to the directors of any corporation. [1987]

§7231. Director Duties and Liabilities; Business Judgment Rule

■ (a) A director shall perform the duties of a director, including duties as a member of any ■ committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

■ (b) In performing the duties of a director, a director shall be entitled to ■ rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by: (1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented; (2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or (3) A ■ committee upon which the director does not serve that is composed exclusively of any or any combination of directors, persons described in paragraph (1), or persons described in paragraph (2), as to matters within the committee's designated authority, which committee the director believes to merit confidence, so long as, in any case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

■ (c) A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no ■ liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which assets held by a corporation are dedicated. [2009]

§7231.5. Monetary Liability of Volunteer Director or Executive Officer

■ (a) Except as provided in Section 7233 or 7236, there is no monetary liability on the part of, and no cause of action for damages shall arise against, any volunteer director or volunteer executive officer of a ■ nonprofit corporation subject to this part based upon any alleged failure to discharge the person's duties as a director or officer if the duties are performed in a manner that meets all of the following criteria:

(1) The duties are performed in good faith.

(2) The duties are performed in a manner such director or officer believes to be in the best interests of the corporation.

(3) The duties are performed with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

■ (b) "Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this section.

(c) “Executive officer” means the president, vice president, secretary, or treasurer of a corporation or other individual serving in like capacity who assists in establishing the policy of the corporation.

(d) This section shall apply only to trade, professional, and labor organizations incorporated pursuant to this part which operate exclusively for fraternal, educational, and other nonprofit purposes, and under the provisions of Section 501(c) of the United States Internal Revenue Code.

(e) This section shall not be construed to limit the provisions of Section 7231. [1990]

§7232. Section 7231 Applies to Election, Selection, or Nomination of Directors

(a) Section 7231 governs the duties of directors as to any acts or omissions in connection with the election, selection, or nomination of directors.

(b) This section shall not be construed to limit the generality of Section 7231. [1978]

§7233. Conflicts of Interest; Whether Contracts Are Void or Voidable

■ (a) No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any domestic or foreign corporation, firm or association in which one or more of its directors has a material financial interest, is either void or voidable because such director or directors or such other corporation, business corporation, firm or association are parties or because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction, if:

(1) The material facts as to the transaction and as to such director’s interest are fully disclosed or known to the members and such contract or transaction is approved by the members (Section 5034) in good faith, with any membership owned by any interested director not being entitled to vote thereon;

(2) The material facts as to the transaction and as to such director’s interest are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested director or directors and the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved or ratified; or

(3) As to contracts or transactions not approved as provided in paragraph (1) or (2) of this subdivision, the person asserting the validity of the contract or transaction sustains the burden of proving that the contract or transaction was just and reasonable as to the corporation at the time it was authorized, approved or ratified.

A mere common directorship does not constitute a material financial interest within the meaning of this subdivision. A director is not interested within the meaning of this subdivision in a resolution fixing the ■ compensation of another director as a director, officer or employee of the

corporation, notwithstanding the fact that the first director is also receiving compensation from the corporation.

(b) No contract or other transaction between a corporation and any corporation, business corporation or association of which one or more of its directors are directors is either void or voidable because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction, if:

(1) The material facts as to the transaction and as to such director's other directorship are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common director or directors or the contract or transaction is approved by the members (Section 5034) in good faith; or

(2) As to contracts or transactions not approved as provided in paragraph (1) of this subdivision, the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved or ratified.

This subdivision does not apply to contracts or transactions covered by subdivision (a). [1979]

§7234. Counting of Interested or Common Directors in Determining Quorum

■ Interested or common directors may be counted in determining the presence of a quorum at a meeting of the board or a committee thereof which authorizes, approves or ratifies a contract or transaction as provided in Section 7233. [1978]

§7235. Loans to and Guarantee of Obligations of Directors or Officers

■ (a) Unless prohibited by the articles or bylaws, a corporation may loan money or property to, or guarantee the obligation of, any director or officer of the corporation or of its parent, affiliate or subsidiary, provided:

(1) The board determines the loan or guaranty may reasonably be expected to benefit the corporation.

(2) Prior to consummating the transaction or any part thereof, the loan or guaranty is either:

(A) Approved by the members (Section 5034), without counting the vote of the director or officer, if a member, or

(B) Approved by the vote of a majority of the directors then in office, without counting the vote of the director who is to receive the loan or the benefit of the guaranty.

(b) Notwithstanding subdivision (a), a corporation may advance money to a director or officer of the corporation or of its parent, affiliate or subsidiary, for any expenses reasonably anticipated to be incurred in the performance of the duties of the director or officer of the corporation or of its parent, affiliate or subsidiary, provided that in the absence of such an advance the director or officer would be entitled to be reimbursed for these expenses by the corporation, its parent, affiliate, or subsidiary.

(c) The provisions of subdivisions (a) and (b) do not apply to credit unions, or to the payment of premiums in whole or in part by a corporation on a life insurance policy on the life of a director or officer so long as repayment to the corporation of the amount paid by it is secured by the proceeds of the policy and its cash surrender value, or to loans permitted under any statute regulating any special class of corporations. [1983]

§7236. Actions for Which Directors Shall Be Jointly and Severally Liable

(a) Subject to the provisions of Section 7231, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for the benefit of all of the creditors entitled to institute an action under paragraph (1) or (2) of subdivision (c) or to the corporation in an action by the head organization or members under paragraph (1) or (3) of subdivision (c):

(1) The making of any distribution contrary to Chapter 4 (commencing with Section 7410).

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapter 15 (commencing with Section 8510), Chapter 16 (commencing with Section 8610), and Chapter 17 (commencing with Section 8710).

(3) The making of any ■ loan or guaranty contrary to Section 7235.

(b) A director who is present at a meeting of the board, or any committee thereof, at which an action specified in subdivision (a), is taken and who ■ abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a), against any or all directors liable by the persons entitled to sue under subdivision (c) of Section 7420.

(2) Under paragraph (2) or (3) of subdivision (a), against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action who have not consented to the corporate action, whether or not they have reduced their claims to judgment.

(3) Under paragraph (3) of subdivision (a) against any or all directors liable by any one or more members at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 7710.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of

appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal ■ loan or guaranty, but not exceeding, in the case of an action for the benefit of creditors, the liabilities of the corporation owed to nonconsenting creditors at the time of the violation.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against the persons who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the persons who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action. [2000]

§7237. Indemnifying Corporate Agents

■ (a) For purposes of this section, ■ “agent” means a person who is or was a director, officer, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of the corporation or of another enterprise at the request of the predecessor corporation; “proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and “expenses” includes, without limitation, attorneys’ fees and any expenses of establishing a right to indemnification under subdivision (d) or paragraph (3) of subdivision (e).

(b) A corporation shall have power to indemnify a person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 5233 of Part 2 (commencing with Section 5110) made applicable pursuant to Section 7238, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust) by reason of the fact that the person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding if the person acted in good faith and in a manner the person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the

person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) A corporation shall have power to indemnify a person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation, or brought under Section 5233 of Part 2 (commencing with Section 5110) made applicable pursuant to Section 7238, or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that the person is or was an agent of the corporation, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith, in a manner the person believed to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this subdivision:

(1) With respect to any claim, issue, or matter as to which the person shall have been adjudged to be liable to the corporation in the performance of the person's duty to the corporation, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall determine;

(2) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(3) Of expenses incurred in defending a threatened or pending action that is settled or otherwise disposed of without court approval unless the action concerns assets held in charitable trust and is settled with the approval of the Attorney General.

(d) To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subdivision (b) or (c), by:

(1) A majority vote of a quorum consisting of directors who are not parties to the proceeding;

(2) Approval of the members (Section 5034), with the persons to be indemnified not being entitled to vote thereon; or

(3) The court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney, or other person

rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be advanced by the corporation before the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay the amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this section. The provisions of subdivision (a) of Section 7235 do not apply to advances made pursuant to this subdivision.

(g) A provision made by a corporation to indemnify its or its subsidiary's directors or officers for the defense of any proceeding, whether contained in the articles, bylaws, a resolution of members or directors, an agreement, or otherwise, shall not be valid unless consistent with this section. Nothing contained in this section shall affect any right to indemnification to which persons other than the directors and officers may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subdivision (d) or paragraph (3) of subdivision (e), in any circumstance where it appears:

(1) That it would be inconsistent with a provision of the articles, bylaws, a resolution of the members, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

■ (i) A corporation shall have power to purchase and maintain ■ insurance on behalf of an agent of the corporation against any ■ liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against that liability under the provisions of this section.

(j) This section does not apply to any proceeding against a trustee, investment manager, or other fiduciary of a pension, deferred compensation, saving, thrift, or other retirement, incentive, or benefit plan, trust, or provision for any or all of the corporation's directors, officers, employees, and persons providing services to the corporation or any of its subsidiary or related or affiliated corporations, in that person's capacity as such, even though the person may also be an agent as defined in subdivision (a) of the employer corporation. A corporation shall have power to indemnify the trustee, investment manager, or other fiduciary to the extent permitted by subdivision (e) of Section 7140. [2013]

§7310. Admission of Members

■ (a) A corporation may admit persons to membership, as provided in its articles or bylaws, or may provide in its articles or bylaws that it shall have no members. In the absence of any provision in its articles or bylaws providing for members, a corporation shall have no members.

(b) In the case of a corporation which has no members:

(1) Any action for which there is no specific provision of this part applicable to a corporation which has no members and which would otherwise require approval by a ■ majority of all members (Section 5033) or approval by the members (Section 5034) shall require only approval of the board, any provision of this part or the articles or bylaws to the contrary notwithstanding.

(2) All rights which would otherwise vest in the members to share in a distribution upon dissolution shall vest in the directors.

(c) Reference in this part to a corporation which has no members includes a corporation in which the directors are the only members. [1984]

§7311. Memberships; Consideration Requirements

■ Subject to the articles or bylaws, memberships may be issued by a corporation for no consideration or for such consideration as is determined by the board. [1981]

§7312. Multiple and Fractional Memberships

■ No person may hold more than one membership, and no fractional memberships may be held, except as follows:

(a) Two or more persons may have an indivisible interest in a single membership when authorized by, and in a manner or under the circumstances prescribed by, the articles or bylaws subject to Section 7612.

(b) If the articles or bylaws provide for classes of membership and if the articles or bylaws permit a person to be a member of more than one class, a person may hold a membership in one or more classes.

(c) Any branch, division, or office of any person, which is not formed primarily to be a member, may hold a separate membership.

(d) In the case of membership in an ■ owners association created in connection with any of the forms of development referred to in Section 11004.5 of the Business and Professions Code) the articles or bylaws may permit a person who owns an interest, or who has a right of exclusive occupancy, in more than one lot, parcel, area, apartment, or unit to hold a separate membership in the owners' association for each lot, parcel, area, apartment, or unit.

(e) In the case of membership in a mutual water company, as defined in Section 14300 of the Corporations Code, the articles or bylaws may permit a person entitled to membership by reason of the ownership, lease, or right of occupancy of more than one lot, parcel, or other service unit to hold a separate membership in the mutual water company for each such lot, parcel, or other service unit.

(f) In the case of membership in a mobilehome park acquisition corporation, as described in Section 11010.8 of the Business and Professions Code, a bona fide secured party who has, pursuant to a security interest in a membership, taken title to the membership by way of foreclosure, repossession or voluntary repossession, and who is actively attempting to resell the membership to a prospective homeowner or resident of the mobilehome park, may own more than one membership. [2006]

§7313. Membership Certificates

■ (a) A corporation may, but is not required to, issue membership certificates. Nothing in this section shall restrict a corporation from issuing identity cards or similar devices to members which serve to identify members qualifying to use facilities or services of the corporation.

(b) Membership certificates issued by corporations shall state the following on the certificate:

■ (1) The corporation is a nonprofit mutual benefit corporation which may not make distributions to its members except upon dissolution, or, if the articles or bylaws so provide, that it may not make distributions to its members during its life or upon dissolution.

(2) If there are restrictions upon the ■ transferability, a statement that a copy of the restrictions are on file with the secretary of the corporation and are open for inspection by a member on the same basis as the records of the corporation.

(c) If the membership certificates are transferable only with consent of the corporation, or if there are no membership certificates, then instead of complying with paragraph (2) of subdivision (b) the corporation may, or if there are no membership certificates, shall, give notice to the transferee, within a reasonable time after the corporation is first notified of the proposed transfer, and before the membership is transferred on the books and records of the corporation, of the information that would otherwise be provided by the legends required by paragraph (2) of subdivision (b).

■ (d) If the articles or bylaws are amended so that any statement required by subdivision (b) upon outstanding membership certificates is no longer accurate, then the board may cancel the outstanding certificates and issue in their place new certificates conforming to the articles or bylaw amendments.

(e) Where new membership certificates are issued in accordance with subdivision (d), the board may order holders of outstanding certificates to surrender and exchange them for new certificates within a reasonable time fixed by the board. The board may further provide that the holder of a certificate so ordered to be surrendered shall not be entitled to exercise any of the rights of membership until the certificate is surrendered and exchanged, but ■ rights shall be suspended only after notice of such order is given to the holder of the certificate and only until the certificate is exchanged. The duty of surrender of any outstanding certificates may also be enforced by civil action. [1985]

§7314. Issuance of New Membership Certificate

■ (a) A corporation may issue a new membership certificate or a new certificate for any security in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

(b) If a corporation refuses to issue a new membership certificate or other certificate in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost, stolen or destroyed, the owner of the lost, stolen or destroyed certificate or the owner's legal representative may bring an action in the superior court of the proper county for an order requiring the corporation to issue a new certificate in place of the one lost, stolen or destroyed. [1978]

§7315. Persons Admitted to Membership; Exceptions

■ (a) Except as provided in subdivision (b), or in its articles or bylaws, a corporation may admit any person to membership.

(b) A corporation may not admit its subsidiary (Section 5073) to membership. [1979]

§7320. Transfer of Memberships

■ Subject to Section 7613:

(a) Unless the articles or bylaws otherwise provide:

(1) No member may transfer a membership or any right arising therefrom; and

(2) Subject to the provisions of subdivision (b), all rights as a member of the corporation cease upon the member's death or dissolution.

(b) The articles or bylaws may provide for, or may authorize the board to provide for, the transfer of memberships, or of memberships within any class or classes, with or without restriction or limitation, including transfer upon the death, dissolution, merger, or reorganization of a member.

(c) Where transfer rights have been provided, no restriction of them shall be binding with respect to memberships issued prior to the adoption of the restriction, unless the holders of such memberships voted in favor of the restriction. [1978]

§7330. Memberships with Different Rights, Privileges, Etc.

A corporation may issue memberships having different rights, privileges, preferences, restrictions, or conditions, as authorized by its articles or bylaws. [1979]

§7331. Equality of Memberships

■ Except as provided in or authorized by the articles or bylaws, all memberships shall have the same rights, privileges, preferences, restrictions and conditions. [1979]

§7332. Classes of Memberships; Redemption or Purchase of Memberships by Corporation

■ (a) A corporation may provide in its articles for one or more classes of memberships which are redeemable, in whole or in part, at the option of the corporation, or the member for such consideration within such time or upon the happening of one or more specified events and upon such terms and

conditions as are stated in the articles. However, no membership shall actually be redeemed if prohibited by Chapter 4 (commencing with Section 7410).

(b) Nothing in this section shall prevent a corporation from creating a sinking fund or similar provision for, or entering into an agreement for, the redemption or purchase of its memberships to the extent permitted by Chapter 4 (commencing with Section 7410). [1978]

§7333. Reference to Affiliated Persons as Members

■ (a) A corporation may refer to persons associated with it as “members” even though such persons are not members within the meaning of Section 5056; but references to members in this part mean members as defined in Section 5056.

(b) A corporation may benefit, serve, or assist persons who are not members within the meaning of Section 5056 for such consideration, if any, as the board may determine or as is authorized or provided for in the articles or bylaws. [1979]

§7340. Resignation or Expiration of Membership

■ (a) A member may resign from membership at any time, although the articles or bylaws may require reasonable notice before the resignation is effective.

(b) This section shall not relieve the resigning member from any obligation for charges incurred, services or benefits actually rendered, dues, assessments or fees, or ■ arising from contract, a ■ condition to ownership of land, an obligation arising out of the ownership of land, or otherwise, and this section shall not diminish any right of the corporation to enforce any such obligation or obtain damages for its breach.

(c) A membership issued for a period of time shall expire when such period of time has elapsed unless the membership is renewed. [1979]

§7341. Expulsion, Suspension, or Termination; Procedures

■ (a) No member may be expelled or suspended, and no membership or memberships may be terminated or suspended, except according to procedures satisfying the requirements of this section. An expulsion, termination or suspension not in accord with this section shall be void and without effect.

(b) Any expulsion, suspension, or termination must be done in good faith and in a fair and reasonable manner. Any procedure which conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the suspension, termination, or expulsion are considered.

(c) A procedure is fair and reasonable when:

(1) The provisions of the procedure have been set forth in the articles or bylaws, or copies of such provisions are sent annually to all the members as required by the articles or bylaws;

(2) It provides the giving of 15 days’ prior notice of the expulsion, suspension or termination and the reasons therefor; and

(3) It provides an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or body authorized to decide that the proposed expulsion, termination or suspension not take place.

(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by ■ mail must be given by first-class or registered mail sent to the last address of the members shown on the corporation's records.

(e) Any action challenging an expulsion, suspension or termination of membership, including any claim alleging defective notice, must be commenced within one year after the date of the expulsion, suspension or termination. In the event such an action is successful the court may order any relief, including reinstatement, it finds equitable under the circumstances, but no vote of the members or of the board may be set aside solely because a person was at the time of the vote wrongfully excluded by virtue of the challenged expulsion, suspension or termination, unless the court finds further that the wrongful expulsion, suspension or termination was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(f) This section governs only the procedures for expulsion, suspension or termination and not the substantive grounds therefor. An expulsion, suspension or termination based upon substantive grounds which violate contractual or other rights of the member or are otherwise unlawful is not made valid by compliance with this section.

(g) A member who is expelled or suspended or whose membership is terminated shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments or fees incurred before the expulsion, suspension or termination or arising from contract or otherwise. [1996]

§7350. Liability of Members for Debts of Corporation

■ (a) A member of a corporation is not, as such, personally liable for the debts, liabilities, or obligations of the corporation.

(b) No person is liable for any obligation arising from membership unless the person was admitted to membership upon the person's application or with the person's consent.

■ (c) The ownership of an interest in real property, when a ■ condition of its ownership is membership in a corporation, shall be considered ■ consent to such membership for the purpose of this section. [1978]

§7351. Dues, Assessments, or Fees Authorized

■ A corporation may levy dues, assessments, or fees upon its members pursuant to its articles or bylaws, but a member upon learning of them may avoid liability for them by promptly ■ resigning from membership, except where the member is liable for them by contract, as a condition to ownership of an interest in real property, as an obligation arising out of the ownership of an

interest in real property, or otherwise. Article or bylaw provisions authorizing such dues, assessments or fees do not, of themselves, create such liability. [1979]

§7411. Distributions to Members Generally Prohibited

■ (a) Except as provided in subdivision (b), no corporation shall make any distribution except upon dissolution.

(b) A corporation may, subject to meeting the requirements of Sections 7412 and 7413 and any additional restrictions authorized by Section 7414, purchase or redeem memberships. [1979]

§7412. Distributions Prohibited if Liabilities Cannot Be Met

■ Neither a corporation nor any of its subsidiaries shall make a distribution if the corporation or the subsidiary making the distribution is, or as a result thereof would be, likely to be unable to meet its liabilities (except those whose payment is otherwise adequately provided for) as they mature. [1978]

§7510. Member Meetings

(a) Meetings of members may be held at a place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings of members shall be held at the ■ principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, members not physically present in person (or, if proxies are allowed, by proxy) at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of members, be deemed present in person (or, if proxies are allowed, by proxy), and vote at a meeting of members whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (f).

■ (b) A regular meeting of members shall be held on a date and time, and with the frequency stated in or fixed in accordance with the bylaws, but in any event in each year in which directors are to be elected at that meeting for the purpose of conducting such election, and to transact any other proper business which may be brought before the meeting.

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

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

■ (e) Special meetings of members for any lawful purpose may be called by the board, the chairman of the board, the president, or such other persons, if any, as are specified in the bylaws. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members.

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide members in person (or, if proxies are allowed, by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings, and (2) if any member votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a member pursuant to clause (b) of Section 20 for consent to conduct a meeting of members by electronic transmission by and to the corporation, shall include a notice that absent consent of the member pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a). [2004]

§7511. Notice of Member Meeting

■ (a) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 nor more than 90 days before the date of the meeting to each member who, on the record date for notice of the meeting, is entitled to vote thereat; provided, however, that if notice is given by ■ mail, and the notice is not mailed by first-class, registered, or certified mail, that notice shall be given not less than 20 days before the meeting. Subject to subdivision (f), and subdivision (b) of Section 7512, the notice shall state the place, date and time of the meeting, the means of electronic transmission by and to the corporation (Sections 20 and 21) or electronic video screen communication, if any, by which members may participate in that meeting, and (1) in the case of a ■ special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) in the case of the regular meeting, those matters which the board, at the time the notice is given, intends to ■ present for action by the members, but, except as provided in subdivision (b) of Section 7512, any proper matter may be presented at the meeting for the action. ■ The notice of any meeting at which

directors are to be elected shall include the names of all those who are nominees at the time the notice is given to members.

(b) Notice of a members' meeting or any report shall be given personally, by electronic transmission by a corporation, or by mail or other means of written communication, addressed to a member at the address of the member appearing on the books of the corporation or given by the member to the corporation for purpose of notice; or if no such address appears or is given, at the place where the ■ principal office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. An affidavit of giving of any notice or report in accordance with the provisions of this part, executed by the secretary, assistant secretary or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to the member at the address of the member appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the member at the address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the member upon written demand of the member at the principal office of the corporation for a period of one year from the date of the giving of the notice or report to all other members.

Notice given by electronic transmission by the corporation under this subdivision shall be valid only if it complies with Section 20. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation under this subdivision after either of the following:

(1) The corporation is unable to deliver two consecutive notices to the member by that means.

(2) The inability to so deliver the notices to the member becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

(c) Upon request in writing to the corporation addressed to the attention of the chairman of the board, president, vice president, or secretary by any person (other than the board) entitled to call a ■ special meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board not less than 35 nor more than 90 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

(d) When a members' meeting is ■ adjourned to another time or place, unless the bylaws otherwise require and except as provided in this

subdivision, notice need not be given of the adjourned meeting if the time and place thereof (or the means of electronic transmission by and to the corporation or electronic video screen communication, if any, by which members may participate) are announced at the meeting at which the adjournment is taken. No meeting may be adjourned for more than 45 days. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

(e) The transactions of any meeting of members however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person (or, if proxies are allowed, by proxy), provides a ■ waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing. ■ All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this part to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

(f) Any approval of the members required under Section 7222, 7224, 7233, 7812, 8610, or 8719, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(g) A court may find that notice not given in conformity with this section is still valid, if it was given in a fair and reasonable manner. [2004]

§7512. Determination of Quorum

■ (a) One-third of the voting power, represented in person or by proxy, shall constitute a quorum at a meeting of members, but, subject to subdivisions (b) and (c), a bylaw may set a different quorum. Any bylaw amendment to increase the quorum may be adopted only by approval of the members (Section 5034). If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the members unless the vote of a greater number or voting by classes is required by this part or the articles or bylaws.

(b) Where a bylaw authorizes a corporation to conduct a meeting with a quorum of less than one-third of the voting power, then the only matters that may be voted upon at any regular meeting actually attended, in person or by

proxy, by less than one-third of the voting power are matters notice of the general nature of which was given, pursuant to the first sentence of subdivision (a) of Section 7511.

(c) Subject to subdivision (b), the members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a ■ majority of the members required to constitute a quorum, or, if required by this division, or by the articles or the bylaws, the vote of the greater number or voting by classes.

(d) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the votes represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (c). [2000]

§7513. Member Action Without Meeting by Written Ballot

■ (a) Subject to subdivision (e), and unless prohibited in the articles or bylaws, any action which may be taken at any regular or special meeting of members may be taken without a meeting if the corporation distributes a written ballot to every member entitled to vote on the matter. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that ballot and any related material may be sent by electronic transmission by the corporation (Section 20) and responses may be returned to the corporation by electronic transmission to the corporation (Section 21). That ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the corporation.

(b) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the ■ quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) Ballots shall be ■ solicited in a manner consistent with the requirements of subdivision (b) of Section 7511 and Section 7514. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of directors, shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted.

■ (d) Unless otherwise provided in the articles or bylaws, a written ballot may not be revoked.

■ (e) Directors may be elected by written ballot under this section, where authorized by the articles or bylaws, except that election by written ballot may not be authorized where the directors are elected by ■ cumulative voting pursuant to Section 7615.

(f) When directors are to be elected by written ballot and the articles or bylaws prescribe a ■ nomination procedure, the procedure may provide for a date for the close of nominations prior to the printing and distributing of the written ballots. [2004]

§7514. Form of Proxy or Written Ballot; Failure to Comply with Section

■ (a) Any form of proxy or written ballot distributed to 10 or more members of a corporation with 100 or more members shall afford an opportunity on the proxy or form of written ballot to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time the written ballot or proxy is distributed, to be acted upon at the meeting for which the proxy is solicited or by such written ballot, and shall provide, subject to reasonable specified conditions, that where the person solicited specifies a choice with respect to any such matter the vote shall be cast in accordance therewith.

(b) In any election of directors, any form of proxy or written ballot in which the directors to be voted upon are named therein as candidates and which is marked by a member ■ “withhold” or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld shall not be voted either for or against the election of a director.

(c) Failure to comply with this section shall not invalidate any corporate action taken, but may be the basis for challenging any proxy at a meeting or written ballot and the superior court may compel compliance therewith at the suit of any member. [1979]

§7515. Court Action When Meetings or Consent is Unduly Difficult

■ (a) If for any reason it is impractical or unduly difficult for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles or bylaws, or this part, then the superior court of the proper county, upon petition of a director, officer, delegate or member, may order that such a meeting be called or that a ■ written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all parties who would be entitled to notice of a meeting held pursuant to the articles, bylaws and this part, whether or not the method results in actual notice to every such person, or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of and voting at meetings or obtaining of votes, including any requirement as to ■ quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this part.

(d) Wherever practical any order issued pursuant to this section shall limit the subject matter of the meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, sale of assets or reorganization of the corporation.

(e) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this part. [1986]

§7516. Action Without Meeting by Written Consent

■ Any action required or permitted to be taken by the members may be taken without a meeting, if all members shall individually or collectively consent in writing to the action. ■ The written consent or consents shall be filed with the minutes of the proceedings of the members. The action by written consent shall have the same force and effect as the unanimous vote of the members. [1981]

§7517. Proxies; Ballots; Power to Accept

(a) If the name signed on a ballot, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the ballot, consent, waiver or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a ballot, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if any of the following occur:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity.

(2) The name signed purports to be that of an attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the ballot, consent, waiver, or proxy appointment.

(3) Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-holders and the person signing appears to be acting on behalf of all the coholders.

(4) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation

has been presented with respect to the ballot, consent, waiver, or proxy appointment.

(5) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment.

(c) The corporation is entitled to reject a ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis for doubt concerning the validity of the signature or the signatory's authority to sign for the member.

(d) The corporation and any officer or agent thereof who accepts or rejects a ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section shall not be liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a ballot, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise. [1996]

§7520. Nomination and Election Procedures

■ (a) As to directors elected by members, there shall be available to the members reasonable nomination and election procedures given the nature, size and operations of the corporation.

(b) If a corporation complies with all of the provisions of Sections 7521, 7522, 7523, and 7524 applicable to a corporation with the same number of members, the nomination and election procedures of that corporation, shall be deemed reasonable. However, those sections do not prescribe the exclusive means of making available to the members reasonable procedures for nomination and election of directors. A corporation may make available to the members other reasonable nomination and election procedures given the nature, size, and operations of the corporation.

(c) Subject to the provisions of subdivisions (a), (b), and (d) of Section 7616, the superior court of the proper county shall enforce the provisions of this section. [1996]

§7521. Nomination Procedures; Corporations with 500 or More Members

■ A corporation with 500 or more members may provide that, except for directors who are elected as authorized by Section 7152 or 7153, and except as provided in Section 7522, any person who is qualified to be elected to the board of directors of the corporation may be nominated:

(a) By any method authorized by the bylaws, or if no method is set forth in the bylaws by any method authorized by the board.

(b) By petition delivered to an officer of the corporation, signed within 11 months preceding the next time directors will be elected, by members representing the following number of votes:

Number of Votes Eligible
to be Cast for Director
Disregarding any Provision
for Cumulative Voting
Under 5,000
5,000 or more

Number of Votes
2 percent of voting power
one-twentieth of 1 percent of
voting power but not less than 100

This subdivision does not apply to a corporation described in subdivision (c).

(c) In corporations with one million or more members engaged primarily in the business of retail merchandising of consumer goods, by petition delivered to an officer of the corporation, signed within 11 months preceding the next time directors will be elected, by such reasonable number of members as is set forth in the bylaws, or if no number is set forth in the bylaws, by such reasonable number of members as is determined by the directors.

(d) If there is a meeting to elect directors, by any member present at the meeting in person or by proxy if proxies are permitted. [1996]

§7522. Election of Directors; Corporations with 5,000 or More Members

■ A corporation with 5,000 or more members may provide that, in any election of a director or directors by members of the corporation except for an election authorized by Section 7152 or 7153:

(a) The corporation's articles or bylaws shall set a date for the close of nominations for the board. The date shall not be less than 50 nor more than 120 days before the day directors are to be elected. No nominations for the board can be made after the date set for the close of nominations.

(b) If more people are nominated for the board than can be elected, the election shall take place by means of a procedure which allows all nominees a reasonable opportunity to ■ solicit votes and all members a reasonable opportunity to choose among the nominees.

(c) A nominee shall have a reasonable opportunity to communicate to the members the nominee's qualifications and the reasons for the nominee's candidacy.

(d) If after the close of nominations the number of people nominated for the board is not more than the number of directors to be elected, the corporation may without further action declare that those nominated and qualified to be elected have been elected. [1996]

§7523. Equal Access to Corporate Publications; Vote Solicitations in Corporate Publications

Where a corporation with 500 or more members publishes any material ■ soliciting a vote for any nominee for director in any publication owned or controlled by the corporation, the corporation may provide that it shall make available to all other nominees, in the same issue of the publication, an

equal amount of space, with equal prominence, to be used by the nominee for a purpose reasonably related to the election. [1996]

§7524. Mailing by Nominee in Corporation with 500 or More Members

A corporation with 500 or more members may provide that upon written request by any nominee for election to the board and the payment of the reasonable costs of mailing (including postage), the corporation shall within 10 business days after such request (provided payment has been made) mail to all members, or such portion of them as the nominee may reasonably specify, any material, which the nominee may furnish and which is reasonably related to the election, unless the corporation within five business days after the request allows the nominee, at the corporation's option, the rights set forth in either paragraph (1) or (2) of subdivision (a) of Section 8330. [1996]

§7525. Liability for Content of Candidate's Materials

■ (a) This section shall apply to corporations publishing or mailing materials on behalf of any nominee in connection with procedures for the nomination and election of directors.

(b) Neither the corporation, nor its agents, officers, directors, or employees, may be held criminally liable, liable for any negligence (active or passive) or otherwise liable for damages to any person on account of any material which is supplied by a nominee for director and which it mails or publishes in procedures intended to comply with Section 7520 or pursuant to Section 7523 or 7524 but the nominee on whose behalf such material was published or mailed shall be liable and shall indemnify and hold the corporation, its agents, officers, directors, and employees and each of them harmless from all demands, costs, including reasonable legal fees and expenses, claims, damages and causes of action arising out of such material or any such mailing or publication.

(c) Nothing in this section shall prevent a corporation or any of its agents, officers, directors, or employees from seeking a court order providing that the corporation need not mail or publish material tendered by or on behalf of a nominee under this article on the ground the material will expose the moving party to liability. [1996]

§7526. Use of Corporation Funds to Support a Nominee

■ Without authorization of the board, no corporation funds may be expended to support a nominee for director after there are more people nominated for director than can be elected. [1978]

§7527. Statute of Limitations; Action to Challenge Validity of Election

■ An action challenging the validity of any election, appointment or removal of a director or directors must be commenced within nine months after the election, appointment or removal. If no such action is commenced, in the absence of fraud, any election, appointment or removal of a director is conclusively presumed valid nine months thereafter. [1981]

§7610. One Vote Per Member

■ Except as provided in a corporation's articles or bylaws or Section 7615, each member shall be entitled to one vote on each matter submitted to a vote of the members. Single memberships in which two or more persons have an indivisible interest shall be voted as provided in Section 7612. [1978]

§7611. Determination of Record Date

■ (a) The bylaws may provide or, in the absence of such provision, the board may fix, in advance, a date as the record date for the purpose of determining the members entitled to notice of any meeting of members. Such record date shall not be more than 90 nor less than 10 days before the date of the meeting. If no record date is fixed, members at the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of a meeting of members. A determination of members entitled to notice of a meeting of members shall apply to any adjournment of the meeting unless the board fixes a new record date for the adjourned meeting.

(b) The bylaws may provide or, in the absence of such provision, the board may fix, in advance, a date as the record date for the purpose of determining the members entitled to vote at a meeting of members. Such record date shall not be more than 60 days before the date of the meeting. Such record date shall also apply in the case of an adjournment of the meeting unless the board fixes a new record date for the adjourned meeting. If no record date is fixed, members on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting of members or, in the case of an adjourned meeting, members on the day of the adjourned meeting who are otherwise eligible to vote are entitled to vote at the adjourned meeting of members.

(c) The bylaws may provide or, in the absence of such provision, the board may fix, in advance, a date as the record date for the purpose of determining the members entitled to cast written ballots (Section 7513). Such record date shall not be more than 60 days before the day on which the first written ballot is mailed or solicited. If no record date is fixed, members on the day the first written ballot is mailed or solicited who are otherwise eligible to vote are entitled to cast written ballots.

(d) The bylaws may provide or, in the absence of such provision, the board may fix, in advance, a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. Such record date shall not be more than 60 days prior to such other action. If no record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the 60th day prior to the date of such other action, whichever is later, are entitled to exercise such rights. [1981]

§7612. Voting Where Membership Stands on Record in Names of Two or More Persons

■ If a membership stands of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, ■ tenants in common, husband and wife as community property, tenants by the entirety, persons entitled to vote under a voting agreement or otherwise, or if two or more persons (including proxyholders) have the same fiduciary relationship respecting the same membership, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

(a) If only one votes, such act binds all; or

(b) If more than one vote, the act of the majority so voting binds

all. [1978]

§7613. Proxies Authorized

■ (a) Any member may authorize another person or persons to act by proxy with respect to such membership except that this right may be limited or withdrawn by the articles or bylaws, subject to subdivision (f). Any proxy purported to be executed in accordance with the provisions of this part shall be presumptively valid.

(b) No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three years from the date of execution. Every proxy continues in full force and effect until revoked by the person executing it prior to the vote pursuant thereto, except as otherwise provided in this section. Such revocation may be effected by a writing delivered to the corporation stating that the proxy is revoked or by a subsequent proxy executed by the person executing the prior proxy and presented to the meeting, or as to any meeting by attendance at such meeting and voting in person by the person executing the proxy. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed.

(c) A proxy is not revoked by the death or incapacity of the maker or the termination of a membership as a result thereof unless, before the vote is counted, written notice of such death or incapacity is received by the corporation.

(d) Unless otherwise provided in the articles or bylaws, the proxy of a member which states that it is irrevocable is irrevocable for the period specified therein (notwithstanding subdivisions (b) and (c)) when it is held by any of the following or a nominee of any of the following:

(1) A person who has purchased or who has agreed to purchase the membership;

(2) A creditor or creditors of the corporation or the member who extended or continued credit to the corporation or the member in consideration of the proxy if the proxy states that it was given in consideration

of such extension or continuation of credit and the name of the person extending or continuing the credit; or

(3) A person who has contracted to perform services as an employee of the corporation, if the proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for.

Notwithstanding the period of irrevocability specified, the proxy becomes revocable when the agreement to purchase is terminated; the debt of the corporation or the member is paid; or the period of employment provided for in the contract of employment has terminated. In addition to the foregoing paragraphs (1) through (3), a proxy of a member may be made irrevocable (notwithstanding subdivision (c)) if it is given to secure the performance of a duty or to protect a title, either legal or equitable, until the happening of events which, by its terms, discharge the obligations secured by it.

(e) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a transferee of a membership without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability appears on the ■ certificate representing the membership.

(f) Subdivision (a) notwithstanding:

(1) No amendment of the articles or bylaws repealing, restricting, creating or expanding proxy rights may be adopted without approval by the members (Section 5034); and

(2) No amendment of the articles or bylaws restricting or limiting the use of proxies may affect the validity of a previously issued irrevocable proxy during the term of its irrevocability, so long as it complied with applicable provisions, if any, of the articles or bylaws at the time of its issuance, and is otherwise valid under this section.

(g) Anything to the contrary notwithstanding, any revocable proxy covering matters requiring a vote of the members pursuant to Section 7222; Section 7224; Section 7233; paragraph (1) of subdivision (f) of this section; Section 7812; paragraph (2) of subdivision (a) of Section 7911; Section 8012; subdivision (a) of Section 8015; Section 8610; or subdivision (a) of Section 8719 is not valid as to such matters unless it sets forth the general nature of the matter to be voted on. [1981]

§7614. Election Inspectors; Appointment; Powers and Duties

■ (a) In advance of any meeting of members, the board may appoint inspectors of election to act at the meeting and any adjournment thereof. If inspectors of election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the chairman of any meeting of members may, and on the request of any member or a member's proxy shall, appoint inspectors of election (or persons to replace those who so fail or refuse) at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more members or proxies, the majority of members represented in person or by proxy shall determine whether one or three inspectors are to be appointed. In the case of any action by written ballot

(Section 7513), the board may similarly appoint inspectors of election to act with powers and duties as set forth in this section.

(b) The inspectors of election shall determine the number of memberships outstanding and the voting power of each, the number represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies, receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all members.

(c) The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein. [1984]

§7615. Cumulative Voting; Notice of Intention to Cumulate Votes

■ (a) If the articles or bylaws authorize cumulative voting, but not otherwise, every member entitled to vote at any election of directors may cumulate the member's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the member is entitled, or distribute the member's votes on the same principle among as many candidates as the member thinks fit. An article or bylaw provision authorizing cumulative voting may be repealed or amended only by approval of the members (Section 5034), except that the governing article or bylaw provision may require the vote of a greater proportion of the members, or of the members of any class, for its repeal.

(b) No member shall be entitled to cumulate votes for a candidate or candidates unless the candidate's name or candidates' names have been placed in nomination prior to the voting and the member has given notice at the meeting prior to the voting of the member's intention to cumulate votes. If any one member has given this notice, all members may cumulate their votes for candidates in nomination.

(c) In any election of directors by cumulative voting, the candidates receiving the highest number of votes are elected, subject to any lawful provision specifying election by classes.

(d) In any election of directors not governed by subdivision (c), unless otherwise provided in the articles or bylaws, the candidates receiving the highest number of votes are elected.

■ (e) Elections for directors need not be by ballot unless a member demands election by ballot at the meeting and before the voting begins or unless the bylaws so require. [1984]

§7616. Actions to Determine Validity of Election or Appointment

■ (a) Upon the filing of an action therefor by any director or member or by any person who had the right to vote in the election at issue, the

superior court of the proper county shall determine the validity of any election or appointment of any director of any corporation.

(b) In the case of a corporation holding assets in charitable trust, any person bringing an action under this section shall give notice of the action to the Attorney General, who may intervene.

(c) Upon the filing of the complaint, and before any further proceedings are had, the court shall enter an order fixing a date for the hearing, which shall be within five days unless for good cause shown a later date is fixed, and requiring notice of the date for the hearing and a copy of the complaint to be served upon the corporation and upon the person whose purported election or appointment is questioned and upon any person (other than the plaintiff) whom the plaintiff alleges to have been elected or appointed, in the manner in which a summons is required to be served, or, if the court so directs, by registered mail; and the court may make such further requirements as to notice as appear to be proper under the circumstances.

(d) The court, consistent with the provisions of this part and in conformity with the articles and bylaws to the extent feasible, may determine the person entitled to the office of director or may order a new election to be held or appointment to be made, may determine the validity, effectiveness and construction of voting agreements and voting trusts, the validity of the issuance of memberships and the right of persons to vote and may direct such other relief as may be just and proper. [1978]

§7710. Derivative Actions; Required Conditions; Bond

■ (a) Subdivisions (c) through (f) notwithstanding, no motion to require a ■ bond shall be granted in an action brought by 100 members or the ■ authorized number (Section 5036), whichever is less.

(b) No action may be instituted or maintained in the right of any corporation by any member of such corporation unless both of the following conditions exist:

(1) The plaintiff alleges in the complaint that plaintiff was a member at the time of the transaction or any part thereof of which plaintiff complains, or that plaintiff's membership thereafter devolved upon plaintiff by operation of law from a holder who was a holder at the time of transaction or any part thereof complained of; and

(2) The plaintiff alleges in the complaint with particularity plaintiff's efforts to secure from the board such action as plaintiff desires, or the reasons for not making such effort, and alleges further that plaintiff has either informed the corporation or the board in writing of the ultimate facts of each cause of action against each defendant or delivered to the corporation or the board a true copy of the complaint which plaintiff proposes to file.

(c) Subject to subdivision (a), in any action referred to in subdivision (b), at any time within 30 days after service of summons upon the corporation or upon any defendant who is an officer or director of the corporation, or held such office at the time of the acts complained of, the corporation or such defendant may move the court for an order, upon notice and

hearing, requiring the plaintiff to furnish a ■ bond as hereinafter provided. The motion shall be based upon one or both of the following grounds:

(1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the corporation or its members economically or otherwise.

(2) That the moving party, if other than the corporation, did not participate in the transaction complained of in any capacity.

The court on application of the corporation or any defendant may, for good cause shown, extend the 30-day period for an additional period or periods not exceeding 60 days.

(d) At the hearing upon any motion pursuant to subdivision (c), the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground or grounds upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the corporation and the moving party which will be incurred in the defense of the action. If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the ■ amount of the bond, not to exceed fifty thousand dollars (\$50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, which may be incurred by the moving party and the corporation in connection with the action, including expenses for which the corporation may become liable pursuant to Section 7237. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. If the court, upon any such motion, makes a determination that a bond shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to such defendant or defendants, unless the bond required by the court has been furnished within such reasonable time as may be fixed by the court.

(e) If the plaintiff shall, either before or after a motion is made pursuant to subdivision (c), or any order or determination pursuant to such motion, furnish a bond or bonds in the aggregate amount of fifty thousand dollars (\$50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff has complied with the requirements of this section and with any order for a bond theretofore made, and any such motion then pending shall be dismissed and no further or additional bond shall be required.

(f) If a motion is filed pursuant to subdivision (c), no pleadings need be filed by the corporation or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of. [1982]

§7810. Amending Articles of Incorporation

(a) By complying with the provisions of this chapter, a corporation may amend its articles from time to time, in any and as many respects as may be desired, so long as its articles as amended contain only such provisions as it would be lawful to insert in original articles filed at the time of the filing of the amendment or as authorized by Section 7813.5 and, if a change in the rights of members or an exchange, ■ reclassification or cancellation of

memberships is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. It is the intent of the Legislature in adopting this section to exercise to the fullest extent the reserve power of the state over corporations and to authorize any amendment of the articles covered by the preceding sentence regardless of whether any provision contained in the amendment was permissible at the time of the original incorporation of the corporation.

(b) A corporation shall not amend its articles to add any statement or to alter any statement which may appear in the original articles of the initial street address and initial mailing address of the corporation, the names and addresses of the first directors, or the name and address of the ■ initial agent, except to correct an error in the statement or to delete the information after the corporation has filed a statement under Section 8210. [2012]

§7811. Adoption of Amendments by Incorporators

■ Any amendment of the articles may be adopted by a writing signed by a majority of the ■ incorporators, so long as:

- (a) No directors were named in the original articles;
- (b) No directors have been elected; and
- (c) The corporation has no members. [1978]

§7812. Adoption of Amendments by Board and Members

■ (a) Except as provided in this section or Section 7813, amendments may be adopted if approved by the board and approved by the members (Section 5034) and approved by such other person or persons, if any, as required by the articles. The approval by the members or other person or persons may be before or after the approval by the board.

■ (b) Notwithstanding subdivision (a), the following amendments may be adopted by approval of the board alone:

(1) An amendment extending the corporate existence or making the corporate existence perpetual, if the corporation was organized prior to August 14, 1929.

(2) An amendment deleting the initial street address and initial mailing address of the corporation, the names and addresses of the first directors or the name and address of the initial agent.

(3) Any amendment, at a time the corporation has no members; provided, however, that if the articles require approval by any person for an amendment, an amendment may not be adopted without such approval.

(4) An amendment adopted pursuant to Section 9913.

■ (c) Whenever the articles require for corporate action the approval of a particular class of members or of a larger proportion of, or all of, the votes of any class, or of a larger proportion of, or all of, the directors, than is otherwise required by this part, the provision in the articles requiring such greater vote shall not be altered, amended or repealed except by such class or such greater vote, unless otherwise provided in the articles. [2012]

§7813. Circumstances Requiring Approval by Class

■ An amendment must also be approved by the members (Section 5034) of a class, whether or not such class is entitled to vote thereon by the provisions of the articles or bylaws, if the amendment would:

(a) Materially and adversely affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer in a manner different than such action affects another class;

(b) Materially and adversely affect such class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(c) Increase or decrease the number of memberships authorized for such class;

(d) Increase the number of memberships authorized for another class;

(e) Effect an exchange, ■ reclassification or cancellation of all or part of the memberships of such class; or

(f) Authorize a new class of memberships. [1981]

§7814. Officers' Certificate on Amendment of Articles

(a) Except for amendments adopted by the ■ incorporators pursuant to Section 7811, upon adoption of an amendment, the corporation shall file a certificate of amendment, which shall consist of an officers' certificate stating:

(1) The wording of the amendment or amended articles in accordance with Section 7816;

(2) That the amendment has been approved by the board;

(3) If the amendment is one for which the approval of the members (Section 5034) or the approval of 100 percent of the voting power is required, that the amendment was approved by the required vote of members; and

(4) If the amendment is one which may be adopted with approval by the board alone, a statement of the facts entitling the board alone to adopt the amendment.

(5) If the amendment is one for which the approval of a person or persons other than the incorporators, directors or members is required, that the approval of such person or persons has been obtained.

(b) In the event of an amendment of the articles pursuant to a merger, the filing of the officers' certificate and agreement pursuant to Section 8014 shall be in lieu of any filing required under this chapter. [1979]

§7815. Certificate of Amendment Adopted by Incorporators

In the case of amendments adopted by the ■ incorporators under Section 7811, the corporation shall file a certificate of amendment signed and verified by a majority of the incorporators which shall state that the signers thereof constitute at least a majority of the incorporators, that directors were not named in the original articles and have not been elected, that the corporation has

no members and that they adopt the amendment or amendments therein set forth. [1979]

§7816. Wording of Amendment of Articles

■ The certificate of amendment shall establish the wording of the amendment or amended articles by one or more of the following means:

(a) By stating that the articles shall be amended to read as therein set forth in full.

(b) By stating that any provision of the articles, which shall be identified by the numerical or other designation given it in the articles or by stating the wording thereof, shall be stricken from the articles or shall be amended to read as set forth in the certificate.

(c) By stating that the provisions set forth therein shall be added to the articles.

If the purpose of the amendment is to ■ reclassify, cancel, exchange, or otherwise change outstanding memberships the amended articles shall state the effect thereof on outstanding memberships. [1978]

§7817. Certificate as Prima Facie Evidence of Amendment Adoption

■ Upon the filing of the certificate of amendment, the articles shall be amended in accordance with the certificate and any change, ■ reclassification or cancellation of memberships shall be effected, and a copy of the certificate, certified by the Secretary of State, is prima facie evidence of the performance of the conditions necessary to the adoption of the amendment. [1978]

§7818. Extending Corporate Existence

■ A corporation formed for a limited period may at any time subsequent to the expiration of the term of its corporate existence, extend the term of its existence by an amendment to its articles removing any provision limiting the term of its existence and providing for perpetual existence. If the filing of the certificate of amendment providing for perpetual existence would be prohibited if it were original articles by the provisions of Section 7122, the Secretary of State shall not file such certificate unless, by the same or a concurrently filed certificate of amendment, the articles of such corporation are amended to adopt a new available name. For the purpose of the adoption of any such amendment, persons who have been functioning as directors of such corporation shall be considered to have been validly elected even though their election may have occurred after the expiration of the original term of the corporate existence. [1978]

§7819. Restated Articles of Incorporation; Approval; Filing

■ (a) A corporation may restate in a single certificate the entire text of its articles as amended by filing an officers' certificate or, in circumstances where ■ incorporators or the board may amend a corporation's articles pursuant to Sections 7811 and 7815, a certificate signed and verified by a majority of the incorporators or the board, as applicable, entitled "Restated Articles of Incorporation of (insert name of corporation)" which shall set forth the articles

as amended to the date of filing of the certificate, except that the signatures and acknowledgments of the articles by the incorporators and any statements regarding the effect of any prior amendment upon memberships and any provisions of agreements of merger (other than amendments to the articles of the surviving corporation), and the initial street address and initial mailing address of the corporation, and the names and addresses of the first directors and of the ■ initial agent for service of ■ process shall be omitted (except that the initial street address and initial mailing address of the corporation and the names and addresses of the initial agent for service of process and, if previously set forth in the articles, the initial directors, shall not be omitted prior to the time that the corporation has filed a statement under Section 8210). Such omissions are not alterations or amendments of the articles. The certificate may also itself alter or amend the articles in any respect, in which case the certificate must comply with Section 7814 or 7815, as the case may be, and Section 7816.

(b) If the certificate does not itself alter or amend the articles in any respect, it shall be approved by the board or, prior to the issuance of any memberships and the naming and election of directors, by a majority of the incorporators, and shall be subject to the provisions of this chapter relating to an amendment of the articles not requiring approval of the members (Section 5034). If the certificate does itself alter or amend the articles, it shall be subject to the provisions of this chapter relating to the amendment or amendments so made.

(c) Restated articles of incorporation filed pursuant to this section shall supersede for all purposes the original articles and all amendments filed prior thereto. [2012]

§7910. Approval to Pledge Assets

■ Any mortgage, deed of trust, pledge or other hypothecation of all or any part of the corporation's property, real or personal, for the purpose of securing the payment or performance of any contract or obligation may be approved by the board. Unless the articles or bylaws otherwise provide, no approval of the members (Section 5034) shall be necessary for such action. [1978]

§7911. Principal Terms of Sale; Abandonment of Proposed Transaction

■ (a) Subject to the provisions of Section 7142,⁴² a corporation may sell, lease, convey, exchange, ■ transfer or otherwise dispose of all or substantially all of its assets when the principal terms are:

(1) Approved by the board; and

(2) Unless the transaction is in the usual and regular course of its activities, approved by the members (Section 5034), either before or after approval by the board and before or after the transaction.

⁴² Section 7142 pertains to assets held in a charitable trust.

(b) Notwithstanding approval by the members (Section 5034), the board may abandon the proposed transaction without further action by the members, subject to the contractual rights, if any, of third parties.

(c) Subject to the provisions of Section 7142,⁴³ such sale, lease, conveyance, exchange, transfer or other disposition may be made upon such terms and conditions and for such consideration as the board may deem in the best interests of the corporation. The consideration may be money, property, or securities of any domestic corporation, foreign corporation, or foreign business corporation or any of them. [1981]

§7912. Annexation of Secretary’s Certificate to Deed or Instrument Conveying or Transferring Assets

Any deed or instrument conveying or otherwise transferring any assets of a corporation may have annexed to it the certificate of the secretary or an assistant secretary of the corporation, setting forth that the transaction has been validly approved by the board and (a) stating that the property described in such deed or instrument is less than substantially all of the assets of the corporation or that the transfer is in the usual and regular course of the business of the corporation, if such be the case, or (b) if such property constitutes all or substantially all of the assets of the corporation and the transfer is not in the usual and regular course of the business of the corporation, stating the fact of approval thereof by the members (Section 5034) or all the members pursuant to this chapter. Such certificate is prima facie evidence of the existence of the facts authorizing such conveyance or other transfer of the assets and conclusive evidence in favor of any purchaser or encumbrancer for value who, without notice of any trust restriction applicable to the property or any failure to comply therewith, in good faith parted with value. [1978]

§8210. Filing Biennial Statement

■ (a) Every corporation shall, within 90 days after the filing of its original articles and biennially thereafter during the applicable filing period, file, on a form prescribed by the Secretary of State, a statement containing: (1) the name of the corporation and the Secretary of State’s file number; (2) the names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer, (3) the street address of its ■ principal office in this state, if any, (4) the mailing address of the corporation, if different from the street address of its principal executive office or if the corporation has no principal office address in this state, and (5) if the corporation chooses to receive renewal notices and any other notifications from the Secretary of State by electronic mail instead of by United States mail, a valid electronic mail address for the corporation or for the corporation’s designee to receive those notices.

(b) The statement required by subdivision (a) shall also designate, as the ■ agent of the corporation for the purpose of service of process, a natural person residing in this state or any domestic or foreign or foreign business

⁴³ Section 7142 pertains to assets held in a charitable trust.

corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence street address. If a corporate agent is designated, no address for it shall be set forth.

(c) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall provide a notice to each corporation to comply with this section approximately three months prior to the close of the applicable filing period. The notice shall state the due date for compliance and shall be sent to the last address of the corporation according to the records of the Secretary of State or to the last electronic mail address according to the records of the Secretary of State if the corporation has elected to receive notices from the Secretary of State by electronic mail. Neither the failure of the Secretary of State to send the notice nor the failure of the corporation to receive it is an excuse for failure to comply with this section.

(d) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the articles as to the agent for service of process and the address of the agent.

(e) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(f) This section shall not be construed to place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section. [2012]

§8211. Resignation as Agent for Service of Process

(a) An agent designated for service of process pursuant to Section 8210 may deliver to the Secretary of State, on a form prescribed by the Secretary of State for filing, a signed and acknowledged written statement of resignation as an agent for service of process containing the name of the corporation, the Secretary of State's file number of the corporation, the name of the resigning agent for service of process, and a statement that the agent is resigning. Thereupon the authority of the agent to act in that capacity shall cease and the Secretary of State forthwith shall mail or otherwise provide written notice of the filing of the statement of resignation to the corporation at its principal office.

(b) The resignation of an agent may be effective if, on a form prescribed by the Secretary of State containing the name of the corporation, the Secretary of State's file number for the corporation, and the name of the agent for service of process, the agent disclaims having been properly appointed as the

agent. Similarly, a person named as an officer or director may indicate that the person was never properly appointed as the officer or director.

(c) The Secretary of State may destroy or otherwise dispose of any statement of resignation filed pursuant to this section after a new form is filed pursuant to Section 8210 replacing the agent for service of process that has resigned. [2014]

§8212. Corporation to Replace Vacancy in Agent for Service of Process

If a natural person who has been designated agent for service of process pursuant to Section 8210 dies or resigns or no longer resides in the state or if the corporate agent for such purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers and privileges suspended or ceases to exist, the corporation shall forthwith file a designation of a new agent conforming to the requirements of Section 8210. [1978]

§8214. Business Records for Owned Corporate Property

Upon request of an assessor, a corporation owning, claiming, possessing or controlling property in this state subject to local assessment shall make available at the corporation's principal office in California or at a place mutually acceptable to the assessor and the corporation a true copy of business records relevant to the amount, cost and value of all property that it owns, claims, possesses or controls within the county. [1979]

§8215. Joint and Several Liability of Officers, Directors, Employees, and Agents

Any officers, directors, employees or agents of a corporation who do any of the following are liable jointly and severally for all the damages resulting therefrom to the corporation or any person injured thereby who relied thereupon or to both:

(a) Make, issue, deliver or publish any prospectus, report, circular, certificate, financial statement, balance sheet, public notice or document respecting the corporation or its memberships, assets, liabilities, capital, dividends, business, earnings or accounts which is false in any material respect, knowing it to be false, or participate in the making, issuance, delivery or publication thereof with knowledge that the same is false in a material respect.

(b) Make or cause to be made in the books, minutes, records or accounts of a corporation any entry which is false in any material particular knowing such entry is false.

(c) Remove, erase, alter or cancel any entry in any books or records of the corporation, with intent to deceive. [1978]

§8216. Member Complaint; Actions by Attorney General; Appointment of Receivers

■ (a) The Attorney General, upon complaint of a member, director or officer, that a corporation is failing to comply with the provisions of this

chapter, Chapter 5 (commencing with Section 7510), Chapter 6 (commencing with Section 7610) or Chapter 13(commencing with Section 8310), may, in the name of the people of the State of California, send to the principal office of such corporation, (or, if there is no such office, to the office or residence of the chief executive officer or secretary, of the corporation, as set forth in the most recent statement filed pursuant to Section 8210) notice of the complaint. If the answer is not satisfactory, or if there is no answer within 30 days, the Attorney General may institute, maintain or intervene in such suits, actions, or proceedings of any type in any court or tribunal of competent jurisdiction or before any administrative agency for such relief by way of injunction, the dissolution of entities, the appointment of receivers or any other temporary, preliminary, provisional or final remedies as may be appropriate to protect the rights of members or to undo the consequences of failure to comply with such requirements. In any such action, suit or proceeding there may be joined as parties all persons and entities responsible for or affected by such activity.

(b) In the case of a corporation where the action concerns assets held in charitable trust, the Attorney General may bring an action under subdivision (a) without having received a complaint, and without first giving notice of a complaint. [1978]

§8310. Inspection of Records; Maintenance in Written Form

■ If any record subject to inspection pursuant to this chapter is not maintained in written form, a request for inspection is not complied with unless and until the corporation at its expense makes such record available in written form. For the purposes of this chapter “written” or “in ■ writing” also includes cathode ray tube and similar ■ electronic communications methods. [1982]

§8311. Inspections; Authorized Persons

Any inspection under this chapter may be made in person or by ■ agent or attorney and the right of inspection includes the right to copy and make extracts. [1978]

§8312. Right of Inspection Extends to Records of Subsidiaries

Any right of inspection created by this chapter extends to the records of each subsidiary of a corporation. [1978]

§8313. Rights of Members Not Limited by Contract, Articles, or Bylaws

■ The rights of members provided in this chapter may not be limited by contract or the articles or bylaws. [1978]

§8320. Books and Records Required of Corporation

■ (a) Each corporation shall keep:
(1) Adequate and correct books and records of account;
(2) ■ Minutes of the proceedings of its members, board and ■ committees of the board; and

(3) A record of its members giving their names and addresses and the class of membership held by each.

(b) Those minutes and other books and records shall be kept either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the foregoing. When minutes and other books and records are kept in a form capable of being converted into clearly legible paper form, the clearly legible paper form into which those minutes and other books and records are converted shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided that the paper form accurately portrays the record. [2004]

§8321. Annual Reports; Contents; Applicability

■ (a) A corporation shall notify each member yearly of the member's right to receive a financial report pursuant to this subdivision. Except as provided in subdivision (c), upon written request of a member, the board shall promptly cause the most recent annual report to be sent to the requesting member. An annual report shall be prepared not later than 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material may be sent by electronic transmission by the corporation (Section 20). That report shall contain in appropriate detail the following:

(1) A balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year.

(2) A statement of the place where the names and addresses of the current members are located.

(3) Any information required by Section 8322.

■ (b) The report required by subdivision (a) shall be accompanied by any report thereon of independent accountants, or, if there is no report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

(c) Subdivision (a) does not apply to any corporation that receives less than ten thousand dollars (\$10,000) in gross revenues or receipts during the fiscal year. [2006]

§8322. Annual Statement to Members of Insider Transactions

(a) Any provision of the articles or bylaws notwithstanding, every corporation shall furnish annually to its members and directors a statement of any transaction or indemnification of a kind described in subdivision (d) or (e), if any such transaction or indemnification took place. If the corporation issues an annual report to all members, this subdivision shall be satisfied by including the required information in the annual report. A corporation which does not issue an annual report to all members, pursuant to subdivision (c) of Section 8321, shall satisfy this section by mailing or delivering to its members the required statement within 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the

board of directors, that statement may be sent by electronic transmission by the corporation (Section 20).

(b) Except as provided in subdivision (c), a covered transaction under this section is a transaction in which the corporation, its parent, or its subsidiary was a party, and in which either of the following had a direct or indirect material financial interest:

(1) Any director or officer of the corporation, or its parent or subsidiary.

(2) Any holder of more than 10 percent of the voting power of the corporation, its parent or its subsidiary.

For the purpose of subdivision (d), an “interested person” is any person described in paragraph (1) or (2) of this subdivision.

(c) Transactions approved by the members of a corporation (Section 5034), under subdivision (a) of Section 7233, are not covered transactions. For the purpose of subdivision (b), a mere common directorship is not a material financial interest.

(d) The statement required by subdivision (a) shall describe briefly:

(1) Any covered transaction (excluding ■ compensation of officers and directors) during the previous fiscal year involving more than fifty thousand dollars (\$50,000), or which was one of a number of covered transactions in which the same interested person had a direct or indirect material financial interest, and which transactions in the aggregate involved more than fifty thousand dollars (\$50,000).

(2) The names of the interested persons involved in such transactions, stating such person’s relationship to the corporation, the nature of such person’s interest in the transaction and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

(e) The statement required by subdivision (a) shall describe briefly the amount and circumstances of any ■ loans, guaranties, indemnifications or advances aggregating more than ten thousand dollars (\$10,000) paid or made during the fiscal year to any officer or director of the corporation pursuant to Section 7237; provided that no such report need be made in the case of a loan, guaranty, or indemnification approved by the members (Section 5034) or a loan or guaranty not subject to the provisions of subdivision (a) of Section 7235. [2004]

§8323. Court Enforcement of Inspection Requirements; Costs and Attorneys’ Fees

■ (a) The superior court of the proper county shall enforce the duty of making and mailing or delivering the information and financial statements required by this article and, for good cause shown, may extend the time therefor.

(b) In any action or proceeding under this section, if the court finds the failure of the corporation to comply with the requirements of this article to have been without justification, the court may award the member

reasonable expenses, including attorneys' fees, in connection with such action or proceeding. [1978]

§8325. Membership Meeting Voting Results

For a period of 60 days following the conclusion of an annual, regular, or special meeting of members, a corporation shall, upon written request from a member, forthwith inform the member of the result of any particular vote of members taken at the meeting, including the number of memberships voting for, the number of memberships voting against, and the number of memberships ■ abstaining or withheld from voting. If the matter voted on was the election of directors, the corporation shall report the number of memberships, or votes if voted cumulatively, cast for each nominee for director. If more than one class or series of memberships voted, the report shall state the appropriate numbers by class and series of memberships. [1999]

§8330. Membership List; Inspection Rights; Persons Authorized

■ (a) Subject to Sections 8331 and 8332, and unless the corporation provides a reasonable alternative pursuant to subdivision (c), a member may do either or both of the following as permitted by subdivision (b):

(1) Inspect and copy the record of all the members' names, addresses and ■ voting rights, at reasonable times, upon five business days' prior written demand upon the corporation which demand shall state the purpose for which the inspection rights are requested; or

(2) Obtain from the secretary of the corporation, upon written demand and tender of a reasonable charge, a list of the names, addresses and ■ voting rights of those members entitled to vote for the election of directors, as of the most recent record date for which it has been compiled or as of a date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be made available on or before the later of ten business days after the demand is received or after the date specified therein as the date as of which the list is to be compiled.

(b) The rights set forth in subdivision (a) may be exercised by:

(1) Any member, for a purpose reasonably related to such person's interest as a member. Where the corporation reasonably believes that the information will be used for another purpose, or where it provides a reasonable alternative pursuant to subdivision (c), it may deny the member access to the list. In any subsequent action brought by the member under Section 8336, the court shall enforce the rights set forth in subdivision (a) unless the corporation proves that the member will allow use of the information for purposes unrelated to the person's interest as a member or that the alternative method offered reasonably achieves the proper purpose set forth in the demand.

■ (2) The authorized number of members for a purpose reasonably related to the members' interest as members.

(c) The corporation may, within ten business days after receiving a demand under subdivision (a), deliver to the person or persons making the demand a written offer of an alternative method of achieving the purpose

identified in said demand without providing access to or a copy of the membership list. An alternative method which reasonably and in a timely manner accomplishes the proper purpose set forth in a demand made under subdivision (a) shall be deemed a reasonable alternative, unless within a reasonable time after acceptance of the offer the corporation fails to do those things which it offered to do. Any rejection of the offer shall be in writing and shall indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand made pursuant to subdivision (a). [1978]

§8331. Protective Orders Against Membership List Inspection

■ (a) Where the corporation, in good faith, and with a substantial basis, believes that the membership list, demanded under Section 8330 by the ■ authorized number (Section 5036), will be used for a purpose not reasonably related to the interests as members of the person or persons making the demand (hereinafter called the requesting parties) as members or provides a reasonable alternative pursuant to subdivision (c) of Section 8330, it may petition the superior court of the proper county for an order setting aside the demand.

(b) Except as provided in subdivision (c), a ■ petition for an order to show cause why a protective order pursuant to subdivision (d) should not issue shall be filed within 10 business days after the demand by the authorized number under Section 8330 or receipt of a written rejection by the authorized number of an offer made pursuant to subdivision (c) of Section 8330, whichever is later. The petition shall be accompanied by an application for a hearing on the petition. Upon the filing of the petition, the court shall issue a protective order staying production of the list demanded until the hearing on the order to show cause. The court shall set the hearing on the order to show cause not more than 20 days from the date of the filing of the petition. The order to show cause shall be granted unless the court finds that there is no reasonable probability that the corporation will make the showing required under subdivision (f).

(c) A corporation may file a petition ■ under this section more than 10 business days after the demand or rejection under Section 8330, but only upon a showing the delay was caused by excusable neglect. In no event, however, may any petition under this section be considered if filed more than 30 days after the requesting parties' demand or rejection, whichever is later.

(d) Upon the return day of the order to show cause, the court may issue a protective order staying production of the list demanded until final adjudication of the petition filed pursuant to this section. No protective order shall issue under this subdivision unless the court finds that the rights of the requesting parties can reasonably be preserved and that the corporation is likely to make the showing required by subdivision (f) or the court is likely to issue a protective order pursuant to subdivision (g).

(e) If the corporation fails to file a petition within the time allowed by subdivision (b) or (c), whichever is applicable, or fails to obtain a protective order under subdivision (d), then the corporation shall comply with the demand, and no further action may be brought by the corporation under this section.

(f) The court shall issue the final order setting aside the demand only if the corporation proves:

(1) That there is a reasonable probability that the requesting parties will permit use of the membership list for a purpose unrelated to their interests as members; or

(2) That the method offered by the corporation is a reasonable alternative in that it reasonably achieves the proper purpose set forth in the requesting parties' demand and that the corporation intends and is able to effectuate the reasonable alternative.

(g) In the final order, the court may, in its discretion, order an alternate mechanism for achieving the proper purposes of the requesting parties, or impose just and proper conditions upon the use of the membership list which reasonably assures compliance with Section 8330 and Section 8338.

(h) The court shall award reasonable costs and expenses including reasonable attorneys' fees, to requesting parties who successfully oppose any petition or application filed pursuant to this section.

(i) Where the corporation has neither, within the time allowed, complied with a demand by the authorized number (Section 5036) under Section 8330, nor obtained a protective order staying production of the list, or a final order setting aside the demand, which is then in effect, the requesting parties may petition the superior court of the proper county for a writ of mandamus pursuant to Section 1085 of the Code of Civil Procedure compelling the corporation to comply with the demand. At the hearing, the court shall hear the parties summarily, by affidavit or otherwise, and shall issue a peremptory writ of mandamus unless it appears that the demand was not made by an authorized number (Section 5036), that the demand has been complied with, that the corporation, pursuant to subdivision (c) of Section 8330, made an offer which was not rejected in writing within a reasonable time, or that a protective or final order properly issued under subdivision (d), (f) or (g) is then in effect. No inquiry may be made in such proceeding into the use for which the authorized number seek the list. The court shall award reasonable costs and expenses, including reasonable attorneys' fees, to persons granted an order under this subdivision.

(j) Nothing in this section shall be construed to limit the right of the corporation to obtain damages for any misuse of a membership list obtained under Section 8330, or otherwise, or to obtain injunctive relief necessary to restrain misuse of a member list. A corporation shall be entitled to recover reasonable costs and expenses, including reasonable attorneys' fees, incurred in successfully bringing any such action. [1979]

§8332. Limitations and Restrictions on Inspection Rights by Court

■ (a) Upon ■ petition of the corporation or any member, the superior court of the proper county may limit or restrict the rights set forth in Section 8330 where, and only where, such limitation or restriction is necessary to protect the rights of any member under the Constitution of the United States or the Constitution of the State of California. An order issued pursuant to this subdivision shall provide, insofar as possible, for alternative mechanisms by

which the persons seeking to exercise rights under Section 8330 may communicate with members for purposes reasonably related to their interests as members.

(b) Upon the filing of a petition under subdivision (a), the court may, if requested by the person making the petition, issue a temporary order suspending the running of any time limit specified in Section 8330 for compliance with that section. Such an order may be extended, after notice and hearing, until final adjudication of the petition, wherever it appears that the petitioner may prevail on the merits, and it is otherwise equitable to do so. [1978]

§8333. Inspection of Accounting Books, Records, and Minutes

■ The ■ accounting books and records and minutes of proceedings of the members and the board and ■ committees of the board shall be open to inspection upon the written demand on the corporation of any member at any reasonable time, for a purpose reasonably related to such person's interests as a member. [1978]

§8334. Right of Directors to Inspect Corporate Documents and Properties

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation of which such person is a director. [1978]

§8335. Frustration of Inspection Rights by Corporate Delay; Remedies

■ Where the proper purpose of the person or persons making a demand pursuant to Section 8330 is frustrated by (1) any delay by the corporation in complying with a demand under Section 8330 beyond the time limits specified therein, or (2) any delay caused by the filing of a ■ petition under Section 8331 or Section 8332, or (3) any delay caused by the alternative proposed under subdivision (c) of Section 8330, the person or persons properly making the demand shall have, in the discretion of the court, a right to obtain from the superior court an order postponing any members' meeting previously noticed for a period equal to the period of such delay. The members may obtain such an order in a proceeding brought pursuant to Section 8331 upon the filing of a verified complaint in the proper county and after a hearing, notice of which shall be given to such persons and in such manner as the court may direct. Such right shall be in addition to any other legal or equitable remedies to which the member may be entitled. [1980]

§8336. Court Enforcement of Inspection Rights; Contempt of Court

■ (a) Upon refusal of a lawful demand for inspection under this chapter, or a lawful demand pursuant to Section 8330 or Section 8333, the superior court of the proper county, or the county where the books or records in question are kept, may enforce the demand or right of inspection with just and

proper conditions or may, for good cause shown, appoint one or more competent inspectors or independent accountants to ■ audit the financial statements kept in this state and investigate the property, funds and affairs of any corporation and of any subsidiary corporation thereof, domestic or foreign, keeping records in this state and to report thereon in such manner as the court may direct.

(b) All officers and agents of the corporation shall produce to the inspectors or accountants so appointed all books and documents in their custody or power, under penalty of punishment for contempt of court.

(c) All expenses of the investigation or audit shall be defrayed by the applicant unless the court orders them to be paid or shared by the corporation. [1979]

§8337. Award of Costs and Expenses; Failure of Corporation to Comply with Proper Demand for Inspection

In any action or proceeding under this article, and except as required by Section 8331, if the court finds the failure of the corporation to comply with a proper demand thereunder was without justification, the court may award the member reasonable costs and expenses, including reasonable attorneys' fees, in connection with such action or proceeding. [1978]

§8338. Membership List as Corporate Asset and Use of Membership List

■ (a) A membership list is a corporate asset. Without ■ consent of the board a membership list or any part thereof may not be obtained or used by any person for any purpose not reasonably related to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) Used to solicit money or property unless such money or property will be used solely to solicit the vote of the members in an election to be held by their corporation.

(2) Used for any purpose which the user does not reasonably and in good faith believe will benefit the corporation.

(3) Used for any commercial purpose or purpose in competition with the corporation.

(4) Sold to or purchased by any person.

(b) Any person who violates the provisions of subdivision (a) shall be liable for any damage such violation causes the corporation and shall account for and pay to the corporation any profit derived as a result of said violation. In addition, a court in its discretion may award exemplary damages for a fraudulent or malicious violation of subdivision (a).

(c) Nothing in this article shall be construed to limit the right of a corporation to obtain injunctive relief necessary to restrain misuse of a membership list or any part thereof.

(d) In any action or proceeding under this section, a court may award the corporation reasonable costs and expenses, including reasonable attorneys' fees, in connection with such action or proceeding.

(e) As used in this section, the term “membership list” means the record of the members’ names and addresses. [1996]

§8724. Dissolution of Owners’ Association

■ Without the approval of 100 percent of the members, any contrary provision in this part or the articles or bylaws notwithstanding, so long as there is any lot, parcel, area, apartment or unit for which an owners’ association, created in connection with any of the forms of development referred to in Section 11004.5 of the Business and Professions Code, is obligated to provide management, maintenance, preservation, or control, the following shall apply:

(a) The owners’ association or any person acting on its behalf shall not do either of the following:

(1) Transfer all or substantially all of its assets.

(2) File a certificate of dissolution.

(b) No court shall enter an order declaring the owners association duly wound up and dissolved. [2006]

§8810. Failure to File Biennial Statement

■ (a) Upon the failure of a corporation to file the statement required by Section 8210, the Secretary of State shall provide a notice of such delinquency to the corporation. The notice shall also contain information concerning the application of this section, and advise the corporation of the penalty imposed by Section 19141 of the Revenue and Taxation Code for failure to timely file the required statement after notice of delinquency has been provided by the Secretary of State. If, within 60 days after providing notice of the delinquency, a statement pursuant to Section 8210 has not been filed by the corporation, the Secretary of State shall certify the name of the corporation to the Franchise Tax Board.

(b) Upon certification pursuant to subdivision (a), the Franchise Tax Board shall assess against the corporation a penalty of fifty dollars (\$50) pursuant to Section 19141 of the Revenue and Taxation Code.

(c) The penalty herein provided shall not apply to a corporation which on or prior to the date of certification pursuant to subdivision (a) has dissolved, has converted to another type of business entity, or has been merged into another corporation or other business entity.

(d) The penalty herein provided shall not apply and the Secretary of State need not provide a notice of the delinquency to a corporation the corporate powers, rights, and privileges of which have been suspended by the Franchise Tax Board pursuant to Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code on or prior to, and remain suspended on, the last day of the filing period pursuant to Section 8210. The Secretary of State need not provide notice of the filing requirement pursuant to Section 8210, to a corporation the corporate powers, rights, and privileges of which have been so suspended by the Franchise Tax Board on or prior to, and remain suspended on, the day the Secretary of State prepares the notice for sending.

(e) If, after certification pursuant to subdivision (a) the Secretary of State finds the required statement was filed before the expiration of the 60-

day period after providing the notice of delinquency, the Secretary of State shall promptly decertify the name of the corporation to the Franchise Tax Board. The Franchise Tax Board shall then promptly abate any penalty assessed against the corporation pursuant to Section 19141 of the Revenue and Taxation Code.

(f) If the Secretary of State determines that the failure of a corporation to file a statement required by Section 8210 is excusable because of reasonable cause or unusual circumstances which justify the failure, the Secretary of State may waive the penalty imposed by this section and by Section 19141 of the Revenue and Taxation Code, in which case the Secretary of State shall not certify the name of the corporation to the Franchise Tax Board, or if already certified, the Secretary of State shall promptly decertify the name of the corporation. [2014]

TITLE 3. UNINCORPORATED ASSOCIATIONS
PART 1. GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS

§18000. Definitions and Construction

Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this title. [2004]

§18003. Board

“Board” means the board of directors or other governing body of an unincorporated association. [2005]

§18005. Director

“Director” means a natural person serving as a member of the board or other governing body of the unincorporated association. [2005]

§18008. Governing Document

“Governing document” means a constitution, articles of association, bylaws, or other writing that governs the purpose or operation of an unincorporated association or the rights or obligations of its members. [2005]

§18010. Governing Principles

“Governing principles” means the principles stated in an unincorporated association’s governing documents. If an association has no governing documents or the governing documents do not include a provision governing an issue, the association’s governing principles regarding that issue may be inferred from its established practices. For the purpose of this section, “established practices” means the practices used by an unincorporated association without material change or exception during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence. [2005]

§18015. Member

(a) If the governing principles of an unincorporated association define the membership of the association, “member” has the meaning provided by the governing principles.

(b) If the governing principles of an unincorporated association do not define the membership of the association, “member” means a person who, pursuant to the governing principles of the unincorporated association, has a right to participate in the selection of persons authorized to manage the affairs of the unincorporated association or in the development of policy of the unincorporated association, but does not include a person who participates solely as director, officer, or agent of the association. [2004]

§18020. Nonprofit Association

■ (a) “Nonprofit association” means an unincorporated association with a primary common purpose other than to operate a business for profit.

(b) A nonprofit association may carry on a business for profit and apply any profit that results from the business activity to any activity in which it may lawfully engage. [2004]

§18025. Officer

“Officer” means a natural person serving as an unincorporated association’s chair, president, secretary, chief financial officer, or other position of authority that is established pursuant to the association’s governing principles. [2004]

§18030. Person

“Person” includes a natural person, corporation, partnership, or other unincorporated organization, government, or governmental subdivision or agency, or any other entity. [2004]

§18035. Unincorporated Association

(a) “Unincorporated association” means an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not.

(b) Joint tenancy, tenancy in common, community property, or other form or property tenure does not by itself establish an unincorporated association, even if coowners share ownership of the property for a common purpose.

(c) Marriage or creation of a registered domestic partnership does not by itself establish an unincorporated association. [2004]

CHAPTER 2. APPLICATION OF TITLE

§18055. Nonapplicability of Title

This title does not apply to any of the following persons:

- (a) A corporation.
- (b) A government or governmental subdivision or agency.
- (c) A partnership or joint venture.

(d) A limited liability company.

(e) A labor organization, labor federation, labor council, or labor committee, that is governed by a constitution or bylaws. As used in this subdivision, “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, where employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. [2004]

§18060. Specific Statute Controls over General

If a statute specific to a particular type of unincorporated association is inconsistent with a general provision of this title, the specific statute prevails to the extent of the inconsistency. [2004]

§18065. Unincorporated Association Subject to Agency Law Generally

Except to the extent this title provides a specific rule, the general law of agency, including Article 2 (commencing with Section 2019) of Chapter 2 of Title 6 of, and Title 9 (commencing with Section 2295) of, Part 4 of Division 3 of the Civil Code, applies to an unincorporated association. [2004]

§18070. Unincorporated Association Laws Considered a Restatement

A provision of this title, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment, and a reference in a statute to the provision shall be deemed to include a reference to the previously existing provision unless a contrary intent appears. [2004]

CHAPTER 3. PROPERTY

§18100. Membership is Personal Property

The interest of a member in an unincorporated association is personal property. [2004]

§18105. Unincorporated Association May Hold Property in its Name

An unincorporated association may, in its name, acquire, hold, manage, encumber, or transfer an interest in real or personal property. [2004]

§18110. Association Property Not Owned by Members

Property acquired by or for an unincorporated association is property of the unincorporated association and not of the members individually. [2004]

§18115. Officers to Execute Transfers of Property Interests

The acquisition, transfer, or encumbrance of an interest in real property by an unincorporated association shall be executed by its president and secretary or other comparable officers, or by a person specifically designated by

a resolution adopted by the association, or by a committee or other body or person authorized to act by the governing principles of the association. [2004]

§18120. Recorded Statement of Authority of Unincorporated Association

(a) An unincorporated association may record in a county in which it has an interest in real property a verified and acknowledged statement of authority stating the name of the association, and the names, title, or capacity of its officers and other persons who are authorized on its behalf to acquire, transfer, or encumber real property. For the purposes of this section, “statement of authority” includes a certified copy of a statement recorded in another county.

(b) An unincorporated association may revoke a statement of authority by recording either of the following documents in the county in which the statement of authority is recorded:

(1) A new statement of authority that satisfies the requirements of subdivision (a). The new statement supersedes the revoked statement.

(2) A verified and acknowledged document that expressly revokes the statement of authority.

(c) It shall be conclusively presumed in favor of a bona fide transferor, or purchaser, or encumbrancer for value of real property of the association located in the county in which a statement of authority has been recorded pursuant to subdivision (a), that a person designated in the statement is authorized to acquire, transfer, or encumber real property on behalf of the association.

(d) The presumption provided in subdivision (c) does not apply if, before the acquisition, transfer, or encumbrance, either of the following occurs:

(1) The statement of authority is revoked by the unincorporated association.

(2) A person claiming to be a member, director, or officer of the unincorporated association records, in the county in which the property is located, a verified and acknowledged document stating that the statement of authority is erroneous or unauthorized. [2004]

§18122. Unincorporated Association Holding Property for Charitable Purposes

An unincorporated association holding property for charitable purposes shall comply with the Supervision of Trustees and Fundraisers for Charitable Purposes Act, Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code, if applicable. [2011]

§18125. Member’s Challenge to Unincorporated Association’s Power

No limitation on the power of an unincorporated association to acquire, hold, manage, pledge, encumber, or transfer an interest in real or personal property, or the manner of exercise of those powers, shall be asserted

as between the unincorporated association or a member of the unincorporated association and a third person, except in the following proceedings:

(a) A proceeding to enjoin an unauthorized act, or the continuation of an unauthorized act, where a third person has not yet acquired rights that would be adversely affected by the injunction, or where, at the time of the unauthorized act, the third person had actual knowledge that the act was unauthorized.

(b) A proceeding to dissolve the unincorporated association.

(c) A proceeding against a director, officer, or agent of the unincorporated association for violation of that person's authority. [2004]

§18130. Unincorporated Association Dissolution and Distribution of Assets

After all of the known debts and liabilities of an unincorporated association in the process of winding up its affairs have been paid or adequately provided for, the assets of the association shall be distributed in the following manner:

(a) Assets held upon a valid condition requiring return, transfer, or conveyance of the assets, which condition has occurred or will occur, shall be returned, transferred, or conveyed in accordance with the condition.

(b) After complying with subdivision (a), any remaining assets that are held in trust shall be distributed in accordance with the trust.

(c) After complying with subdivisions (a) and (b), any remaining assets shall be distributed in accordance with the governing principles of the association. If the governing principles do not provide the manner of distribution of the assets, the assets shall be distributed pro rata to the current members of the association. [2004]

§18135. Action Against Persons Receiving Distribution of Assets

(a) Notwithstanding Section 18260, a cause of action against an unincorporated association may be enforced against a person who received assets distributed under Section 18130. Liability under this section shall be limited to the value of the assets distributed to the person or the person's pro rata share of the claim against the unincorporated association, whichever is less.

(b) An action under this section shall be commenced before the earlier of the following dates:

(1) Expiration of the statute of limitations applicable to the cause of action.

(2) Four years after dissolution of the unincorporated association. This paragraph does not apply in a quiet title action. [2004]

CHAPTER 4. DESIGNATION OF AGENT FOR SERVICE OF PROCESS

§18200. Filing Statements with Secretary of Agent; Address; Agent for Service of Process

(a) An unincorporated association may file with the Secretary of State, on a form prescribed by the Secretary of State, a statement containing either of the following:

(1) A statement designating the location and complete address of the unincorporated association's principal office in this state. Only one place may be designated.

(2) A statement (A) designating the location and complete address of the unincorporated association's principal office in this state in accordance with paragraph (1) or, if the unincorporated association does not have an office in this state, designating the complete address of the unincorporated association to which the Secretary of State shall send any notices required to be sent to the association under Sections 18210 and 18215, and (B) designating as agent of the association for service of process any natural person residing in this state or any corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated.

(b) If a natural person is designated as agent for service of process, the statement shall include the person's complete business or residence address. If a corporate agent is designated, no address for it shall be included.

(c) Filing is deemed complete on acceptance by the Secretary of State of the statement, a copy of the statement, and the filing fee. The Secretary of State shall return the copy of the statement to the unincorporated association, with notations that indicate the file number and filing date of the original.

(d) At any time, an unincorporated association that has filed a statement under this section may file a new statement superseding the last previously filed statement. If the new statement does not designate an agent for service of process, the filing of the new statement shall be deemed to revoke the designation of an agent previously designated. A statement filed under this section expires five years from December 31 following the date it was filed in the office of the Secretary of State, unless previously superseded by the filing of a new statement.

(e) Delivery by hand of a copy of any process against the unincorporated association (1) to any natural person designated by it as agent, or (2) if the association has designated a corporate agent, to any person named in the last certificate of the corporate agent filed pursuant to Section 1505 at the office of the corporate agent shall constitute valid service on the association.

(f) For filing a statement as provided in this section, the Secretary of State shall charge and collect the fee provided in paragraph (1) of subdivision (b) of Section 12191 of the Government Code for filing a designation of agent.

(g) Notwithstanding Section 18055, a statement filed by a partnership under former Section 24003 is subject to this chapter until the statement is revoked or expires. [2004]

§18205. Secretary of State Filing and Indexing

(a) The Secretary of State shall mark each statement filed under Section 18200 with a consecutive file number and the date of filing. In lieu of retaining the original statement, the Secretary of State may retain a copy in accordance with Section 14756 of the Government Code.

(b) The Secretary of State shall index each statement filed under Section 18200 according to the name of the unincorporated association as set out in the statement and shall enter in the index the file number and the address of

the association as set out in the statement and, if an agent for service of process is designated in the statement, the name of the agent and, if a natural person is designated as the agent, the address of that person.

(c) Upon request of any person, the Secretary of State shall issue a certificate showing whether, according to the Secretary of State's records, there is on file on the date of the certificate, any presently effective statement filed under Section 18200 for an unincorporated association using a specific name designated by the person making the request. If a statement is on file, the certificate shall include the information required by subdivision (b) to be included in the index. The fee for the certificate is the fee provided in Section 12183 of the Government Code.

(d) When a statement has expired under subdivision (d) of Section 18200, the Secretary of State shall enter that fact in the index together with the date of the expiration.

(e) Four years after a statement has expired, the Secretary of State may destroy or otherwise dispose of the statement and delete information concerning that statement from the index. [2004]

§18210. Resignation of Agent for Service of Process

(a) An agent designated by an unincorporated association for the service of process may deliver to the Secretary of State, on a form prescribed by the Secretary of State for filing, a signed and acknowledged written statement of resignation as an agent for service of process containing the name of the unincorporated association and Secretary of State's file number of the unincorporated association, the name of the resigning agent for service of process, and a statement that the agent is resigning. The resignation is effective when filed. The Secretary of State shall mail or otherwise provide written notice of the filing to the unincorporated association at its address set out in the statement filed by the association.

(b) An unincorporated association may at any time file with the Secretary of State a revocation of a designation of an agent for service of process on a form prescribed by the Secretary of State containing the name of the unincorporated association and Secretary of State's file number for the unincorporated association, the name of the agent whose designation to accept service of process in being revoked and a statement that the unincorporated association has revoked the designation to accept service of process. The revocation is effective when filed.

(c) Notwithstanding subdivisions (a) and (b), service made on an agent designated by an unincorporated association for service of process in the manner provided in subdivision (e) of Section 18200 is effective if made within 30 days after the statement of resignation or the revocation is filed with the Secretary of State.

(d) The resignation of an agent may be effective if, on a form prescribed by the Secretary of State containing the name of the unincorporated association and Secretary of State's file number for the unincorporated association and the name of the agent for service of process, the agent disclaims having been properly appointed as the agent.

(e) The Secretary of State may destroy or otherwise dispose of any resignation filed pursuant to this section after a new form is filed pursuant to Section 18200 replacing the agent for service of process that has resigned. [2014]

§18215. Expiration of Statements on File; Mailing Notice by Secretary of State

Between the first day of October and the first day of December immediately preceding the expiration date of a statement filed under Section 18200, the Secretary of State shall send by first-class mail a notice, indicating the date on which the statement will expire and the file number assigned to the statement, to the unincorporated association at its address as set out in the statement. Neither the failure of the Secretary of State to mail the notice as provided in this section nor the failure of the notice to reach the unincorporated association shall continue the statement in effect after the date of its expiration. Neither the state nor any officer or employee of the state is liable for damages for failure to mail the notice as required by this section. [2004]

§18220. Service on Association if Agent for Service Cannot Be Found

If designation of an agent for the purpose of service of process has not been made as provided in Section 18200, or if the agent designated cannot with reasonable diligence be found at the address specified in the index referred to in Section 18205 for delivery by hand of the process, and it is shown by affidavit to the satisfaction of a court or judge that process against an unincorporated association cannot be served with reasonable diligence upon the designated agent by hand or the unincorporated association in the manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or subdivision (a) of Section 415.20 of the Code of Civil Procedure, the court or judge may make an order that service be made upon the unincorporated association by delivery of a copy of the process to one or more of the association's members designated in the order and by mailing a copy of the process to the association at its last known address. Service in this manner constitutes personal service upon the unincorporated association. [2004]

CHAPTER 5. LIABILITY AND ENFORCEMENT OF JUDGMENTS

§18250. Liability of Unincorporated Association

■ Except as otherwise provided by law, an unincorporated association is liable for its act or omission and for the act or omission of its director, officer, agent, or employee, acting within the scope of the office, agency, or employment, to the same extent as if the association were a natural person. [2004]

§18260. Enforcing Money Judgment against Unincorporated Association

■ A money judgment against an unincorporated association, whether organized for profit or not, may be enforced only against the property of the association. [2004]

§18270. Levying by Judgment Creditor of Unincorporated Association

(a) A judgment creditor of a member, director, officer, or agent of an unincorporated association may not levy execution against the assets of the member, director, officer, or agent to satisfy a judgment based on a claim against the unincorporated association unless a judgment based on the same claim has been obtained against the unincorporated association and any of the following conditions is satisfied:

(1) A writ of execution on the judgment against the unincorporated association has been returned unsatisfied in whole or in part.

(2) The unincorporated association is a debtor in bankruptcy.

(3) The member, director, officer, or agent has agreed that the creditor need not exhaust the assets of the unincorporated association.

(4) A court grants permission to the judgment creditor to levy execution against the assets of a member, director, officer, or agent based on a finding that the assets of the unincorporated association subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the unincorporated association is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

(b) Nothing in this section affects the right of a judgment creditor to levy execution against the assets of a member, director, officer, or agent of an unincorporated association if the claim against the member, director, officer, or agent is not based on a claim against the unincorporated association. [2004]

CHAPTER 6. GOVERNANCE

ARTICLE 1. (RESERVED)

§18300. Purpose of Legislation

It is the intent of the Legislature to enact legislation relating to the governance of unincorporated associations. [2005]

ARTICLE 2. TERMINATION OR SUSPENSION OF MEMBERSHIP

§18310. Termination of Membership

(a) Unless otherwise provided by an unincorporated association's governing principles, membership in the unincorporated association is terminated by any of the following events:

(1) Resignation of the member.

(2) Expiration of the fixed term of the membership, unless the membership is renewed before its expiration.

(3) Expulsion of the member.

(4) Death of the member.

(5) Termination of the legal existence of a member that is not a natural person.

(b) Termination of membership does not relieve a person from an obligation incurred as a member before termination.

(c) Termination of membership does not affect the right of an unincorporated association to enforce an obligation against a person incurred as a member before termination, or to obtain damages for its breach. [2005]

§18320. Procedures for Expulsion or Suspension of Membership

(a) This section only applies if membership in an unincorporated association includes a property right or if expulsion or suspension of a member would affect an important, substantial economic interest. This section does not apply to an unincorporated association that has a religious purpose.

(b) Expulsion or suspension of a member shall be done in good faith and in a fair and reasonable manner. A procedure that satisfies the requirements of subdivision (c) is fair and reasonable, but a court may also determine that another procedure is fair and reasonable taking into account the full circumstances of the expulsion or suspension.

(c) A procedure for expulsion or suspension of a member that satisfies the following requirements is fair and reasonable:

(1) The procedure is included in the unincorporated association's governing documents.

(2) The member to be expelled or suspended is given notice, including a statement of the reasons for the expulsion or suspension. The notice shall be delivered at least 15 days before the effective date of the expulsion or suspension.

(3) The member to be expelled or suspended is given an opportunity to be heard by the person or body deciding the matter, orally or in writing, not less than five days before the effective date of the expulsion or suspension.

(d) A notice pursuant to this section may be delivered by any method reasonably calculated to provide actual notice. A notice delivered by mail shall be sent by first-class, certified, or registered mail to the last address of the member shown on the unincorporated association's records.

(e) A member may commence a proceeding to challenge the expulsion or suspension of the member, including a claim alleging defective notice, within one year after the effective date of the expulsion or suspension. The court may order any relief, including reinstatement, it determines is equitable under the circumstances. A vote of the members or of the board may not be set aside solely because a person was wrongfully excluded from voting by virtue of the challenged expulsion or suspension, unless the court determines that the wrongful expulsion or suspension was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(f) This section governs only the procedure for expulsion or suspension and not the substantive grounds for expulsion or suspension. An expulsion or suspension based on substantive grounds that violate contractual or other rights of the member or are otherwise unlawful is not made valid by compliance with this section. [2005]

ARTICLE 3. MEMBER VOTING

§18330. Member Voting

Except as otherwise provided by statute or by an unincorporated association's governing principles, the following rules govern a member vote conducted pursuant to this chapter:

(a) A vote may be conducted either at a member meeting at which a quorum is present or by a written ballot in which the number of votes cast equals or exceeds the number required for a quorum. Approval of a matter voted on requires an affirmative majority of the votes cast.

(b) Written notice of the vote shall be delivered to all members entitled to vote on the date of delivery. The notice shall be delivered or mailed or sent electronically to the member addresses shown in the association's records a reasonable time before the vote is to be conducted. The notice shall not be delivered electronically, unless the recipient has consented to electronic delivery of the notice. The notice shall state the matter to be decided and describe how and when the vote is to be conducted.

(c) If the vote is to be conducted by written ballot, the notice of the vote shall serve as the ballot. It shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the unincorporated association.

(d) One-third the voting power of the association constitutes a quorum.

(e) The voting power of the association is the total number of votes that can be cast by members on a particular issue at the time the member vote is held. [2005]

Article 4. Amendment of Governing Documents

§18340. Amending Governing Documents

If an unincorporated association's governing principles do not provide a procedure to amend the association's governing documents, the governing documents may be amended by a vote of the members. [2005]

Article 5. Merger

§18350. Definitions Concerning Merger

The following definitions govern the construction of this article:

(a) "Constituent entity" means an entity that is merged with one or more other entities and includes the surviving entity.

(b) "Disappearing entity" means a constituent entity that is not the surviving entity.

(c) "Surviving entity" means an entity into which one or more other entities are merged. [2005]

§18360. Unincorporated Association Merging with Other Entities

An unincorporated association may merge with a domestic or foreign corporation, domestic or foreign limited partnership, domestic or foreign general partnership, or domestic or foreign limited liability company. Notwithstanding this section, a merger may be effected only if each constituent entity is authorized to effect the merger by the laws under which it was organized. [2009]

§18370. Requirements for Merger

A merger involving an unincorporated association is subject to the following requirements:

(a) Each party to the merger shall approve an agreement of merger. The agreement shall include the following provisions:

(1) The terms of the merger.

(2) Any amendments the merger would make to the articles, bylaws, or other governing documents of the surviving entity.

(3) The name, place of organization, and type of entity of each constituent entity.

(4) The name of the constituent entity that will be the surviving entity.

(5) If the name of the surviving entity will be changed in the merger, the new name of the surviving entity.

(6) The disposition of the memberships or ownership interests of each constituent entity.

(7) Other details or provisions, if any, including any details or provisions required by the law under which a constituent entity is organized.

(b) The principal terms of the merger agreement shall be approved by the board, the members, and any person whose approval is required by the association's governing documents. Unless otherwise provided in the governing documents, the members shall approve the agreement in the manner provided for amendment of the association's governing documents. The members may approve the agreement before or after the board approves the agreement.

(c) A merger agreement that would cause the members of an unincorporated association to become individually liable for an obligation of a constituent or surviving entity shall be approved by all of the members of the unincorporated association. ■ Approval by all members is not required under this subdivision if the agreement of merger provides for purchase by the surviving entity of the membership interest of a member who votes against approval of the merger agreement.

(d) A merger agreement may be amended by the board, unless the amendment would change a principal term of the agreement, in which case it shall be approved as provided in subdivision (b).

(e) Subject to the contractual rights of third parties, the board may abandon a merger without the approval of the members. [2005]

§18380. Effect of Merger

(a) A merger pursuant to this article has the following effect:

(1) The separate existence of the disappearing entity ceases.

(2) The surviving entity succeeds, without other transfer, to the rights and property of the disappearing entity.

(3) The surviving entity is subject to all the debts and liabilities of the disappearing entity. A trust or other obligation governing property of the disappearing entity applies as if it were incurred by the surviving entity.

(b) All rights of creditors and all liens on or arising from the property of each of the constituent entities are preserved unimpaired, provided that a lien on property of a disappearing entity is limited to the property subject to the lien immediately before the merger is effective.

(c) An action or proceeding pending by or against a disappearing entity or other party to the merger may be prosecuted to judgment, which shall bind the surviving entity, or the surviving entity may be proceeded against or substituted in its place.

(d) A merger does not affect an existing liability of a member, director, officer, or agent of a constituent unincorporated association for an obligation of the unincorporated association. [2005]

§18390. Recording to Effect Change in Real Property Title Due to Merger

If, as a consequence of merger, a surviving entity succeeds to ownership of real property located in this state, the surviving entity's record ownership of that property may be evidenced by recording in the county in which the property is located a copy of the agreement of merger that is signed by the president and secretary or other comparable officers of the constituent entities and is verified and acknowledged as provided in Sections 149 and 193. [2005]

§18400. Effect on Bequest to Disappearing Entity Due to Merger

A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a disappearing entity and that takes effect or remains payable after the merger inures to the benefit of the surviving entity. A trust obligation that would govern property if transferred to the disappearing entity applies to property that is instead transferred to the surviving entity under this section. [2005]

Article 6. Dissolution

§18410. Methods for Dissolution

An unincorporated association may be dissolved by any of the following methods:

(a) If the association's governing documents provide a method for dissolution, by that method.

(b) If the association's governing documents do not provide a method for dissolution, by the affirmative vote of a majority of the voting power of the association.

(c) If the association's operations have been discontinued for at least three years, by the board or, if the association has no incumbent board, by the members of its last preceding incumbent board.

(d) If the association's operations have been discontinued, by court order. [2005]

§18420. Winding Up Affairs after Dissolution

Promptly after commencement of dissolution of an unincorporated association, the board or, if none, the members shall promptly wind up the affairs of the association, pay or provide for its known debts or liabilities, collect any amounts due to it, take any other action as is necessary or appropriate for winding up, settling, and liquidating its affairs, and dispose of its assets as provided in Section 18130. [2005]

PART 2. NONPROFIT ASSOCIATIONS

CHAPTER 1. LIABILITY

§18605. Non-liability of Agents of Unincorporated Nonprofit Association

■ A member, director, or agent of a nonprofit association is not liable for a debt, obligation, or liability of the association solely by reason of being a member, director, officer, or agent. [2004]

§18610. Non-liability of Members of Unincorporated Nonprofit Association

■ A member of a nonprofit association is not liable for a contractual obligation of the association unless one of the following conditions is satisfied:

(a) The member expressly assumes personal responsibility for the obligation in a signed writing that specifically identifies the obligation assumed.

(b) The member expressly authorizes or ratifies the specific contract, as evidenced by a writing. This subdivision does not apply if the member authorizes or ratifies a contract solely in the member's capacity as a director, officer, or agent of the association.

(c) With notice of the contract, the member receives a benefit under the contract. Liability under this subdivision is limited to the value of the benefit received.

(d) The member executes the contract without disclosing that the member is acting on behalf of the association.

(e) The member executes the contract without authority to execute the contract. [2004]

§18615. Circumstances Giving Rise to Personal Liability for Debts of Unincorporated Nonprofit Association

■ A director, officer, or agent of a nonprofit association is not liable for a contractual obligation of the association unless one of the following conditions is satisfied:

(a) The director, officer, or agent expressly assumes responsibility for the obligation in a signed writing that specifically identifies the obligation assumed.

(b) The director, officer, or agent executes the contract without disclosing that the director, officer, or agent is acting on behalf of the association.

(c) The director, officer, or agent executes the contract without authority to execute the contract. [2004]

§18620. Liability of Individuals in Nonprofit Association

■ (a) A member, director, officer, or agent of a nonprofit association shall be liable for injury, damage, or harm caused by an act or omission of the association or an act or omission of a director, officer, or agent of the association, if any of the following conditions is satisfied:

(1) The member, director, officer, or agent expressly assumes liability for injury, damage, or harm caused by particular conduct and that conduct causes the injury, damage, or harm.

(2) The member, director, officer, or agent engages in tortious conduct that causes the injury, damage, or harm.

(3) The member, director, officer, or agent is otherwise liable under any other statute.

(b) This section provides a nonexclusive list of existing grounds for liability, and does not foreclose any common law grounds for liability. [2005]

§18630. Personal Liability in Nonprofit Association under Alter Ego Theory

■ Notwithstanding any other provision of this chapter, a member or person in control of a nonprofit association may be subject to liability for a debt, obligation, or liability of the association under common law principles governing alter ego liability of shareholders of a corporation, taking into account the differences between a nonprofit association and a corporation. [2004]

§18640. Nonprofit Associations-Effect of Uniform Voidable Transactions Act

■ Nothing in this chapter limits application of the Uniform ***Voidable Transactions*** Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). ***[2015]***

§7026.1. Definitions of Contractor and Consultant; Not to Include Common Interest Development Manager

■ (a) The term “contractor” includes all of the following:
(1) Any person not exempt under Section 7053 who maintains or services air-conditioning, heating, or refrigeration equipment that is a fixed part of the structure to which it is attached.

(2) (A) Any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or which undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct any building or home improvement project, or part thereof.

(B) For purposes of this paragraph, a consultant is a person, other than a public agency or an owner of privately owned real property to be improved, who meets either of the following criteria as it relates to work performed pursuant to a home improvement contract as defined in Section 7151.2:

(i) Provides or oversees a bid for a construction project.

(ii) Arranges for and sets up work schedules for contractors and subcontractors and maintains oversight of a construction project.

(3) A temporary labor service agency that, as the employer, provides employees for the performance of work covered by this chapter. The provisions of this paragraph shall not apply if there is a properly licensed contractor who exercises supervision in accordance with Section 7068.1 and who is directly responsible for the final results of the work. Nothing in this paragraph shall require a qualifying individual, as provided in Section 7068, to be present during the supervision of work covered by this chapter. A contractor requesting the services of a temporary labor service agency shall provide his or her license number to that temporary labor service agency.

(4) Any person not otherwise exempt by this chapter, who performs tree removal, tree pruning, stump removal, or engages in tree or limb cabling or guying. The term contractor does not include a person performing the activities of a nurseryperson who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.

(5) Any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, reperforming, or abandoning any water well, cathodic protection well, or monitoring well.

(b) The term “contractor” or “consultant” does not include a common interest development manager, as defined in Section 11501, and a common interest development manager is not required to have a contractor’s

license when performing management services, as defined in subdivision (d) of Section 11500. [2013]

§7574. Title - Proprietary Security Services Act

This chapter may be cited as the Proprietary Security Services Act. [2005]

§7574.1. Definition of Proprietary Private Security Officer

A proprietary private security officer, as used in this chapter, is an unarmed individual who is employed exclusively by any one employer whose primary duty is to provide security services for his or her employer, whose services are not contracted to any other entity or person, and who is not exempt pursuant to Section 7582.2, and who meets both of the following criteria:

(a) Is required to wear a distinctive uniform clearly identifying the individual as a security officer.

(b) Is likely to interact with the public while performing his or her duties. [2005]

§7574.2. Registration of Private Security Officer Required

A person who meets the definition of a proprietary private security officer shall register with the Department of Consumer Affairs, subject to the adoption of reasonable rules by the director. Those rules shall include, but are not limited to, the following criteria:

(a) Background checks as described in Section 7583.9.

(b) Payment of an application fee. [2005]

§7574.3. Effective Dates

Section 7574.2 shall apply on and after July 1, 2006, to any person hired as a proprietary private security officer on and after January 1, 2006. For a person hired as a proprietary private security officer before January 1, 2006, the section shall apply on and after January 1, 2007. [2005]

§7574.5. Training in Security Officer Skills

(a) Except for a person who has completed the course of training required by Section 7583.45, a person registered pursuant to this chapter shall complete training in security officer skills within six months from the date upon which evidence of registration is issued, or within six months of his or her employment with a proprietary private security officer employer.

(b) A course provider shall issue a certificate to a proprietary private security officer upon satisfactory completion of a required course, conducted in accordance with the department's requirements. An employer of a proprietary private security officer may provide training programs and courses in addition to the training required in this section.

(c) The department shall develop and approve by regulation a standard course and curriculum for the skills training required by subdivision (a) to promote and protect the safety of persons and the security of property. For this purpose, the department shall, before June 30, 2008, convene an advisory

committee consisting of security directors at proprietary facilities, including, but not limited to, sports or entertainment complex owners, retailers, and restaurants, labor organizations representing security officers, law enforcement representatives, representatives of the Commission on Peace Officer Standards and Training, subject matter experts, and other interested parties in order to develop a curriculum for the training of proprietary security officers that features skills, courses, and a minimum number of hours of instruction appropriate to a proprietary private security officer's worksite or industry. The advisory committee shall not include any representation from private patrol operators, or any trade association representing private patrol operators or security guards or officers.

(d) The course of training required by subdivision (a) may be administered, tested, and certified by any proprietary private security officer employer, organization, or school approved by the department. The department may approve any proprietary private security officer employer, organization, or school to teach the course.

(e) (1) On and after January 1, 2009, a proprietary private security officer employer shall annually provide each employee registered pursuant to this chapter with specifically dedicated review or practice of security officer skills prescribed in the course required in this section. The minimum number of hours shall be established by regulation pursuant to the recommendations of the advisory committee.

(2) A proprietary private security officer employer shall maintain at the principal place of business or branch office a record verifying completion of the review or practice training for a period of not less than two years. The records shall be available for inspection by the department upon request.

(f) This section does not apply to a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has successfully completed a course of study in the exercise of the power to arrest approved by the Commission on Peace Officer Standards and Training. This section does not apply to armored vehicle guards. [2007]

§7574.7. Applicability of Section 7574.5

Section 7574.5 shall apply on and after July 1, 2009, to any person hired as a proprietary private security officer on and after January 1, 2009. For a person hired as a proprietary private security officer before January 1, 2009, that section shall apply on and after January 1, 2010. [2007]

§10153.2. Real Estate Broker Education Requirements

(a) An applicant to take the examination for an original real estate broker license shall also submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of:

(1) A three-semester unit course, or the quarter equivalent thereof, in each of the following:

- (A) Real estate practice.
- (B) Legal aspects of real estate.

- (C) Real estate appraisal.
- (D) Real estate financing.
- (E) Real estate economics or ■ accounting.

(2) A three-semester unit course, or the quarter equivalent thereof, in three of the following:

- (A) Advanced legal aspects of real estate.
- (B) Advanced real estate finance.
- (C) Advanced real estate appraisal.
- (D) Business law.
- (E) Escrows.
- (F) Real estate principles.
- (G) Property management.
- (H) Real estate office administration.
- (I) Mortgage loan brokering and lending.
- (J) Computer applications in real estate.

(K) On and after July 1, 2004, California law that relates to common interest developments, including, but not limited to, topics addressed in the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) and in the Commercial and Industrial Common Interest Development Act (Part 5.3 (commencing with Section 6500) of Division 4 of the Civil Code).

(b) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California and shall waive the requirements for which an applicant has successfully completed an equivalent course of study as determined under Section 10153.5.

(c) The commissioner shall extend credit under this section for any course completed to satisfy requirements of Section 10153.3 or 10153.4. [2013]

§10170.5. Education Requirements to Renew Broker License

(a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund ■ accounting and handling.

(4) A three-hour course in fair housing.

(5) A three-hour course in risk management that shall include, but need not be limited to, principles, practices, and procedures calculated to avoid errors and omissions in the practice of real estate licensed activities.

(6) *In addition to paragraphs (1) to (5), inclusive, a broker shall complete a three-hour course in the management of real estate offices and supervision of real estate licensed activities that shall include, but need not be limited to, the requirements described in subdivision (a) of Section 10159.7 and Section 10164.*

(7) Not less than 18 clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace, land use regulation and control, pertinent consumer disclosures, agency relationships, capital formation for real estate development, fair practices in real estate, appraisal and valuation techniques, landlord-tenant relationships, energy conservation, environmental regulation and consideration, taxation as it relates to consumer decisions in real estate transactions, probate and similar disposition of real property, governmental programs such as revenue bond activities, redevelopment, and related programs, business opportunities, mineral, oil, and gas conveyancing, and California law that relates to managing community associations that own, operate, and maintain property within common interest developments, including, but not limited to, management, maintenance, and financial matters addressed in the Davis-Stirling Common Interest Development Act (*Part 5 (commencing with Section 4000) of Division 4 of the Civil Code.*)

(8) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques, *including relevant information to assist a salesperson or broker in understanding how to be effectively supervised by a responsible broker or branch manager,* that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including an eight-hour update survey course that covers the subject areas specified in paragraphs (1) to (6), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

(d) For purposes of this section, “successful completion” of a course described in paragraphs (1) to (6), inclusive, of subdivision (a) means the passing of a final examination. *[2015]*

§11003.4. “Limited-equity Housing Cooperative” and “Workforce Housing Cooperative Trust

■ (a) A “limited-equity housing cooperative” or a “workforce housing cooperative trust” is a corporation that meets the criteria of Section 11003.2 and that also meets the criteria of Sections 817 and 817.1 of the Civil Code, as applicable. Except as provided in subdivision (b), a limited-equity housing or workforce housing cooperative trust shall be subject to all the requirements of this chapter pertaining to stock cooperatives.

(b) A limited-equity housing cooperative or a workforce housing cooperative trust shall be exempt from the requirements of this chapter if the limited-equity housing cooperative or workforce housing cooperative trust complies with all the following conditions:

(1) The United States Department of Housing and Urban Development, the United States Department of Agriculture, the National Consumers Cooperative Bank, the California Housing Finance Agency, the Public Employees’ Retirement System (PERS), the State Teachers’ Retirement System (STRS), the Department of Housing and Community Development, the Federal Home Loan Bank System or any of its member institutions, a state or federally chartered credit union, a state or federally certified community development financial institution, or the city, county, school district, or redevelopment agency in which the cooperative is located, alone or in any combination with each other, directly finances or subsidizes at least 50 percent of the total construction or development cost or one hundred thousand dollars (\$100,000), whichever is less; or the real property to be occupied by the cooperative was sold or leased by the Transportation Agency, other state agency, a city, a county, or a school district for the development of the cooperative and has a regulatory agreement approved by the Department of Housing and Community Development for the term of the permanent financing, notwithstanding the source of the permanent subsidy or financing.

(2) No more than 20 percent of the total development cost of a limited-equity mobilehome park, and no more than 10 percent of the total development cost of other limited-equity housing cooperatives, is provided by purchasers of membership shares.

(3) A regulatory agreement that covers the cooperative for a term of at least as long as the duration of the permanent financing or subsidy, notwithstanding the source of the permanent subsidy or financing has been duly executed between the recipient of the financing and either (A) one of the federal or state agencies specified in paragraph (1) or (B) a local public agency that is providing financing for the project under a regulatory agreement meeting standards of the Department of Housing and Community Development. The regulatory agreement shall make provision for at least all of the following:

(A) Assurances for completion of the common areas and facilities to be owned or leased by the limited-equity housing cooperative, unless a construction agreement between the same parties contains written assurances for completion.

(B) Governing instruments for the organization and operation of the housing cooperative by the members.

(C) The ongoing fiscal management of the project by the cooperative, including an adequate budget, reserves, and provisions for maintenance and management.

(D) Distribution of a membership information report to any prospective purchaser of a membership share, prior to purchase of that share. The membership information report shall contain full disclosure of the financial obligations and responsibilities of cooperative membership, the resale of shares, the financing of the cooperative including any arrangements made with any partners, membership share accounts, occupancy restrictions, management arrangements, and any other information pertinent to the benefits, risks, and obligations of cooperative ownership.

(4) Each party that executes the regulatory agreement shall satisfy itself that the bylaws, articles of incorporation, occupancy agreement, subscription agreement, any lease of the regulated premises, any arrangement with partners, and arrangement for membership share accounts provide adequate protection of the rights of cooperative members.

(5) Each provider of financing or subsidies shall receive from the attorney for the recipient of the financing or subsidy a legal opinion that the cooperative meets the requirements of Section 817 of the Civil Code and the exemption provided by this section.

(c) Any limited-equity cooperative, or workforce housing cooperative trust that meets the requirements for exemption pursuant to subdivision (b) may elect to be subject to all provisions of this chapter.

(d) The developer of the cooperative shall notify the Bureau of Real Estate, on a form provided by the bureau, that an exemption is claimed under this section. The Bureau of Real Estate shall retain this form for at least four years for statistical purposes. [2014]

§11010. Requirements for BRE Public Report

■ (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the Bureau of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the bureau.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

(1) The name and address of the owner.

(2) The name and address of the subdivider.

(3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.

(6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities. For subdivided lands that were subject to

the imposition of a condition pursuant to subdivision (b) of Section 66473.7 of the Government Code, the true statement of the provisions made for water shall be satisfied by submitting a copy of the written verification of the available water supply obtained pursuant to Section 66473.7 of the Government Code.

(7) A true statement of the use or uses for which the proposed subdivision will be offered.

(8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

(9) A true statement of the amount of indebtedness that is a lien upon the subdivision or any part thereof, and that was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.

(10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to that subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.

(11) A notice pursuant to Section 1102.6c of the Civil Code.

(12)(A) As to each school district serving the subdivision, a statement from the appropriate district that indicates the location of each high school, junior high school, and elementary school serving the subdivision, or documentation that a statement to that effect has been requested from the appropriate school district.

(B) In the event that, as of the date the notice of intention and application for issuance of a public report are otherwise deemed to be qualitatively and substantially complete pursuant to Section 11010.2, the statement described in subparagraph (A) has not been provided by any school district serving the subdivision, the person who filed the notice of intention and application for issuance of a public report shall immediately provide the bureau with the name, address, and telephone number of that district.

(13)(A) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision. If the property is located within an airport influence area, the following statement shall be included in the notice of intention:

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.

(14) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(15) A true statement of whether or not fill is used, or is proposed to be used, in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(16) On or after July 1, 2005, as to property located within the jurisdiction of the San Francisco Bay Conservation and Development Commission, a statement that the property is so located and 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.

(17) If the property is presently located within one mile of a parcel of real property designated as “Prime Farmland,” “Farmland of Statewide Importance,” “Unique Farmland,” “Farmland of Local Importance,” or “Grazing Land” on the most current “Important Farmland Map” issued by the California Department of Conservation, Division of Land Resource Protection, utilizing solely the county-level GIS map data, if any, available on the Farmland Mapping and Monitoring Program Website. If the residential property is within one mile of a designated farmland area, the report shall contain the following notice:

NOTICE OF RIGHT TO FARM

This property is located within one mile of a farm or ranch land designated on the current county-level GIS “Important Farmland Map,” issued by the California Department of Conservation, Division of Land Resource Protection. Accordingly, the property may be subject to inconveniences or discomforts resulting from agricultural operations that are a normal and necessary aspect of living in a community with a strong rural character and a healthy agricultural sector. Customary agricultural practices in farm operations may include, but are not limited to, noise, odors, dust, light, insects, the operation of pumps and machinery, the storage and disposal of manure, bee pollination, and the ground or aerial application of fertilizers, pesticides, and herbicides. These agricultural

practices may occur at any time during the 24-hour day. Individual sensitivities to those practices can vary from person to person. You may wish to consider the impacts of such agricultural practices before you complete your purchase. Please be advised that you may be barred from obtaining legal remedies against agricultural practices conducted in a manner consistent with proper and accepted customs and standards pursuant to Section 3482.5 of the Civil Code or any pertinent local ordinance.

(18) Any other information that the owner, his or her agent, or the subdivider may desire to present.

(c) The commissioner may, by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention. [2013]

§11210. Title - Time-share Act of 2004

This chapter may be cited as the Vacation Ownership and Time-share Act of 2004. [2004]

§11211. Purposes of Act

The purposes of this chapter are to do all of the following:

(a) Provide full and fair disclosure to the purchasers and prospective purchasers of time-share plans.

(b) Require certain time-share plans offered for sale or created and existing in this state to be subject to the provisions of this chapter.

(c) Recognize that the tourism industry in this state is a vital part of the state's economy; that the sale, promotion, and use of time-share plans is an emerging, distinct segment of the tourism industry; that this segment of the tourism industry continues to grow, both in volume of sales and in complexity and variety of product structures; and that a uniform and consistent method of regulation is necessary in order to safeguard California's tourism industry and the state's economic well-being.

(d) In order to protect the quality of California time-share plans and the consumers who purchase them, it is the intent of the Legislature that this chapter be interpreted broadly in order to encompass all forms of time-share plans with a duration of at least three years that are created with respect to accommodations that are located in the state or that are offered for sale in the state, including, but not limited to, condominiums, cooperatives, vacation clubs, and multisite vacation plans.

(e) It is the intent of the Legislature that this chapter not be interpreted to preempt the application of, the enforcement of, or alter the standards of, the general consumer protection laws of this state set forth in Sections 17200 to 17209, inclusive, and Sections 17500 to 17539.1, inclusive, of the Business and Professions Code. [2004]

§11211.5. Applicability of Act

(a) This chapter applies to all of the following:

(1) Time-share plans with an accommodation or component site in this state.

(2) Time-share plans without an accommodation or component site in this state, if those time-share plans are sold or offered to be sold to any individual located within this state.

(3) Exchange programs as defined in this chapter.

(4) Short-term products as defined in this chapter.

(b) This chapter does not apply to any of the following:

(1) Time-share plans, whether or not an accommodation is located in this state, consisting of 10 or fewer time-share interests. Use of an exchange program by owners of time-share interests to secure access to other accommodations shall not affect this exemption.

(2) Time-share plans, whether or not an accommodation is located in this state, the use of which extends over any period of three years or less.

(3) Time-share plans, whether or not an accommodation is located in this state, under which the prospective purchaser's total financial obligation will be equal to or less than three thousand dollars (\$3,000) during the entire term of the time-share plan.

(c) For purposes of determining the term of a time-share plan, the period of any renewal or renewal option shall be included.

(d) Single site time-share plans located outside the state and component sites of multisite time-share plans located outside the state, that are offered for sale or sold in this state are subject only to Sections 11210 to 11219, inclusive, Sections 11225 to 11246, inclusive, Sections 11250 to 11256, inclusive, paragraphs (1), (2), (3), and (4) of subdivision (a), and subdivisions (b) and (c), of Section 11265, subdivision (g) of Section 11266, subdivisions (a) and (c) of Section 11267, Sections 11272 and 11273, subdivisions (b), (c), and (d) of Section 11274, and Sections 11280 to 11287, inclusive. [2006]

§11211.7. Exemptions

(a) Any time-share plan registered pursuant to this chapter to which the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) might otherwise apply is exempt from that act, except for Sections 4090, 4177, 4178, 4215, 4220, 4230, 4260 to 4275, inclusive, 4500 to 4510, inclusive, 4625 to 4650, inclusive, 4775 to 4790, inclusive, 4900 to 4950, inclusive, 5500 to 5560, inclusive, and 5975 of the Civil Code.

(b) (1) To the extent that a single site time-share plan or component site of a multisite time-share plan located in the state is structured as a condominium or other common interest development, and there is any inconsistency between the applicable provisions of this chapter and the Davis-Stirling Common Interest Development Act, the applicable provisions of this chapter shall control.

(2) To the extent that a time-share plan is part of a mixed use project where the time-share plan comprises a portion of a condominium or other common interest development, the applicable provisions of this chapter shall apply to that portion of the project uniquely comprising the time-share plan, and the Davis-Stirling Common Interest Development Act shall apply to the project as a whole.

(c) (1) The offering of any time-share plan, exchange program, incidental benefit, or short term product in this state that is subject to the provisions of this chapter shall be exempt from Sections 1689.5 to 1689.14, inclusive, of the Civil Code (Home Solicitation Sales), Sections 1689.20 to 1689.24, inclusive, of the Civil Code (Seminar Sales), and Sections 1812.100 to 1812.129, inclusive, of the Civil Code (Contracts for Discount Buying Services).

(2) A developer or exchange company that, in connection with a time-share sales presentation or offer to arrange an exchange, offers a purchaser the opportunity to utilize the services of an affiliate, subsidiary, or third-party entity in connection with wholesale or retail air or sea transportation, shall not, in and of itself, cause the developer or exchange company to be considered a seller of travel subject to Sections 17550 to 17550.34, inclusive, of the Business and Professions Code, so long as the entity that actually provides or arranges the air or sea transportation is registered as a seller of travel with the California Attorney General's office or is otherwise exempt under those sections.

(d) To the extent certain sections in this chapter require information and disclosure that by their terms only apply to real property time-share plans, those requirements shall not apply to personal property time-share plans. [2012]

§11212. Definitions

As used in this chapter, the following definitions apply:

(a) "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities therein that is designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals, or any unit or berth on a commercial passenger ship, which is included in the offering of a time-share plan.

(b) "Advertisement" means any written, oral, or electronic communication that is directed to or targeted to persons within the state or such a communication made from this state or relating to a time-share plan located in this state and contains a promotion, inducement, or offer to sell a time-share plan, including, but not limited to, brochures, pamphlets, radio and television scripts, electronic media, telephone and direct mail solicitations, and other means of promotion.

(c) "Association" means the organized body consisting of the purchasers of time-share interests in a time-share plan.

(d) "Assessment" means the share of funds required for the payment of common expenses which is assessed from time to time against each purchaser by the managing entity.

(e) “Commissioner” means the Real Estate Commissioner.

(f) “Component site” means a specific geographic location where accommodations that are part of a multisite time-share plan are located. Separate phases of a time-share property in a specific geographic location and under common management shall not be deemed a component site.

(g) “Conspicuous type” means either of the following:

(1) Type in upper and lower case letters two point sizes larger than the nearest nonconspicuous type, exclusive of headings, on the page on which it appears but in at least 10-point type.⁴⁴

(2) Conspicuous type may be utilized in contracts for purchase or public permits only where required by law or as authorized by the commissioner.

(h) “Department” means the Department of Real Estate.⁴⁵

(i) “Developer” means and includes any person who creates a time-share plan or is in the business of selling time-share interests, other than those employees or agents of the developer who sell time-share interests on the developer’s behalf, or employs agents to do the same, or any person who succeeds to the interest of a developer by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer time-share interests for disposition in the ordinary course of business.

(j) “Dispose” or “disposition” means a voluntary transfer or assignment of any legal or equitable interest in a time-share plan, other than the transfer, assignment, or release of a security interest.

(k) “Exchange company” means any person owning or operating, or both owning and operating, an exchange program.

(l) “Exchange program” means any method, arrangement, or procedure for the voluntary exchange of time-share interests or other property interests. The term does not include the assignment of the right to use and occupy accommodations to owners of time-share interests within a single site time-share plan. Any method, arrangement, or procedure that otherwise meets this definition in which the purchaser’s total contractual financial obligation exceeds three thousand dollars (\$3,000) per any individual, recurring time-share period, shall be regulated as a time-share plan in accordance with this chapter. For purposes of determining the purchaser’s total contractual financial obligation, amounts to be paid as a result of renewals and options to renew shall be included in the term except for the following: (1) amounts to be paid as a result of any optional renewal that a purchaser, in his or her sole discretion may elect to exercise, (2) amounts to be paid as a result of any automatic renewal in which the purchaser has a right to terminate during the renewal period at any time and receive a pro rata refund for the remaining unexpired renewal term, or (3) amounts to be paid as a result of an automatic renewal in which the purchaser receives a written notice no less than 30 nor more than 90 days prior to the date of renewal informing the purchaser of the right to terminate prior to

⁴⁴ See example in footnote 30, page 208 in Civil Code §5300.

⁴⁵ Note that this section 11212 was not amended as part of AB 1317 in 2013 to change Department of Real Estate to Bureau of Real Estate.

the date of renewal. Notwithstanding these exceptions, if the contractual financial obligation exceeds three thousand dollars (\$3,000) for any three-year period of any renewal term, amounts to be paid as a result of that renewal shall be included in determining the purchaser's total contractual financial obligation.

(m) "Incidental benefit" is an accommodation, product, service, discount, or other benefit, other than an exchange program, that is offered to a prospective purchaser of a time-share interest prior to the end of the rescission period set forth in Section 11238, the continuing availability of which for the use and enjoyment of owners of time-share interests in the time-share plan is limited to a term of not more than three years, subject to renewal or extension. The term shall not include an offer of the use of the accommodation, product, service, discount, or other benefit on a free or discounted one-time basis.

(n) "Managing entity" means the person who undertakes the duties, responsibilities, and obligations of the management of a time-share plan.

(o) "Offer" means any inducement, solicitation, or other attempt, whether by marketing, advertisement, oral or written presentation, or any other means, to encourage a person to acquire a time-share interest in a time-share plan, other than as security for an obligation.

(p) "Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, government, governmental subdivision or agency, or other legal entity, or any combination thereof.

(q) "Promotion" means a plan or device, including one involving the possibility of a prospective purchaser receiving a vacation, discount vacation, gift, or prize, used by a developer, or an agent, independent contractor, or employee of any of the same on behalf of the developer, in connection with the offering and sale of time-share interests in a time-share plan.

(r) "Public report" means a preliminary public report, conditional public report, final public report, or other such disclosure document authorized for use in connection with the offering of time-share interests pursuant to this chapter.

(s) "Purchaser" means any person, other than a developer, who by means of a voluntary transfer for consideration acquires a legal or equitable interest in a time-share plan other than as security for an obligation.

(t) "Purchase contract" means a document pursuant to which a developer becomes legally obligated to sell, and a purchaser becomes legally obligated to buy, a time-share interest.

(u) "Reservation system" means the method, arrangement, or procedure by which a purchaser, in order to reserve the use or occupancy of any accommodation of a multisite time-share plan for one or more time-share periods, is required to compete with other purchasers in the same multisite time-share plan, regardless of whether the reservation system is operated and maintained by the multisite time-share plan managing entity, an exchange company, or any other person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy accommodations in a multisite time-share plan, that arrangement shall be deemed a reservation system. When an exchange company utilizes a

mechanism for the exchange of use of time-share periods among members of an exchange program, that utilization is not a reservation system of a multisite time-share plan.

(v) “Short-term product” means the right to use accommodations on a one-time or recurring basis for a period or periods not to exceed 30 days per stay and for a term of three years or less, and that includes an agreement that all or a portion of the consideration paid by a person for the short-term product will be applied to or credited against the price of a future purchase of a time-share interest or that the cost of a future purchase of a time-share interest will be fixed or locked-in at a specified price.

(w) “Time-share instrument” means one or more documents, by whatever name denominated, creating or governing the operation of a time-share plan and includes the declaration dedicating accommodations to the time-share plan.

(x) “Time-share interest” means and includes either of the following:

(1) A “time-share estate,” which is the right to occupy a time-share property, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof.

(2) A “time-share use,” which is the right to occupy a time-share property, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a time-share property.

(y) “Time-share period” means the period or periods of time when the purchaser of a time-share plan is afforded the opportunity to use the accommodations of a time-share plan.

(z) “Time-share plan” means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years. A time-share plan may be either of the following:

(1) A “single site time-share plan,” which is the right to use accommodations at a single time-share property.

(2) A “multisite time-share plan,” which includes either of the following:

(A) A “specific time-share interest,” which is the right to use accommodations at a specific time-share property, together with use rights in accommodations at one or more other component sites created by or acquired through the time-share plan’s reservation system.

(B) A “nonspecific time-share interest,” which is the right to use accommodations at more than one component site created by or acquired through the time-share plan’s reservation system, but including no specific right to use any particular accommodations.

(aa) “Time-share property” means one or more accommodations subject to the same time-share instrument, together with any other property or rights to property appurtenant to those accommodations. [2004]

§11213. Title Classification for Time-Share Estate

Each time-share estate, as specified in paragraph (1) of subdivision (x) of Section 11212, constitutes, for purposes of title, a separate estate or interest in real property including ownership in real property for tax purposes. [2004]

§11214. Duties of the Developer

(a) The developer shall supervise, manage, and control all aspects of the offering of the time-share plan by or on behalf of the developer, including, but not limited to, promotion, advertising, contracting, and closing. The developer is responsible for each time-share plan registered with the commissioner and for the actions of any sales or marketing entity utilized by the developer in the offering or selling of any registered time-share plan.

(b) Any violation of this chapter that occurs during the offering activities shall be deemed to be a violation by the developer as well as by the person who actually committed the violation. [2004]

§11215. Time-Share Instrument Prohibitions

(a) The time-share instrument shall prohibit a person from seeking or obtaining, through any legal procedures, judicial partition of the time-share interest or sale of the time-share interest, in lieu of partition and shall subordinate all rights that a time-share interest owner might otherwise have as a tenant-in-common in real property to the terms of the time-share instrument.

(b) Subdivision (a) shall not be deemed to prohibit a sale of an accommodation upon termination of the time-share plan or the removal of an accommodation from the time-share plan in accordance with applicable provisions of the time-share instrument. [2004]

§11216. Exchange Program

(a) An exchange program is not a part of a time-share plan offering and, except as provided in this section and Section 11238, shall not be subject to either this chapter or the regulations of the commissioner adopted pursuant to this chapter.

(b) If a developer offers a purchaser the opportunity to subscribe to or to become a member of an exchange program, the developer shall provide to the purchaser in writing ***or in a digital format at the discretion of the purchaser*** all of the information set forth in paragraphs (1) to (17), inclusive. If the exchange company is offering directly to the purchaser the opportunity to subscribe to or become a member of an exchange company, the exchange company shall provide to the purchaser in writing all of the information set forth in paragraphs (1) to (17), inclusive. In either case, the written information shall be provided prior to or concurrently with the execution of any contract or subscription for membership in the exchange program.

(1) The name and address of the exchange company.
(2) The names of all officers, directors, and shareholders of the exchange company.

(3) Whether the exchange company or any of its officers or directors have any legal or beneficial interest in any developer or managing entity for any time-share plan participating in the exchange program and, if so, the identity of the time-share plan and the nature of the interest.

(4) A copy of the form of the contract between the purchaser and the exchange company, along with a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the seller of time-share interests.

(5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the applicable time-share plan with the exchange program.

(6) Whether the purchaser's participation in the exchange program is voluntary.

(7) A fair and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made.

(8) A fair and accurate description of the procedures necessary to qualify for and effectuate exchanges.

(9) A fair and accurate description of all limitations, restrictions, and priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, accommodation size, or levels of occupancy, expressed in conspicuous type. If those limitations, restrictions, or priorities are not uniformly applied by the exchange company, the information shall include a clear description of the manner in which they are applied.

(10) Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange company.

(11) Whether and under what circumstances an owner, in dealing with the exchange program, may lose the right to use and occupy an accommodation of the time-share plan during a reserved use period with respect to any properly applied for exchange without being provided with substitute accommodations by the exchange program.

(12) The fees or range of fees for participation by owners in the exchange program, a statement of whether any such fees may be altered by the exchange company and the circumstances under which alterations may be made.

(13) The name and address of the site of each accommodation included within a time-share plan participating in the exchange program.

(14) The number of accommodations in each time-share plan that are available for occupancy and that qualify for participation in the exchange program, expressed within the following numerical groups: 1-5; 6-10; 11-20; 21-50; and 51 and over.

(15) The number of currently enrolled owners for each time-share plan participating in the exchange program, expressed within the following numerical groups: 1-100; 101-249; 250-499; 500-999; and 1,000 and over; and a statement of the criteria used to determine those owners who are currently enrolled with the exchange program.

(16) The disposition made by the exchange company of use periods deposited with the exchange program by owners enrolled in the exchange program and not used by the exchange company in effecting exchanges.

(17) The following information for the preceding calendar year, which shall be independently audited by a certified public accountant in accordance with the standards of the ■ Accounting Standards Board of the American Institute of Certified Public Accountants and reported annually no later than August 1 of each year:

(A) The number of owners currently enrolled in the exchange program.

(B) The number of time-share plans that have current affiliation agreements with the exchange program.

(C) The percentage of confirmed exchanges, which is the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for.

(D) The number of use periods for which the exchange program has an outstanding obligation to provide an exchange to an owner who relinquished a use period during a particular year in exchange for a use period in any future year.

(E) The number of exchanges confirmed by the exchange program during the year.

(F) A statement in conspicuous type to the effect that the percentage described in subparagraph (C) is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate the probabilities of an owner's being confirmed to any specific choice or range of choices.

(c) All written, visual, and electronic communications relating to an exchange company or an exchange program shall be filed with the commissioner upon its request.

(d) The failure of an exchange company to observe the requirements of this section, and the use of any unfair or deceptive act or practice in connection with the operation of an exchange program, is a violation of this chapter.

(e) An exchange company may elect to deny exchange privileges to any owner whose use of the accommodations of the owner's time-share plan is denied, and no exchange program or exchange company shall be liable to any of its members or any third parties on account of any such denial of exchange privileges. [2015]

§11217. Communications Not Deemed Advertisement or Promotion

(a) The following communications shall not be deemed an advertisement or promotion and are exempt from this chapter so long as the communications are in compliance with Section 11245:

(1) Any stockholder communication, such as an annual report or interim financial report, proxy material, a registration statement, a securities prospectus, a registration, a property report, or other material required to be delivered to a prospective purchaser by an agency of any state or the federal government.

(2) Any oral or written statement disseminated by a developer to broadcast or print media, other than paid advertising or promotional material, regarding plans for the acquisition or development of time-share property. However, any rebroadcast or any other dissemination of the oral statements to a prospective purchaser by a developer or any person in any manner, or any distribution of copies of newspaper magazine articles or press releases, or any other dissemination of the written statements to a prospective purchaser by a developer or any person in any manner, shall constitute an advertisement.

(3) Any advertisement or promotion in any medium to the general public if the advertisement or promotion clearly states that it is not an offer in any jurisdiction in which any applicable registration requirements have not been fully satisfied.

(4) Any audio, written, or visual publication or material relating to the availability of any accommodations for transient rental, so long as a sales presentation is not a term or condition of the availability of the accommodations and so long as the failure of any transient renter to take a tour of a time-share property or attend a sales presentation does not result in any reduction in the level of services that would otherwise be available to the transient renter.

(b) Any communication regarding a time-share interest that is addressed to any person who has previously executed a contract for the sale or purchase of that time-share interest and that does not constitute a solicitation of a time-share interest, shall be exempt from this chapter. [2004]

§11218. Time-Share Interest and the Corporation Code

A time-share interest in a time-share plan shall be deemed an interest in subdivided lands or a subdivision for purposes of subdivision (f) of Section 25100 of the Corporations Code. [2004]

§11219. Amendment Carries No Retroactive Effect

(a) Time-share plans registered as Qualified Resort Vacation Club Projects under prior law shall continue to operate under that prior law notwithstanding anything in this chapter to the contrary.

(b) (1) All registrations of time-share plans in effect on the effective date of this chapter shall remain in full force and effect and shall be considered registered pursuant to this chapter.

(2) All time-share plans included in this subdivision are subject to Sections 11217, 11219, 11238, 11239, 11245, 11250, and 11280 to

11286, inclusive, and shall be required to comply with the other provisions of this chapter at the time they seek amendment or renewal of their existing registrations. When an amendment or renewal of a time-share plan is filed with the commissioner, the existing registration continues in full force and effect while the amendment or renewal is pending before the commissioner.

(c) Any existing injunction or temporary restraining order validly obtained that prohibits unregistered practice of time-share developers, time-share plans, or their agents shall not be invalidated by the enactment of this chapter and shall continue to have full force and effect on and after the effective date of this chapter. [2004]

§11225. Persons Exempt from Registering Time-Share Plan

A person shall not be required to register a time-share plan with the commissioner pursuant to this chapter if any of the following applies:

(a) The person is an owner of a time-share interest who has acquired the time-share interest for the person's own use and occupancy and who later offers it for resale.

(b) The person is a managing entity or an association that is not otherwise a developer of a time-share plan in its own right, solely while acting as an association or under a contract with an association to offer or sell a time-share interest transferred to the association through foreclosure, deed in lieu of foreclosure, or gratuitous transfer, if these acts are performed in the regular course of, or as an incident to, the management of the association for its own account in the time-share plan. Notwithstanding the exemption from registration, the association or managing entity shall provide each purchaser of a time-share interest covered by this subdivision a copy of the time-share instruments, a copy of the then-current budget, a written statement of the then-current assessment amounts, and shall provide the purchaser the opportunity to rescind the purchase within seven days after receipt of these documents. Immediately prior to the space reserved in the contract for the signature of the purchaser, the association or managing entity shall disclose, in conspicuous type, substantially the following notice of cancellation:

YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN SEVEN CALENDAR DAYS OF RECEIPT OF THE PUBLIC REPORT OR AFTER THE DATE YOU SIGN THIS CONTRACT, WHICHEVER DATE IS LATER. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE ASSOCIATION (OR MANAGING ENTITY) IN WRITING OF YOUR INTENT TO CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT TO (NAME OF ASSOCIATION OR MANAGING ENTITY) AT (ADDRESS OF ASSOCIATION OR MANAGING ENTITY). YOUR NOTICE OF CANCELLATION MAY ALSO BE SENT BY FACSIMILE TO (FACSIMILE NUMBER OF THE ASSOCIATION OR MANAGING ENTITY) OR BY HAND-DELIVERY. ANY ATTEMPT TO OBTAIN A WAIVER OF YOUR CANCELLATION RIGHT IS VOID AND OF NO EFFECT.

(c) The person is conveyed, assigned, or transferred more than seven time-share interests from a developer in a single voluntary or involuntary transaction and subsequently conveys, assigns, or transfers all of the time-share interests received from the developer to a single purchaser in a single transaction.

(d) (1) The developer is offering or disposing of a time-share interest to a purchaser who has previously acquired a time-share interest from the same developer if the developer has a time-share plan registered under this chapter, which was originally approved by the commissioner within the preceding seven years, and the developer complies in all respects with the provisions of Section 11245, and, further, provides the purchaser with (A) a cancellation period of at least seven days, (B) all the time-share disclosure documents that are required to be provided to purchasers as if the sale occurred in the state or jurisdiction where the time-share property is located, and (C) the following disclaimer in conspicuous type:

WARNING: THE CALIFORNIA BUREAU OF REAL ESTATE HAS NOT EXAMINED THIS OFFERING, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE PROJECT COMPLETION, ESCROW PRACTICES, CONTROL OVER PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE FOR YOU TO CONSULT AN ATTORNEY OR OTHER KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE AND DEVELOPMENT LAW IN THE STATE WHERE THIS TIME-SHARE PROPERTY IS SITUATED.

(2) By making such an offering or disposition, the person is deemed to consent to the jurisdiction of the commissioner in the event of a dispute with the purchaser in connection with the offering or disposition.

(e) It is a single site time-share plan located outside of the boundaries of the United States or component site of a specific time-share interest multisite time-share plan located wholly outside of the boundaries of the United States, or a nonspecific time-share interest multisite time-share plan in which all component sites are located wholly outside of the boundaries of the United States. However, it is unlawful and a violation of this chapter for a person, in this state, to sell or lease or offer for sale or lease a time-share interest in such a time-share plan, located outside the United States, unless the printed material, literature, advertising, or invitation in this state relating to that sale, lease, or offer clearly and conspicuously contains the following disclaimer in capital letters of at least 10-point type:⁴⁶

WARNING: THE CALIFORNIA BUREAU OF REAL ESTATE HAS NOT EXAMINED THIS OFFERING, INCLUDING, BUT NOT

⁴⁶ See example in footnote 30, page 208 in Civil Code §5300.

LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE PROJECT COMPLETION, ESCROW PRACTICES, CONTROL OVER PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE FOR YOU TO CONSULT AN ATTORNEY OR OTHER KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE AND DEVELOPMENT LAW IN THE COUNTRY WHERE THIS TIME-SHARE PROPERTY IS SITUATED.

(1) If an offer of time-share interest in a time-share plan described in subdivision (e) is not initially made in writing, the foregoing disclaimer shall be received by the offeree in writing prior to a visit to a location, sales presentation, or contact with a person representing the offeror, when the visit or contact was scheduled or arranged by the offeror or its representative. The deposit of the disclaimer in the United States mail, addressed to the offeree and with first-class postage prepaid, at least five days prior to the scheduled or arranged visit or contact, shall be deemed to constitute delivery for purposes of this section.

(2) If any California resident is presented with an agreement or purchase contract to lease or purchase a time-share interest as described in subdivision (e), where an offer to lease or purchase that time-share interest was made to that resident in California, a copy of the disclaimer set forth in subdivision (e) shall be inserted in at least 10-point type⁴⁷ at the top of the first page of that agreement or purchase contract and shall be initialed by that California resident.

(3) This subdivision shall not be deemed to exempt from registration in this state a nonspecific time-share interest multisite time-share plan in which any component site in the time-share plan is located in the United States. [2013]

§11226. Persons Required to Register Time-Share Plan

(a) Any person who, to any individual located in the state, sells, offers to sell, or attempts to solicit prospective purchasers to purchase a time-share interest, or any person who creates a time-share plan with an accommodation in the state, shall register the time-share plan with the commissioner, unless the time-share plan is otherwise exempt under this chapter.

(b) A developer, or any of its agents, shall not sell, offer, or dispose of a time-share interest in the state unless all necessary registration requirements are provided and approved by the commissioner, or the sale, offer, or disposition is otherwise permitted by this chapter, or while an order revoking or suspending a registration is in effect.

⁴⁷ See example in footnote 30, page 208 in Civil Code §5300.

(c) In registering a time-share plan, the developer shall provide the commissioner all of the following information:

(1) The developer's legal name, any assumed names used by the developer, principal office street address, mailing address, primary contact person, and telephone number.

(2) The name of the developer's authorized or registered agent in the state upon whom claims can be served or service of process be had, the agent's street address in California, and telephone number.

(3) The name, street address, mailing address, primary contact person, and telephone number of the time-share plan being registered.

(4) The name, street address, mailing address, and telephone number of any managing entity of the time-share plan.

(5) A public report that complies with the requirements of Section 11234, or for a time-share plan located outside of the state, a public report that has been authorized for use by the situs state regulatory agency and that contains disclosures as determined by the commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to Section 11234.

(6) A description of the inventory control system that will ensure compliance with Section 11250.

(7) Any other information regarding the developer, time-share plan, or managing entities as established by regulation.

(d) An applicant for a public report for a time-share plan shall present evidence of the following for each accommodation in each time-share property that is, or will be, offered for sale in this state pursuant to the registration:

(1) That the accommodation is presently suitable for human occupancy or that financial arrangements have been made to complete construction or renovation of the accommodation to make it suitable for human occupancy on or before the first date for occupancy by a time-share interest owner.

(2) That the accommodation is owned or leased by the developer of the time-share plan or is the subject of an enforceable option or contract under which the developer will build, purchase, or lease the accommodation. Notwithstanding this subdivision, the developer shall present evidence prior to the receipt of a final public report that the accommodation to be sold is owned or leased by the developer and that the accommodation is free and clear of encumbrances in accordance with Sections 11244 and 11255.

(e) If an accommodation in a time-share plan is located within a local governmental jurisdiction or subdivision of real property in which the dedication of accommodations to time-sharing is expressly prohibited by ordinance or recorded restriction, either absolutely or without a permit or other entitlement from the governing body, the applicant for a public report shall present evidence of a permit or other entitlement by the appropriate authority for the local government or the subdivision.

(f) (1) The developer shall amend or supplement its disclosure documents and registration information, to reflect any material change in any

information required by this chapter or the regulations implementing this chapter. The developer shall notify the commissioner of the material change prior to implementation of the change, unless the change is beyond the control of the developer; in which event, the developer shall provide written notice to the commissioner as soon as reasonably practicable after the occurrence of the event necessitating the change. All amendments, supplements, and facts relevant to the material change shall be filed with the commissioner within 20 calendar days of the material change.

(2) The developer may continue to sell time-share interests in the time-share plan so long as, prior to closing, the developer provides a notice to each purchaser that describes the material change and provides to each purchaser the previously approved public report.

(A) If the change is material and adverse to the purchaser, all purchaser funds shall be held in escrow, or pursuant to alternative assurances permitted by subdivision (c) of Section 11243, and no closing shall occur until the amendment relating to the material and adverse change has been approved by the commissioner. After the amendment relating to the material and adverse change has been approved and the amended public report has been issued, the amended public report shall be sent to the purchaser, and an additional seven-day rescission period shall commence. The developer shall be required to maintain evidence of the receipt by each purchaser of the amended public report.

(B) If the commissioner refuses to approve the amendment relating to the material and adverse change, all sales made using the notice shall be subject to rescission and all funds returned.

(3) The developer shall update the public report to reflect any changes to the time-share plan that are not material and adverse, including the addition of any component sites, within a reasonable time, and may continue to sell and close time-share interests prior to the date that the amended public report is approved.

(g) An applicant for a public report for a multisite, time-share plan consisting of specific time-share interests, as defined in subparagraph (A) of paragraph (2) of subdivision (z) of Section 11212, affiliated with sites operated through the time-share plan's reservation system, shall certify both of the following:

(1) That a purchaser has, or will have, contractual or membership rights to use accommodations at each affiliated site and that, if an accommodation or promised improvement is, or may become, subject to a blanket encumbrance, that the blanket encumbrance is, or will be, subordinate to these rights.

(2) That a certificate of occupancy has been issued with respect to the accommodations at each affiliated site or that adequate provisions exist or will exist for the completion of all such accommodations. For any affiliated site accommodations that are not complete, the public report shall clearly identify in conspicuous type that those accommodations are not completed. For any accommodations that are not complete and for which adequate provisions for completion do not exist at the time the public report is issued, the public report shall also provide in conspicuous type that those

accommodations might not be built, provided, however, that a developer's failure to build the accommodations shall not relieve the developer of any obligations created by the certification made pursuant to this subdivision.

(h) For purposes of subdivision (d) of this section, the "time-share property being offered for sale in this state" shall mean the following:

(1) With respect to a single site time-share plan, the time-share property being registered pursuant to this chapter.

(2) With respect to a specific time-share interest multisite time-share plan, the specific time-share property being registered pursuant to this chapter.

(3) With respect to a nonspecific time-share interest multisite time-share plan, all time-share properties in the time-share plan. [2006]

§11226.1. Documents to be Made Available to Prospective Purchasers

Any person offering to sell or lease any interest subject to the requirements of Section 11226 shall make a copy of each of the following documents available for examination by a prospective purchaser or lessee before the execution of an offer to purchase or lease and shall give a copy of those documents to each purchaser or lessee as soon as practicable before transfer of the interest being acquired by the purchaser or lessee:

(a) The declaration of covenants, conditions, and restrictions for the time-share plan.

(b) Articles of incorporation or association for the time-share owners' association.

(c) Bylaws of the owners' association.

(d) Any other instrument that establishes or defines the common, mutual, and reciprocal rights and responsibilities of the owners or lessees of interest in the time-share plan as members of the owners' association or otherwise.

(e) The current budget and financial statements for the time-share plan. [2006]

§11227. Final Public Report of Commissioner

(a) Subject to subdivision (h), the commissioner shall issue a final public report if all registration requirements have been met as set forth in this chapter and if all deficiencies and substantive inadequacies in the substantially complete application for a final public report for the time-share plan have been corrected.

(b) The commissioner may issue a conditional public report prior to issuing a final public report for a time-share plan if the requirements of subdivision (c) are met, all deficiencies and substantive inadequacies in the substantially complete application for a final public report for the time-share plan have been corrected, the material elements of the offering to be made under the authority of the conditional public report have been established, and all requirements for the issuance of the conditional public report have been met, except for one or more of the following requirements, as may be applicable:

(1) A final map has not been recorded.

(2) A condominium plan has not been recorded.
(3) A declaration of covenants, conditions, and restrictions has not been recorded.

(4) A declaration of annexation has not been recorded.
(5) A recorded subordination of existing liens to the time-share instruments or declaration of annexation or escrow instructions to effect recordation prior to the first sale, are lacking.

(6) Filed articles of incorporation are lacking.
(7) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the time-share instrument covering all time-share interests to be included in the public report has not been provided.

(8) Other requirements the commissioner determines are likely to be timely satisfied by the applicant.

(c) An applicant for a conditional public report shall submit the following information and documents with the applicable filing fee:

(1) A copy of the statement set forth in subdivision (e).
(2) A sales agreement or lease to be used in any transaction conducted under authority of the conditional public report. The sales agreement or lease shall include all of the following provisions:

(A) No escrow will close, funds will not be released from escrow, and the interest contracted for will not be conveyed until a current final public report for the time-share plan is furnished to the purchaser.

(B) The contract may be rescinded, in which event the entire sum of money paid or advanced by the purchaser shall be returned if (i) a final public report has not been issued within six months after the date of issuance of the conditional public report if the conditional public report is not renewed, (ii) the final public report is not issued within 12 months after the initial conditional public report is received if the conditional public report has been renewed for an additional six-month period, or (iii) the purchaser or lessee is dissatisfied with the final public report because of a material and adverse change.

(3) Escrow instructions to be used in any transaction conducted under authority of the conditional public report that includes at least the following information:

(A) The name and address of the escrow depository.
(B) A description of the nature of the transaction.
(C) Provisions ensuring compliance with Section 11243.
(D) Provisions ensuring that no escrow will close, funds will not be released from escrow, and the interest contracted for will not be conveyed until a current final public report for the time-share plan is furnished to the purchaser or lessee.

(E) Provisions for the return of money as prescribed in subparagraph (B) of paragraph (2).

(d) A decision by the commissioner to not issue a conditional public report shall be noticed in writing to the applicant within five business

days after his or her decision and that notice shall specifically state the reasons why the report is not being issued.

(e) A person may sell or lease, or offer for sale or lease, time-share interests in a time-share plan pursuant to a conditional public report if, as a condition of the sale or lease or offer for sale or lease, delivery of legal title or other interest contracted for will not take place until issuance of a final public report and provided that the requirements of subdivision (c) are met.

(f) A developer, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following information:

(1) Specification of the information required for issuance of a final public report.

(2) Specification of the information required in the final public report that is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell or lease, or offer for sale or lease, time-share interests in a time-share plan for which a conditional public report has been issued except as provided in this chapter.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report may not exceed six months unless renewed pursuant to this subdivision. The conditional public report may be renewed for one additional six-month period if the commissioner determines that the requirements for issuance of a final public report are likely to be satisfied during the renewal term. The renewal of a conditional public report shall not act to afford a purchaser who received the initial conditional public report any additional rescission rights other than those provided to a purchaser when a final public report is issued and a material and adverse change has been made.

(i) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, a disclosure document that has been authorized for use by the state regulatory agency in the state in which the time-share plan or component site is located that contains the disclosures as determined by the commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to Section 11234, shall be accepted in lieu of a public report required pursuant to this section. The disclosure document shall contain a cover page issued by the commissioner certifying the approval of its use in lieu of the public report required herein.

(j) Notwithstanding anything in this section to the contrary, the commissioner may grant a 12-month preliminary public report allowing the developer to begin offering and selling time-share interests, in a time-share plan regardless of whether the accommodations of the time-share plan are located within or outside of the state, while the registration is pending with the

commissioner. The commissioner may grant one additional 12-month period if the developer is actively and diligently pursuing registration under this chapter. The preliminary public report shall automatically terminate with respect to those time-share interests covered by a final public report that is issued before the scheduled termination date of the preliminary report. To obtain a preliminary public report, the developer shall provide all of the following:

(1) Submit the reservation instrument to be used in a form previously approved by the department with at least the following provisions:

(A) The right of both the developer and the potential purchaser to unilaterally cancel the reservation at any time.

(B) The payment to the potential purchaser of his or her total deposit following cancellation of the reservation by either party.

(C) The placing of the deposit into an interest bearing escrow account.

(2) Agree to provide each potential purchaser with a copy of the preliminary public report and an executed receipt for a copy before any money or other thing of value has been accepted by or on behalf of the developer in connection with the reservation.

(3) Agree to provide a copy of the reservation instrument signed by the potential purchaser and by or on behalf of the developer to the potential purchaser, and place any deposit taken from the potential purchaser into a neutral escrow depository acceptable to the commissioner. [2004]

§11228. Term of Final Public Report

The term of a final public report shall be limited to five years. A renewal shall be issued if the developer, owner, or agent makes application for renewal of any report and has submitted the additional information that the commissioner may require. [2004]

§11229. Time-Share Plan Application and Review; Appeal Process

(a) In connection with its review of the registration application of a time-share plan, the commissioner may make an examination of any time-share property submitted for registration pursuant to this chapter, and shall, unless there are grounds for denial, issue to the developer a public report authorizing the sale or lease in this state of the time-share interests within the time-share plan submitted pursuant to this chapter. The report shall contain the data obtained in accordance with Section 11234.

(b) The commissioner may deny the issuance of the public report based on the applicant's failure to comply with any of the provisions of this chapter or the regulations of the commissioner pertaining thereto, including, but not limited to, all of the following:

(1) The sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees.

(2) Inability to deliver title or other interest contracted for.

(3) Inability to demonstrate, in accordance with this chapter, that adequate financial arrangements have been made for all offsite improvements included in the offering.

(4) Inability to demonstrate, in accordance with this chapter, that adequate financial arrangements have been made for any community, recreational, or other facilities included in the offering.

(5) Failure to make a showing that the parcels can be used for the purpose for which they are offered.

(6) Failure to provide in the contract or other writing the use or uses for which the parcels are offered, together with any covenants or conditions relative thereto.

(c) Any developer objecting to the denial of a public report may, within 30 days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within 20 days thereafter unless the party requesting the hearing requests a postponement. If the hearing is not held within 20 days after request for a hearing is received plus the period of the postponement or if a proposed decision is not rendered within 45 days after submission and an order adopting or rejecting the proposed decision is not issued within 15 days thereafter, the order of denial shall be rescinded and a public report issued. [2004]

§11230. Amenities Incomplete before Final Public Report Issuance

If the time-share plan, including any accommodations, or amenities within the common area are not completed prior to the issuance of a final public report for the time-share plan, the developer shall specify a reasonable date for completion and shall comply with any one of the following conditions:

(a) Arranges for lien and completion bond or bonds, enforceable by the association, in an amount and subject to the terms, conditions, and coverage necessary to assure completion of the improvements lien-free. The bond shall not exceed 120 percent of the cost for completion, and the bond shall provide for the reduction of the bond amount as work is completed.

(b) All funds from the sale of time-share interests as the commissioner shall determine are sufficient to assure construction of the improvement or improvements shall be bonded or impounded in a neutral escrow depository acceptable to the commissioner until the improvements have been completed and all applicable lien periods have expired.

(c) An amount sufficient to cover the costs of construction shall be deposited in a neutral escrow depository acceptable to the commissioner under a written escrow agreement providing for disbursements from the escrow as work is completed.

(d) An alternative plan that may be approved by the commissioner. [2004]

§11231. Review and Issuance Schedule

Every registration required to be filed with the commissioner under this chapter shall be reviewed and issued the specified public report in accordance with the following schedule:

(a) Time-share registration. Registration shall be effective only upon the issuance of a public report by the commissioner that shall occur no later than 60 calendar days after the actual receipt by the commissioner of the

properly completed application. The commissioner shall provide a list of deficiencies in the application, if any, within 60 calendar days of receipt. This same time period applies when amending a public report to add additional phases or component sites of the time-share plan.

(b) Preliminary public report registration. A preliminary public report shall be issued within 15 calendar days of receipt, unless the commissioner provides to the applicant a written list of deficiencies in the application, if any, within 15 calendar days of receipt of an application.

(c) Amended public report where no additional phases or component sites are added. An effective date for an amendment to a public report should occur no more than 45 calendar days after actual receipt by the commissioner of the amendment. The commissioner shall provide a list of deficiencies regarding the amendments, if any, within 45 calendar days of receipt. [2004]

§11232. Filing Fees

(a) The commissioner may by regulation prescribe filing fees in connection with applications to the Bureau of Real Estate for a public report pursuant to the provisions of this chapter that are lower than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this chapter. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fees for an application for a public report to be issued under authority of this chapter shall not exceed the following for each time-share plan, location, or phase of the time-share plan in which interests are to be offered for sale or lease:

(1) One thousand seven hundred dollars (\$1,700) plus ten dollars (\$10) for each time-share interest to be offered for an original public report application.

(2) Six hundred dollars (\$600) plus ten dollars (\$10) for each time-share plan interest to be offered that was not permitted to be offered under the public report to be renewed for a renewal public report or permit application.

(3) Five hundred dollars (\$500) plus ten dollars (\$10) for each time-share interest to be offered under the amended public report for which a fee has not previously been paid for an amended public report application.

(4) Five hundred dollars (\$500) for a conditional public report application.

(c) Fees collected by the commissioner under authority of this chapter shall be deposited into the Real Estate Fund pursuant to Chapter 6 (commencing with Section 10450) of Part 1. Fees received by the commissioner pursuant to this article shall be deemed earned upon receipt. A fee is not refundable unless the commissioner determines that it was paid as a result of mistake or inadvertency. This section shall remain in effect unless it is superseded pursuant to Section 10266 or subdivision (a) of Section 10266.5, whichever is applicable. [2013]

§11233. Required Information for a Point System Public Report

An applicant for a public report for a time-share plan in which the use and occupancy of the time-share interest purchased in the time-share plan is determined according to a point system shall include in the application the following information:

(a) Whether additional points may be acquired by purchase or otherwise, in the future and the manner in which future purchases of points may be made.

(b) The transferability of points to other persons, other years or other time-share plans.

(c) A copy of the then-current point value use directory, along with rules and procedures for changes by the developer or the association in the manner in which point values may be used.

(1) No change exceeding 10 percent per annum in the manner in which point values may be used may be made without the assent of at least 25 percent of the voting power of the association other than the developer.

(2) No time-share interest owner shall be prevented from using a time-share plan as a result of changes in the manner in which point values may be used.

(3) In the event point values are changed or adjusted, no time-share owner shall be prevented from using his or her home resort in the same manner as was provided for under the original purchase contract.

(d) Any limitations or restrictions upon the use of point values.

(e) A description of an inventory control system that will ensure compliance with Section 11250. [2004]

§11234. Required Disclosures in Developer's Public Report

A developer shall prepare, for issuance by the commissioner, a public report that shall fully and accurately disclose those facts concerning the time-share developer and time-share plan that are required by this chapter or by regulation. The developer shall provide the public report to each purchaser of a time-share interest in a time-share plan at the time of purchase. The public report shall be in writing *or in a digital format at the discretion of the purchaser* and dated and shall require the purchaser to certify in writing the receipt thereof. The public report for a single site time-share plan is subject to the requirements of subdivision (a). The public report for a specific time-share interest multisite time-share plan is subject to the requirements of both subdivisions (a) and (b). The public report for a nonspecific time-share interest multisite time-share plan is subject to the requirements of subdivision (c). For time-share plans located outside of the state, a public report that has been authorized for use by the situs state regulatory agency and that contains disclosures as determined by the commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to this section may be used by the developer to meet the requirements of this section. A developer may, upon approval by the commissioner, submit a public report that combines, in a manner prescribed by the commissioner, the information required to be disclosed by the applicable subdivisions of this section and the information

required to be disclosed in a public report issued by a regulatory agency in one or more other states.

(a) Public reports for a single site and those component sites of a specific time-share interest multisite time-share plan that are offered in this state shall include the following:

(1) The name and address of the developer and the type of time-share plan being offered and the name and address of the time-share project.

(2) A description of the existing or proposed accommodations, including the type and number of time-share interests in the accommodations, and if the accommodations are proposed or not yet complete or fully functional, an estimated date of completion.

(3) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to the time-share plan, committed to the multisite time-share plan, and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(4) A description of any existing or proposed amenities of the time-share plan and, if the amenities are proposed or not yet complete or fully functional, the estimated date of completion.

(5) The extent to which financial arrangements have been made for the completion of any incomplete, promised improvements.

(6) A description of the duration, phases, and operation of the time-share plan.

(7) The name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it.

(8) The current annual budget as required by Section 11240, along with the projected assessments and a description of the method for calculating and apportioning the assessments among purchasers, all of which shall be attached as an exhibit to the public report.

(9) Any initial or special fee due from the purchaser at closing together with a description of the purpose and the method of calculating the fee.

(10) A description of any financing offered by or available through the developer.

(11) A description of any liens, defects, or encumbrances on or affecting the title to the time-share interests.

(12) A description of any bankruptcies, pending civil or criminal suits, adjudications, or disciplinary actions of which the developer has knowledge, that would have a material effect on the developer's ability to perform its obligations.

(13) Any current or expected fees or charges to be paid by time-share purchasers for the use of any amenities related to the time-share plan.

(14) A description and amount of insurance coverage provided for the protection of the purchaser.

(15) The extent to which a time-share interest may become subject to a tax lien or other lien arising out of claims against purchasers of different time-share interests.

(16) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.

(17) A statement disclosing that any deposit made in connection with the purchase of a time-share interest shall be held by an escrow agent until expiration of any right to cancel the contract and that any deposit shall be returned to the purchaser if he or she elects to exercise his or her right of cancellation. Alternatively, if the commissioner has accepted from the developer a surety bond, irrevocable letter of credit, or other financial assurance, each of which shall be enforceable by the association, in lieu of placing deposits in an escrow account: (A) a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other financial assurance in an amount equal to or in excess of the funds that would otherwise be placed in an escrow account, (B) a description of the type of financial assurance that has been obtained, (C) a statement that if the purchaser elects to exercise his or her right of cancellation as provided in the contract, the developer shall return the deposit, and (D) a description of the person or entity to whom the purchaser should apply for payment.

(18) A statement that the assessments collected from the purchasers will be kept in a segregated account separate from the assessments collected from the purchasers of other time-share plans managed by the same managing entity, along with a statement identifying the location of the account and a disclosure of the rights of owners to inspect the records pertaining to their accounts.

(19) If the time-share plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program.

(20) Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

(21) Any other information reasonably requested by the commissioner.

(b) Public reports for specific time-share interest multisite time-share plans shall include the following additional disclosures:

(1) A description of each component site, including the name and address of each component site.

(2) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to each component site of the time-share plan, committed to the multisite time-share plan and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(3) Each type of accommodation in terms of the number of bedrooms, bathrooms, and sleeping capacity, and a statement of whether or not the accommodation contains a full kitchen. For purposes of this description, a “full kitchen” means a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

(4) A description of amenities available for use by the purchaser at each component site.

(5) A description of the reservation system, which shall include the following:

(A) The entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system.

(B) A summary of the rules and regulations governing access to and use of the reservation system.

(C) The existence of and an explanation regarding any priority reservation features that affect a purchaser’s ability to make reservations for the use of a given accommodation on a first-come-first-served basis.

(6) The name and principal address of the managing entity for the multisite time-share plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it.

(7) A description of any right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite time-share plan.

(8) A description of the purchaser’s liability for any fees associated with the multisite time-share plan.

(9) The location of each component site of the multisite time-share plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite time-share plan during the 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at that time within the multisite time-share plan.

(10) Any other information that the developer, with the approval of the commissioner, desires to include in the time-share disclosure statement.

(c) Public reports for nonspecific time-share interest multisite time-share plans shall include the following:

(1) The name and address of the developer.

(2) A description of the type of interest and usage rights the purchaser will receive.

(3) A description of the duration and operation of the time-share plan.

(4) A description of the type of insurance coverage provided for each component site.

(5) An explanation of who holds title to the accommodations of each component site.

(6) A description of each component site, including the name and address of each component site.

(7) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to the multisite time-share plan for each component site committed to the multisite time-share plan and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(8) Each type of accommodation in terms of the number of bedrooms, bathrooms, and sleeping capacity, and a statement of whether or not the accommodation contains a full kitchen. For purposes of this description, a “full kitchen” means a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

(9) A description of amenities available for use by the purchaser at each component site.

(10) A description of any incomplete amenities at any of the component sites along with a statement as to any assurance for completion and the estimated date the amenities will be available.

(11) The location of each component site of the multisite time-share plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite time-share plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at that time within the multisite time-share plan.

(12) A description of any right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite time-share plan.

(13) A description of the reservation system that shall include all of the following:

(A) The entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system.

(B) A summary of the rules and regulations governing access to and use of the reservation system.

(C) The existence of and an explanation regarding any priority reservation features that affect a purchaser’s ability to make reservations for the use of a given accommodation on a first-come-first-served basis.

(14) A description of any liens, defects, or encumbrances that materially affect the purchaser’s use rights.

(15) The name and principal address of the managing entity for the multisite time-share plan and a description of the procedures, if any, for

altering the powers and responsibilities of the managing entity and for removing or replacing it, and a description of the relationship between a multisite time-share plan managing entity and the managing entity of the component sites of a multisite time-share plan, if different from the multisite time-share plan managing entity.

(16) The current annual budget as provided in Section 11240, along with the projected assessments and a description of the method for calculating and apportioning the assessments among purchasers, all of which shall be attached as an exhibit to the public report.

(17) Any current fees or charges to be paid by time-share purchasers for the use of any amenities related to the time-share plan and a statement that the fees or charges are subject to change.

(18) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(19) A description of any financing offered by or available through the developer.

(20) A description of any bankruptcies, pending civil or criminal suits, adjudications, or disciplinary actions of which the developer has knowledge, which would have a material effect on the developer's ability to perform its obligations.

(21) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.

(22) A statement disclosing that any deposit made in connection with the purchase of a time-share interest shall be held by an escrow agent until expiration of any right to cancel the contract and that any deposit shall be returned to the purchaser if he or she elects to exercise his or her right of cancellation. Alternatively, if the commissioner has accepted from the developer a surety bond, irrevocable letter of credit, or other financial assurance in lieu of placing deposits in an escrow account: (A) a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other financial assurance in an amount equal to or in excess of the funds that would otherwise be placed in an escrow account, (B) a description of the type of financial assurance that has been arranged, (C) a statement that if the purchaser elects to exercise his or her right of cancellation as provided in the contract, the developer shall return the deposit, and (D) a description of the person or entity to whom the purchaser should apply for payment.

(23) If the time-share plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program.

(24) Any other information that the developer, with the approval of the commissioner, desires to include in the time-share disclosure statement.

(d) The commissioner may establish by regulation provisions regarding the delivery of the public report and other required information through alternative media forms.

(e) The commissioner may, upon finding that the subject matter is otherwise adequately covered or the information is unnecessary or inapplicable, waive any requirement set forth in this section. [2015]

§11235. Short Term Product

(a) A person who has entered into a contract to purchase a short-term product shall have the right to rescind the contract until midnight of the seventh calendar day, or a later time as provided in the contract, following the day on which the contract is first made, in which event the purchaser shall be entitled to a refund of 100 percent of the consideration paid under the contract, without deduction.

(b) The developer or other person who offers a short-term product shall clearly and conspicuously disclose, in writing, to all purchasers of a short-term product, all of the following:

(1) The right of rescission provided for in subdivision (a).

(2) That reservations for accommodations under the contract are subject to availability and that there is no guarantee that a purchaser will be able to obtain specific accommodations during a specific time period, if applicable.

(3) Specific blackout dates, if applicable.

(4) That the earlier the purchaser requests a reservation, the greater the opportunity to received [*sic*] a confirmed reservation.

(5) That, if the purchaser later purchases a time-share interest, the developer shall provide the purchaser with the then-current public report for the time-share plan being purchased and that the purchaser shall have until midnight of the seventh calendar day following receipt of the public report to cancel the purchase of the time-share interest.

(c) If a purchaser is unable to obtain a confirmed reservation for a specific accommodation and time period requested, the developer or other person who offers the short-term product shall attempt to provide the purchaser with a substantially similar alternative to the reservation requested. If the developer or other person who offers the short-term product is unable to provide the reservation requested or an acceptable alternative during the initial term of the contract, the purchaser may request and be granted an extension of the contract for a period of 12 months.

(d) The contract for the purchase of a short-term product shall include the date of the contract and shall contain, in immediate proximity to the space reserved for the signature of the purchaser, a conspicuous statement as follows:

“YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE SEVENTH (7TH) (or later) CALENDAR DAY AFTER THE DATE OF THIS CONTRACT AND RECEIVE A FULL REFUND. YOU MAY EXERCISE YOUR RIGHT TO CANCEL BY SENDING A FACSIMILE, OR BY DEPOSIT, FIRST-CLASS POSTAGE PREPAID, INTO THE UNITED STATES MAIL TO THE FOLLOWING ADDRESS: (SPECIFIC CONTACT INFORMATION)”

(e) A purchaser of a short-term product may exercise the right of rescission by giving written notice to the owner of the short-term product as specified in subdivision (b), using a preprinted form provided by the developer. The developer or other person who offers the short-term product shall cause any deposit given by a purchaser who has exercised the right to rescind described in subdivision (a) to be returned to the purchaser not later than the last to occur of 10 business days following receipt of the purchaser's written notice of rescission, or 10 business days following the date upon which any deposit becomes good and immediately available funds.

(f) A developer or other person who offers a short-term product shall do one of the following:

(1) Place any purchase money funds received from the purchaser of a short-term product into an independent escrow depository until the seven-day period for rescission described in subdivision (a) has expired.

(2) Post a bond to secure the return of a purchaser's purchase money funds in a form and in an amount prescribed by the commissioner.

(3) Make alternative arrangements satisfactory to the commissioner to secure the owner's obligation to return the purchase money funds.

(g) If applicable, the developer shall disclose to the purchaser the type of alternative arrangement to be used and, in the event of a claim, to whom the purchaser should apply for payment under the alternative arrangement.

(h) The developer shall compensate the association for any services acquired from the association or for any of the association's property used when fulfilling a short-term product in excess of services or use of property provided to other owners.

(i) If the contract for a short-term product is negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, the developer shall provide to the prospective purchaser prior to the commencement of the rescission period an unexecuted translation of the contract in the language in which the contract was negotiated. The terms of the short-term contract that is executed in the English language shall determine the rights and obligations of the parties. [2004]

§11236. Receipt for Public Report

(a) A receipt on the form specified herein shall be taken by or on behalf of the developer 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 time-share interest under authority of a preliminary, conditional, or final public report.

(b) The developer or his or her agent shall retain each receipt for a final public report for a period of three years from the date of the receipt and shall make the receipts available for inspection by the commissioner or his or her designated representative during regular business hours.

(c) The form approved by the commissioner for the acknowledgment of receipt of a preliminary, conditional, or final public report shall be as follows:

“RECEIPT FOR PUBLIC REPORT

The Law and Regulations of the commissioner require that you as a prospective purchaser or lessee be afforded an opportunity to read the public report for this time-share before you execute a contract to purchase or lease a time-share interest or before any money or other consideration toward purchase or lease of a time-share interest is accepted from you. You must be afforded an opportunity to read the report before a written reservation or any deposit in connection therewith is accepted from you.

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

I have read the commissioner’s public report on ____ (File No., Tract No., or Name). I understand the report is not a recommendation or endorsement of the time-share, but is for information only. The date of the public report which I received and read is ____.

Developer Is Required to Retain This Receipt for Three Years. [2004]

§11237. Disclosure Statement for Incidental Benefit

(a) If a purchaser of a time-share interest in a time-share plan is offered the opportunity to acquire an incidental benefit in connection with the sale of a time-share interest, the developer shall provide the purchaser with a disclosure statement containing all of the following information:

(1) A general description of the incidental benefit, including the terms and conditions governing the use of the incidental benefit.

(2) A statement that the continued availability of the incidental benefit is not necessary for the use and enjoyment of the purchaser’s use of any accommodation of the time-share plan.

(3) A statement that the purchaser’s use of or participation in the incidental benefit is completely voluntary, and payment of any fee or other cost associated with the incidental benefit is required only upon that use or participation.

(4) A listing of the fees, if any, that the purchaser will be required to pay to use the incidental benefit.

(5) A statement that no costs of acquisition, operation, maintenance, or repair of the incidental benefit shall be passed on to purchasers of time-share interests in the time-share plan as a common expense of the time-share plan.

(b) A developer shall include in its initial application for registration, a description of any incidental benefits which may be used by the developer. The developer may, but shall not be required to describe the incidental benefits in the public report for the time-share plan.

(c) The incidental benefit disclosure is not required to be filed with the commissioner prior to the use of the disclosure. However, the commissioner may request and review the records of the developer to ensure that the incidental benefit disclosure required by this section has been given to purchasers and to ensure that the statements required to be made in the disclosure are accurate as to the operation of each incidental benefit offered by

the developer. The developer shall deliver the records to the commissioner within 10 business days of the commissioner's request. [2004]

§11238. The Purchase Contract

(a) The purchase contract entered into by any person who has made an offer to purchase a time-share interest or interests, any incidental benefit, made on the same day or within seven calendar days after the person attended a sales presentation for a time-share interest, or any right under an exchange program, made on the same day or within seven calendar days after the person attended a sales presentation for a time-share interest, shall be voidable by the purchaser, without penalty, within seven calendar days, or a longer period as provided in the contract, after the receipt of the public report or the execution of the purchase contract, whichever is later.

(1) The purchase contract for the time-share interest shall provide notice of the seven-day cancellation period, together with the name and mailing address to which any notice of cancellation shall be delivered.

(2) Notice of cancellation shall be deemed timely if given not later than midnight of the seventh calendar day.

(b) A person who has made an offer to purchase a time-share interest, incidental benefit, or rights under an exchange program as described above may exercise the right of cancellation granted by this section by giving written notification of the notice to cancel to the developer at the place of business designated by the developer in the purchase contract.

(c) If the notice of cancellation is by United States mail, a rebuttable presumption shall exist that notice was given on the date that it is postmarked. If the notice is sent by facsimile, it shall be considered given on the date of a confirmed transmission. If the notice is by means of a writing sent other than by United States mail or telegraph, it shall be considered as given at the time of delivery at the place of business designated by the developer. Exercising the rescission rights of the time-share interest shall also automatically rescind any agreement for the purchase of an incidental benefit or an enrollment into an exchange program where the agreements were entered into in conjunction with the purchase of the time-share interest.

(d) Each developer shall utilize and furnish each purchaser with a fully completed and executed copy of a contract pertaining to the sale of a time-share interest, which contract shall include the following information:

(1) The actual date the contract is executed by each party.

(2) The names and addresses of the developer and time-share plan.

(3) The initial purchase price and any additional recurring or nonrecurring charges, or a good faith estimate if the amount of those charges cannot then be determined, that the purchaser will be required to pay in connection with the purchase of the time-share interest, including, but not limited to, the current year's annual assessment for common expenses and financing charges.

(4) The estimated date of completion of construction of each accommodation promised to be completed which is not completed at the time the contract is executed.

(5) A brief description of the nature and duration of the time-share interest being sold, including whether any interest in real property is being conveyed.

(6) The specific number of years of the term of the time-share plan.

(7) Immediately prior to the space reserved in the contract for the signature of the purchaser, the developer shall disclose, in conspicuous type, substantially the following notice of cancellation: You may cancel this contract without any penalty or obligation within seven calendar days of receipt of the public report or after the date you sign this contract, whichever date is later. If you decide to cancel this contract, you must notify the developer in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (name of developer) at (address of developer). Your notice of cancellation may also be sent by facsimile to (facsimile number of the developer) or by hand-delivery. Any attempt to obtain a waiver of your cancellation right is void and of no effect.

(8) The purchase contract for an interest in a single site or specific time-share interest multisite time-share plan without an accommodation in this state shall include the following additional disclosure in conspicuous type: The accommodations of this time-share plan are located outside of California. As such, the management (including all matters relating to the association, the association budget, and any management contract) of this time-share plan is not governed by California law, but by the applicable law, if any, of the jurisdiction in which the accommodations are located as stated in the public report. You should review the governing documents related to the association, the association's budget, and the management of the time-share plan.

(e) If rescission is sought by the purchaser in accordance with this section, and a court finds the developer denied the rescission in violation of this section, the court may also award reasonable attorneys' fees and costs to the prevailing purchaser. [2006]

§11239. Cancellation Notice

(a) To inform a purchaser of his or her right of cancellation under Section 11238, the developer shall attach to the face page of every copy of a public report given to a prospective purchaser, the cancellation notice set forth in subdivision (b) thereof printed in conspicuous type.

(b) The form and content of the notice shall be as follows:

NOTICE OF CANCELLATION RIGHTS

You may cancel the purchase of the time-share interest(s) in the time-share plan identified below without any penalty or obligation and are legally entitled to the return of all money and other considerations that you have given toward the purchase. If you decide to cancel your purchase, you must notify the developer in writing of your intent to

cancel within seven calendar days of receipt of the public report or the date you sign the purchase contract, whichever date is later. Your notice of cancellation shall be effective upon the date sent and shall be sent to the developer at the address or facsimile number provided in your purchase contract. Any attempt to obtain a waiver of your cancellation right is void and of no effect.

(c) Each notice shall also contain the following form. The form shall have all developer-related information completed by the developer and may be used by a purchaser to cancel the sale of the time-share interest:

(Name of Developer)

(Address of Developer)

(Facsimile Number of Developer)

(Name of Time-share Plan)

(DRE⁴⁸ Registration File Number)

RE: ELECTION TO CANCEL THE SALE OF A TIME-SHARE INTEREST(S)

I hereby elect to cancel my purchase of the time-share interest(s) in the above-name time-share plan.

(Date)

(Signature)

(Print Name)

(Signature)

(Print Name)

[2004]

§11240. Contents of the Estimated Operating Budget

An estimated operating budget for the time-share plan shall be filed with the commissioner along with the other information required to be registered pursuant to this chapter, and shall contain the following information:

(a) The estimated annual expenses of the time-share plan along with the estimated revenue of the association from all sources, including the amounts collectible from purchasers as assessments. The estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due. Expenses shall be shown in a manner that enables the purchaser to calculate the annual expenses associated with the time-share interest being purchased. Expenses that are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the time-share plan documents may be excluded from this estimate.

(b) (1) The estimated items of expenses of the time-share plan and the association, except as excluded under subdivision (a), including, but not limited to, if applicable, the following items, that shall be stated either as

⁴⁸ This reference to “DRE” was apparently overlooked in the change from “DRE” to “BRE” in AB-1317 in 2013.

association expenses collectible by assessments or as expenses of the purchaser payable to persons other than the association:

(2) Expenses for the association:

(A) Administration of the association.

(B) Management fees.

(C) Maintenance.

(D) Rent for accommodations.

(E) Taxes upon time-share property.

(F) Taxes upon leased areas.

(G) Insurance.

(H) Security provisions.

(I) Other expenses.

(J) Operating capital.

(K) Equitable apportionment of expenses between time-share and non-time-share uses of the common area, if applicable.

(L) Reserves for deferred maintenance and reserves for capital expenditures. All reserves for any accommodations and common areas of a time-share plan located in this state shall be based upon the estimated life and replacement cost of accommodations and common elements of the time-share plan. For any accommodations and common elements of a time-share plan located outside of this state, the developer shall disclose the amount of reserves for deferred maintenance and capital expenditures required by the law of the situs state, if applicable, and maintained for those accommodations and common elements, which amount of reserves shall be based on the estimated life and replacement cost of each reserve item. The developer or the association shall include in the budget a reasonable reserve accumulation plan. A plan that (i) provides for reserves to be funded within five years at a level of 50 percent of the amount specified in the reserve study as fully funded, and (ii) requires those reserves collected in any given year to equal or exceed the amount of reserve expenditures estimated for that year shall be deemed to be a reasonable reserve accumulation plan. The funding of reserves may be based on collection of reserve amounts in conjunction with annual assessments, or on some alternative mechanism, including, but not limited to, a bond, letter of credit, or similar mechanism. Collection of required reserve amounts solely by one or more special assessments is not reasonable. If control of the association is in owners other than the developer, and such owners vote not to maintain reserves or to maintain reserves at less than 50 percent, the failure to maintain the required level of reserves shall not be cause for denying the developer a public report.

(c) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time that purchasers elect a majority of the board of administration and the period after that date.

(d) The budget of a phase time-share plan shall contain a note identifying the number of time-share interests covered by the budget, indicating the number of time-share interests, if any, estimated to be declared as part of the time-share plan during that calendar year, and projecting the common expenses

for the time-share plan based upon the number of time-share interests estimated to be declared as part of the time-share plan during that calendar year.

(e) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the budget shall include the subject matter set forth in subdivisions (a) to (d), inclusive. The budget shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if there is a conflict between the affirmative standards set forth in the laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the budget provides for the matters contained in subdivisions (a) to (d), inclusive, the budget shall be deemed to be in compliance with the requirements of this section, and the developer shall not be required to make revisions in order to comply with this section.

(f) The budget shall include a certification subscribed and sworn by an expert in the preparation of time-share plan budgets, who may be (1) an independent public accountant, (2) a certified public accountant, who is an employee of the developer, or (3) at the discretion of the commissioner, an individual or entity acceptable to the commissioner to conduct the review. Acceptance of the individual or entity shall not be considered an endorsement by the commissioner of a proposed budget. The budget certification shall also be signed by the developer or on behalf of the developer by an appropriate officer, if the developer is a corporation, or the managing member, if the developer is a limited liability company. The certification concerning the adequacy of the budget shall be in the following form: On behalf of the developer of the captioned time-share plan, I/my firm has reviewed or prepared the budget containing projections of income and expenses for time-share operation. My/our experience in this field includes: (List experience.) I/we have reviewed the budget and investigated the facts set forth in the budget and the facts underlying it with due diligence in order to form a basis for this certification. I/we certify that the projections in the budget appear reasonable and adequate based on present prices (adjusted to reflect continued inflation and present levels of consumption for comparable units similarly situated) or, for an existing project, based on historical data for the project. I/we certify that the budget:

(1) Sets forth in detail the terms of the transaction as it relates to the budget and is complete, current, and accurate.

(2) Affords potential purchasers an adequate basis upon which to found their judgment.

(3) Does not omit any material fact.

(4) Does not contain any untrue statement of a material fact.

(5) Does not contain any fraud, deception, concealment, or suppression.

(6) Does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances.

(7) Does not contain any representation or statement which is false, where I/we:

(A) Knew the truth.

(B) With reasonable effort could have known the truth and made no reasonable effort to ascertain the truth.

(C) Did not have knowledge concerning the representation or statement made.

I/we understand that a copy of this certification is intended to be incorporated into the public report so that prospective purchasers may rely on it. This certification is made under the penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the laws of California. The certification shall be dated within 90 days prior to the date of the submission of the budget to the commissioner. The expert's certification shall be based on experience in the management of hotel, resort, or time-share properties and disclose the approximate number of properties managed and length of time managed, together with other relevant real estate experience, qualifications, and licenses.

(g) Any budget that is not certified by an independent certified public accountant or an employee of the developer who is licensed as a certified public accountant may be reviewed by the commissioner to confirm the accuracy of the certification.

(h) The certified budget for the time-share plan shall be prepared and submitted by the developer to the commissioner annually for as long as the registration is in effect. If the budget is increased more than 20 percent in any year, the developer shall submit to the commissioner, along with the increased budget, evidence that the requirements of paragraph (5) of subdivision (a) of Section 11265 have been met. The budget shall be submitted at least 15 days prior to the first day of the period that it covers. Upon the submission of each annual budget, the exhibit to the public report specified in paragraph (8) of subdivision (a) of, and paragraph (16) of subdivision (c) of, Section 11234 shall be updated. The updating of the exhibit shall not be considered to constitute an amendment of the public report.

(i) The audited financial statements of the association prepared pursuant to paragraph (2) of subdivision (b) of Section 11272 shall be delivered to the commissioner upon request.

(j) At the time an application is submitted for renewal of the public report or any amendment of the public report that affects the budget for the time-share plan, the developer shall submit with the application a copy of the most recent audited financial statement for the time-share plan, along with a certified copy of the budget reflecting the amendment or renewal. If the commissioner, upon reasonable comparison of the budget and the prior year's audited financial statements, determines that the budget is deficient, the commissioner may subject the budget to a substantive review. [2006]

§11241. Developer Obligation for Unsold Inventory Expenses

(a) The developer is obligated for the expenses associated with unsold inventory held by the developer. The obligation can be fulfilled in either of the following ways:

(1) The developer shall pay the full maintenance fee for each of the interests owned by the developer.

(2) The developer shall enter into a subsidy agreement with the association to cover any shortfall between expenses incurred and assessments collected from other owners (“deficit subsidy”), and shall furnish the association with an executed copy of the agreement within 10 days after closing of escrow of the first sale or lease of a time-share interest. The department will not approve a deficit subsidy program unless provisions are made for the accumulation of reserves for replacement and major maintenance of the time-share property in accordance with accepted property management practices and the transfer of the reserve fund to the association on termination of the program.

(b) To assure the fulfillment of the obligations of the developer of a time-share plan to either pay assessments as an owner of time-share interests in the time-share plan or to pay a deficit subsidy, the commissioner shall require that the developer furnish a surety bond, cash deposit, letter of credit, or other alternate assurance enforceable by the association and acceptable to the commissioner, and that assurance shall be in compliance with either paragraph (1) or (2) of subdivision (c).

(c) The amount of the assurance shall be in such an amount as may be approved by the commissioner, but shall not exceed the lesser of 50 percent of the anticipated cost of operation and maintenance of the time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to this chapter. The security shall be delivered to a neutral escrow depository, or to the trustee if title to the time-share property has been delivered to the trustee, along with instructions signed by the developer for the benefit of the association which shall provide as follows:

(1) Where the developer pays full maintenance fees on unsold inventory the security shall remain available to pay any assessments for which the developer is liable and delinquent until the depository or trustee has received both of the following:

(A) Written notice, from the developer that sales of 80 percent of the time-share interest in the time-share plan have been closed.

(B) Written notice from the association that the developer is not delinquent in the payment of assessments for which it is obligated.

(2) The amount of the assurance required by this section may be adjusted annually to an amount approved by the commissioner, but shall be not more than the smaller of 50 percent of the anticipated cost of operation and maintenance of the time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to this chapter.

(d) A deficit subsidy agreement entered into after July 1, 2005, shall provide that if there is a dispute between the developer and the association

with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The fee payable to the American Arbitration Association to initiate the arbitration shall be remitted by the developer. The cost of arbitration shall ultimately be borne as determined by the arbitrator under these rules. [2006]

§11242. Buy Down Subsidy; Developer Undertaking to Pay

(a) In any time-share plan, the developer may undertake to pay a portion of the assessments otherwise payable by each purchaser (“buy down subsidy”). Any developer undertaking to pay a buy down subsidy shall do both of the following:

(1) Enter into a contract with the association that specifies in detail the obligations of the developer and the methods to be used in valuing the goods and services furnished under the time-share plan.

(2) Furnish the association with an executed copy of the subsidization contract within 10 days after closing of escrow of the first sale or lease of a time-share interest.

(b) If the developer is paying a buy down subsidy, the developer shall provide an assurance for its buy down subsidy obligation in an amount acceptable to the commissioner, but not more than the aggregate amount by which annual assessments are to be reduced, for example, the number of interests to be sold in each unit type multiplied by the amount by which the annual assessment for such unit type is to be reduced, multiplied by the number of years in the term of the buy down subsidy.

(c) For any buy down subsidy agreements entered into after July 1, 2005, the subsidy agreements shall provide that if there is a dispute between the developer and the association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The fee payable to the American Arbitration Association to initiate the arbitration shall be remitted by the developer. The cost of arbitration shall ultimately be borne as determined by the arbitrator under those rules. [2006]

§11242.1. Instructions for Escrow Depository

(a) The assurance specified in Section 11241 and, if applicable, the assurance specified in Section 11242, shall be delivered to the trustee or an escrow depository acceptable to the department along with an executed copy of the subsidization contract and instructions to the escrow depository signed by the developer and on behalf of the association. The instructions shall provide for both of the following:

(1) The escrow agent shall not release or exonerate the security device until it has received written notice from the association that the developer has faithfully performed all of his or her obligations under the

subsidization contract, if applicable, and the escrow agent has received the written notices specified in paragraph (1) of subdivision (c) of Section 11241.

(2) If there is a dispute between the developer and the association with respect to the questions of satisfaction of the conditions for exoneration or release of the security, the issue or issues shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

(b) The fee payable to the American Arbitration Association to initiate arbitration shall be submitted by the developer. The costs of arbitration shall be borne by the party as determined by the arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

(c) The agreement for the deficit subsidy, described in subdivision (a) of Section 11241, and the agreement for the buy down subsidy, described in subdivision (a) of Section 11242 may, at the option of the developer, be contained in one instrument. [2006]

§11243. Escrow Requirements for Developer

The developer shall comply with the following escrow requirements:

(a) A developer of a time-share plan shall deposit into an escrow account in an acceptable escrow depository 100 percent of all funds that are received during the purchaser's rescission period. An acceptable escrow depository includes, when qualified to do business in this state, escrow agents licensed by the Commissioner of Corporations, banks, trust companies, savings and loan associations, title insurers, and underwritten title companies. The deposit of these funds shall be evidenced by an executed escrow agreement between the escrow agent and the developer, that shall include provisions that state the following:

(1) Funds may be disbursed to the developer by the escrow agent from the escrow account only after expiration of the purchaser's rescission period and in accordance with the purchase contract, subject to subdivision (b).

(2) If a prospective purchaser properly cancels the purchase contract pursuant to its terms, the funds shall be paid to the prospective purchaser or paid to the developer if the prospective purchaser's funds have been previously refunded by the developer.

(b) If a developer contracts to sell a time-share interest and the construction of any property in which the time-share interest is located has not been completed, the developer, upon expiration of the rescission period, shall continue to maintain in an escrow account all funds received by or on behalf of the developer from the prospective purchaser under his or her purchase contract. The commissioner shall establish, by regulation, the types of documentation which shall be required for evidence of completion, including, but not limited to, a certificate of occupancy, a certificate of substantial completion, or an inspection by the State Fire Marshal designee or an equivalent public safety inspection agency in the applicable jurisdiction. Unless the developer submits financial assurances, in accordance with subdivision (c), funds shall not be released from escrow until a certificate of occupancy, or its equivalent, has been

obtained and the rescission period has passed, and the time-share interest can be transferred free and clear of blanket encumbrances, including mechanics' liens. Funds to be released from escrow shall be released as follows:

(1) If a prospective purchaser properly cancels the purchase contract pursuant to its terms, the funds shall be paid to the prospective purchaser or paid to the developer if the prospective purchaser's funds have been previously refunded by the developer.

(2) If a prospective purchaser defaults in the performance of the prospective purchaser's obligations under the purchase contract, the funds shall be paid to the developer.

(3) If the funds of a prospective purchaser have not been previously disbursed in accordance with the provisions of this subdivision, they may be disbursed to the developer by the escrow agent upon the issuance of acceptable evidence of completion of construction.

(c) In lieu of the provisions in subdivisions (a) and (b), the commissioner may accept from the developer a surety bond, escrow bond, irrevocable letter of credit, or other financial assurance or arrangement acceptable to the commissioner. Any acceptable financial assurance shall be in an amount equal to or in excess of the lesser of (1) the funds that would otherwise be placed in escrow, or (2) in an amount equal to the cost to complete the incomplete property in which the time-share interest is located. However, in no event shall the amount be less than the amount of funds that would otherwise be placed in escrow pursuant to paragraph (1) of subdivision (a).

(d) The developer shall provide escrow account information to the commissioner and shall execute in writing an authorization consenting to an audit or examination of the account by the commissioner on forms provided by the commissioner. The developer shall comply with the reconciliation and records requirements established by regulation by the commissioner. The developer shall make documents related to the escrow account or escrow obligation available to the commissioner upon the department's request. The escrow agent shall maintain any disputed funds in the escrow account until either of the following occurs:

(1) Receipt of written direction agreed to by signature of all parties.

(2) Deposit of the funds with a court of competent jurisdiction in which a civil action regarding the funds has been filed. [2004]

§11244. Evidence for Release of Escrow Funds to Developer

(a) Excluding any encumbrance placed against the purchaser's time-share interest securing the purchaser's payment of purchase money financing for the purchase, the developer shall not be entitled to the release of any funds escrowed under Section 11243 with respect to each time-share interest and any other property or rights to property appurtenant to the time-share interest, including any amenities represented to the purchaser as being part of the time-share plan, until the developer has provided satisfactory evidence to the commissioner of one of the following:

(1) The time-share interest, including, but not limited to, a time-share interest in any component sites of a nonspecific time-share interest multisite time-share plan, together with any other property or rights to property appurtenant to the time-share interest, including any amenities represented to the purchaser as being part of the time-share plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights.

(2) The developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the time-share plan, has recorded a subordination and notice to creditors document in the appropriate public records of the jurisdiction in which the time-share interest is located. The subordination document shall expressly and effectively provide that the interest holder's right, lien, or encumbrance shall not adversely affect, and shall be subordinate to, the rights of the owners of the time-share interests in the time-share plan regardless of the date of purchase, from and after the effective date of the subordination document.

(3) The developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the time-share plan, has transferred the subject accommodations, amenities, or all use rights in the amenities to a nonprofit organization or owners' association to be held for the use and benefit of the owners of the time-share plan, which shall act as a fiduciary to the purchasers, the developer has transferred control of the entity to the owners or does not exercise its voting rights in the entity with respect to the subject accommodations or amenities. Prior to the transfer, any lien or other encumbrance against the accommodation or facility shall be made subject to a subordination and notice to creditors' instrument pursuant to paragraph (2).

(4) Alternative arrangements have been made which are adequate to protect the rights of the purchasers of the time-share interests and approved by the commissioner.

(b) Nothing in this section shall prevent a developer from accessing any escrow funds if the developer has complied with subdivision (c) of Section 11243.

(c) The developer shall notify the commissioner of the extent to which an accommodation may become subject to a tax or other lien arising out of claims against other purchasers in the same time-share plan. The commissioner may require the developer to notify a prospective purchaser of any such potential tax or lien that would materially and adversely affect the prospective purchaser. [2004]

§11245. Prohibited Representations and Nondisclosures

(a) No person subject to this chapter shall do any of the following:

(1) Make any material misrepresentation that is false or misleading in connection with any advertisement or promotion of a time-share plan.

(2) Make a prediction of any increases in the resale price or resale value of the time-share interest.

(3) Materially misrepresent the size, nature, extent, qualities, or characteristics of the offered time-share plan.

(4) Materially misrepresent the conditions under which a purchaser may exchange the right to use accommodations in one location for the right to use accommodations in another location.

(5) Materially misrepresent the current or future availability of a resale or rental program offered by or on behalf of the developer.

(6) Materially misrepresent the nature or extent of any incidental benefit.

(7) Fail to deliver any item offered in connection with a promotion to a prospective purchaser upon the conclusion of the sales presentation, or fail to deliver any item offered in connection with a promotion to a prospective purchaser, upon request, reasonably approximate to the conclusion of the length of time for the sales presentation that was previously represented to the prospective purchaser.

(8) Fail to disclose, in a manner that meets the requirements of Section 17537.1 or 17537.2 of the Business and Professions Code, that a certificate, coupon, or raincheck redeemable for fulfillment for goods or services will be provided in connection with a promotion for the purchase of a time-share interest, if that is the case.

(9) State that the purchase of a time-share interest constitutes a financial investment.

(10) Fail to clearly and conspicuously disclose, prior to the execution of any purchase contract, the annual maintenance and association dues or any separately billed taxes, when applicable.

(11) Fail to clearly disclose in writing any automatic charging or billing procedure, and fail thereafter to obtain the express written authorization from the prospective purchaser for any purchase, subscription, or enrollment that results in that automatic charging or billing of initial or periodic amounts to the prospective purchaser.

(12) If the contract for a time-share interest is negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, and the developer fails to provide to the prospective purchaser prior to the commencement of the rescission period an unexecuted translation of the contract in the language in which the contract was negotiated.

(13) Fail to inform, verbally or in writing, any prospective purchaser that he or she can take as much time as he or she requires in order to read the public report, and any and all other documents necessary to consummate a sale before leaving the premises or signing a contract, and not allowing, upon request, the prospective purchaser the time and opportunity to do

so. If the prospective purchaser requests that he or she be able to return the next calendar day to complete the review of the documents before signing, the developer shall accommodate such a request, and the return visit shall not disqualify the prospective purchaser from receiving any price reduction or other incentive for purchasing on the day of the scheduled sales presentation. Further, it shall not be fraudulent or misleading for a developer to honor the request even if presented as an incentive only available on the day of the offer.

(14) Inform prospective purchasers that they are finalists in winning an item offered in connection with a promotion or have already won a specific prize, unless it is true.

(15) Offer as a promotional incentive any travel certificate or coupon redeemable for transportation, accommodations, or other travel-related service that does not allow the recipient to activate or redeem the incentive without incurring any additional telephone expenses charged by or on behalf of the developer other than the usual toll costs imposed by the prospective purchaser's telephone service.

(16) Offer as a promotional incentive any travel certificate or coupon redeemable for fixed air transportation or hotel accommodations or other travel-related service that entitles the prospective purchaser to a trip of a specified duration unless the offeror states at the time of the offer that there are terms or conditions that must be followed in order to utilize the incentive and that the details of the terms will be sent to the consumer in writing in time to be received by the consumer prior to leaving his or her house to attend the scheduled sales presentation. The writing shall include the approximate times of the air or sea transportation's departure and return, if applicable, and all other material conditions, including any limitations as to the dates or times available for use of the incentive.

(17) Misrepresent or fail to disclose that a prospective purchaser is required to attend a sales presentation to obtain a prize or promotional item, if attendance is a requirement of the promotion.

(18) Fail to inform any prospective purchaser who contacts the developer with a request to cancel a purchase within the rescission period provided by this chapter all of the procedures necessary to effectively cancel the purchase.

(19) Fail to cancel a purchase upon the receipt of a valid timely written notice of rescission. No person may obtain from the person a waiver or cancellation of the rescission.

(20) Fail to provide any refund of moneys, within the required timeframe, due to the prospective purchaser upon receipt of a valid timely written notice of rescission.

(21) Fail to provide a mechanism for an equitable apportionment of expenses between the time-share owner's association and any commercial operation on the property not operated by the time-share owner's association.

(b) For any time-share plan in which the managing entity is an affiliate of the developer, neither the developer nor the managing entity shall, during any applicable priority reservation period, hold out for rental to the

public on a given day, developer owned or controlled time-share periods in a number greater than the total number of time-share periods owned or controlled by the developer in a particular season, multiplied by a fraction wherein the numerator is the number of time-share periods owned or controlled by the developer in that particular season, and the denominator is the total number or time-share periods in that particular season. For example, if the developer owns or controls 1,000 time-share periods in a particular season, out of a total of 4,000 time-share periods available during that season, then the developer may not hold out for rental to the public during any applicable priority reservation period, more than 250 time-share periods on a given day during that season ($1,000 \times 1,000/4,000=250$). The number of time-share interests permitted to be rented under this subdivision shall be in addition to any time-share interests that the developer may have the right to rent or use by virtue of having acquired those rights from another owner. The developer or managing entity may, at any time, rent any inventory transferred to the developer or managing entity by another owner in exchange for hotel accommodations, future use rights, or other considerations. For any use or rental by a developer of time-share interests owned or controlled by the developer, the developer shall reimburse the association for any increased expenses for housekeeping services that exceed the amount allocated in the assessment for maintenance for the use or rental. [2004]

§11246. Inventory Control System Certification

With each application for an amendment or renewal of a public report, and with the initial submittal of an application for a time-share plan in which sales have occurred prior to obtaining a California public report, the developer shall submit to the commissioner a certification by an independent third party acceptable to the commissioner and dated not more than three months prior to the submittal of the application, stating that the inventory control system, described in paragraph (6) of subdivision (c) of Section 11226 functions in accordance with the description set forth in that section. The certification shall be based on a random sampling of transactions performed within the six months preceding the date of the application. Inventory control systems that cover time-share estates for which the developer offers, and the title insurance company agrees to provide title insurance, shall not require certification. Independent title insurance companies licensed to do business as such in this state and independent certified public accountants shall be deemed acceptable third parties in accordance with this section. [2004]

§11250. Purchaser to Accommodation Ratio

A time-share plan may be created in any accommodation unless otherwise prohibited. All time-share plans shall maintain a one-to-one purchaser to accommodation ratio, which means the ratio of the number of purchasers eligible to use the accommodations of a time-share plan on a given night to the number of accommodations available for use within the plan on that night, such that the total number of purchasers eligible to use the accommodations of the time-share plan during a given calendar year never exceeds the total number of accommodations available for use in the time-share plan during that year. For

purposes of the calculation under this section, each purchaser must be counted at least once, and no individual accommodation may be counted more than 365 times per calendar year or more than 366 times per leap year. A purchaser who is delinquent in the payment of time-share plan assessments shall continue to be considered eligible to use the accommodations of the time-share plan for purposes of calculating the one-to-one purchaser to accommodation ratio. [2004]

§11251. Components of Time-Share Instrument

(a) The developer of a single site time-share plan and for the component sites of a multisite time-share plan located in the state, shall cause to be recorded prior to the closing of the first sale of a time-share interest in each accommodation in the time-share plan, covenants dedicating the accommodations to the time-share plan and incorporating all covenants of the grantor or lessor of the time-share interests, and the following provisions:

(1) Organization of an association of time-share interest owners.

(2) A description of the real property for the common ownership or use of the time-share interest owners. Where the time-share plan is a personal property time-share plan, a description of the personal property for common use of the time-share interest owners.

(3) A description of the method for calculating and collecting regular and special assessments from time-share interest owners to defray expenses of the time-share property and for related purposes.

(4) A description of the method for terminating the membership and selling the interest of a time-share interest owner for failure to pay regular or special assessments.

(5) A description of the method for the disciplining of time-share interest owners for the late payment of assessments.

(6) Provisions requiring comprehensive general liability insurance and adequate property and casualty insurance covering the time-share property.

(7) Restrictions upon partition of an accommodation of the time-share plan.

(8) A description of the method for amending the covenants affecting the time-share plan.

(9) Where applicable, a description of the method relating to the annexation or de-annexation of additional accommodations, phases, or properties to the time-share plan.

(10) A description of the procedures in the event of condemnation, destruction, or extensive damage to an accommodation, including provisions for the disposition of insurance proceeds or damages payable on account of damage or condemnation.

(11) A method of the procedures on regular termination of the time-share plan.

(12) Where applicable, allocation of the cost of maintenance and operation between different elements or mixed uses within the portions of a

project or relating to reciprocal rights and obligations between the time-share project and other property.

(13) A description of the method for entry into accommodations of the time-share plan under authority granted by the association for the purpose of cleaning, maid service, maintenance, and repair including emergency repairs and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity.

(14) Delineate all reserved rights of the developer.

(15) For projects located within the state, the covenants shall, insofar as reasonably possible, satisfy the requirements of Section 1468 or Sections 1469 and 1470 of the Civil Code for real property located in this state.

(b) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the developer shall cause to be recorded a declaration dedicating the accommodations to the time-share plan and incorporating all covenants of the grantor or lessor of the time-share interests. The declaration shall include the subject matter set forth in paragraphs (1) to (14), inclusive, of subdivision (a). If there is no provision for the recording of a declaration in the state or jurisdiction in which the time-share property or component site is located, alternatively, the developer shall establish that the declaration is otherwise enforceable in the state or jurisdiction in which the time-share property or component site is located. The declaration shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the declaration provides for the matters contained in paragraphs (1) to (14), inclusive, of subdivision (a), the declaration shall be deemed to be in compliance with the requirements of subdivision (a) and this subdivision and the developer shall not be required to make revisions in order to comply with subdivision (a) and this subdivision.

(c) The developer of a time-share plan located within the state shall make provisions in the time-share instruments for all of the following:

(1) A description of the services to be made available to time-share interest owners under the time-share plan.

(2) A description, to be contained in the declaration or the bylaws of the association, of the procedures regarding transfer to the association of control over the time-share property and services comprising the time-share plan.

(3) A description of the method for preparation and availability to time-share interest owners of budgets, financial statements, and other information related to the time-share plan.

(4) A description of the methods for employing and for terminating the employment of a managing entity for the time-share plan.

(5) A description of the method for adoption of standards and rules of conduct for the use of accommodations by time-share interest owners.

(6) A description of the method for establishment of the rights of time-share interest owners to the use of an accommodation according to schedule or under a first-reserved, first-served priority system.

(7) A description of the method for compensating use periods or monetary compensation for an owner of a time-share estate if an accommodation cannot be made available for the period of use to which the owner is entitled by schedule or under a reservation system because of an error by the association or managing entity.

(8) A description of the method for the use of accommodations for transient accommodations or other income-producing purpose during periods of nonuse by time-share interest owners.

(9) A description of the method for the inspection of the books and records of the association by time-share interest owners.

(10) A description of the method for collective decisionmaking and the undertaking of action by or in the name of the association including, where applicable, representation of time-share accommodations in an association for the time-share in which the accommodations are located.

(d) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the developer shall cause to be included in the time-share instrument the subject matter set forth in subdivision (c). The time-share instruments shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if there is a conflict between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the time-share instruments provide for the matters contained in subdivision (c), the time-share instruments shall be deemed to be in compliance with the requirements of subdivision (c) and this subdivision and the developer shall not be required to make revisions in order to comply with subdivision (c) and this subdivision. [2004]

§11252. Majority Assent Required to Encumber Accommodations

In a time-share plan offering time-share use interests, the developer shall not encumber the accommodations of the time-share plan in a manner that could materially and adversely affect the use rights of the purchasers of the accommodations without the written assent of not less than 51 percent of the time-share interest owners other than the developer. This section shall not prevent the developer from encumbering the purchaser's use rights so long as the developer has sufficient protection as permitted by Section 11244. [2004]

§11253. Required Insurance Provisions of Time-Share Instrument

For single site time-share plans and component sites of multisite time-share plans located in this state, the time-share instrument shall require that the following insurance be at all times maintained in force to protect time-share interest owners in the time-share plan:

(a) Insurance against property damage as a result of fire and other hazards commonly insured against, covering all real and personal property comprising the time-share plan in an amount not less than 80 percent of the full replacement value of the time-share property.

(1) In a time-share use offering, the trustee shall be a named coinsured, and if for any reason, title to the accommodation is not held in trust,

the association shall be named as a coinsured as the agent for each of the time-share interest owners.

(2) In a time-share estate offering, the association shall be named as a coinsured if it has title to the property or as a coinsured as agent for each of the time-share interests owners if title is held by the owners as tenants in common.

(3) If, after control of the governing body of the association has passed to the owners other than the developer, and the association amends the time-share instrument to reduce the percentage below 80 percent, the failure of the association to maintain coverage at 80 percent of replacement value shall not be grounds for denial of a public report.

(b) Liability insurance against death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the accommodations of the time-share plan.

(1) The amounts of the insurance shall be determined by the association, but shall not be less than five hundred thousand dollars (\$500,000) to one million dollars (\$1,000,000) for personal injury and one hundred thousand dollars (\$100,000) for property damage.

(2) The liability insurance policy shall provide for all of the following:

(A) All time-share interest owners as a class are named as additional insureds in a policy issued to the association.

(B) The waiver by the insurer of its right to subrogation under the policy against any time-share interest owner or member of his or her household.

(C) No act or omission by a time-share interest owner, unless acting within the scope of his or her authority on behalf of the association, shall void the policy or operate as a condition to recovery under the policy by any other person. [2004]

§11254. Conveyance of Fee or Long-Term Leasehold; Time Frame

(a) In a time-share plan in which the fee or a long-term leasehold interest in all or some of the accommodations and in appurtenant real and personal property is to be transferred to the association or to a corporate trustee under a trust agreement, the conveyance shall be made prior to the closing of the escrow for the first sale of a time-share interest in the accommodation.

(b) The developer may reserve easements in the real property conveyed for purposes reasonably related to the conduct of commercial activities in the time-share property, if the developer covenants to use the easements in a manner that will minimize any adverse impact on the use and enjoyment of the accommodation by any time-share interest owner occupying it. [2004]

§11255. Trust or Association Documents; Accommodation in Time-Share Plan

(a) The department shall require that each of the accommodations in a time-share plan offering time-share use interests be conveyed to a trustee or

an association acceptable to the commissioner prior to the closing of the escrow for the first sale of a time-share use interest that entitles the purchaser to occupy the accommodation in question.

(b) If the accommodation in a time-share plan offering time-share use interests that is free and clear of blanket encumbrances, other than a lien of current real property taxes, is conveyed to a trustee or an association, the trust or association instruments shall include, but not be limited to, all of the following:

(1) Transfer of title to the accommodations to the trustee or association.

(2) If the time-share use interests are conveyed to a trust, the association as a party to the trust or an express third-party beneficiary of the trust.

(3) Notice to the department of the intention of the trustee to resign, if applicable.

(4) Continuance of the trustee in that capacity until a successor trustee acceptable to the department assumes the position, if applicable.

(5) Prohibition against any amendments of the trust or association instruments adversely affecting the interests or rights of time-share interest owners without the prior approval of the association.

(6) Instructions for the distribution of condemnation or insurance proceeds by the trustee or the association.

(c) The department may require that each of the accommodations in a time-share plan offering time-share estate interests that is subject to a blanket encumbrance be conveyed to a trustee acceptable to the department prior to the closing of the escrow for the first sale of a time-share estate which entitles the purchaser to occupy the accommodation in question.

(d) If an accommodation in the time-share plan is conveyed to a trustee pursuant to subdivision (c), the trust instrument shall include all of the following provisions in addition to those set forth in subdivision (b):

(1) The deposit into trust, and the retention for the duration of the trust, of nondelinquent installment sales contracts or promissory notes of time-share interests purchases having an aggregate principal balance owing not ordinarily less than 150 percent of the difference between the aggregate principal balance owing under blanket encumbrances against the accommodation and the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket encumbrances.

(A) The trust instrument shall further provide that if the 150 percent requirement has not been met within six months after execution of the trust instrument by the developer, the trustee shall thereafter retain in the trust, or apply to debt service on the blanket encumbrance, the entire amount of all installment payments received on contracts or promissory notes until the 150 percent requirement has been met.

(B) For purposes of this regulation, a contract or promissory note is deemed delinquent when an installment payment is more than 60 days past due.

(C) If the developer for purposes of satisfying the requirements of this subdivision proposes to deposit installment sales contracts or promissory notes of obligor other than purchasers of interests in the time-share plan into the trust, the developer shall have the burden of establishing the liquidated value of the notes and contracts to the satisfaction of the department.

(2) The deposit into trust, and the retention for the duration of the trust, of funds in an amount at all times sufficient to pay the total of three successive monthly installments of debt service on the blanket encumbrance.

(A) If installments of debt service on a blanket encumbrance that is fully amortized are due less frequently than monthly, the funds retained in the trust shall be sufficient to pay all installments becoming due within the next succeeding six months, or, if no installments are due within the next succeeding six months the next installment due.

(B) If a blanket encumbrance against the trust property is an interest-only loan, contains a balloon payment provision, or is otherwise not fully amortized under the terms for repayment, the trust instrument shall require that the developer make monthly payments into the trust sufficient to pay debt service installments as they become due and to create a sinking fund to extinguish the debt at its maturity.

(3) Payment by the trustee of debt service on the blanket encumbrance, property taxes, or assessments on insurance premiums, either as the entity having primary responsibilities for the payments or the entity secondarily responsible if the person with primary responsibility fails to make the payments in a timely manner.

(4) The deposit or investment by the trustee of funds constituting a part of the trust corpus in interest bearing accounts, treasury bills, certificates of deposit, or similar investments.

(e) In the case of a time-share plan offering time-share use interests that have been conveyed to a trustee, the trust for the accommodation shall be irrevocable during the time that any time-share interest owner has a right to the occupancy of an accommodation.

(f) In the case of a time-share plan offering time-share use interests that have been conveyed to an association, the association shall not be dissolved or terminated during the time that any time-share interest owner has the right to occupancy of an accommodation.

(g) In a time-share plan offering time-share estate interests, the trust for an accommodation shall be irrevocable until the extinguishment of all blanket monetary encumbrances against the accommodation. [2004]

§11256. Requirements on Disbursement of Escrow Funds

(a) The contract proposed to be used by a developer applying for a public report for the sale or lease of time-share interests shall provide that if the escrow for sale or lease of a time-share interest does not close on or before the date set forth in the contract, or a later closing date mutually agreed to by the developer and the prospective purchaser or lessee, within 15 days after the closing date set forth in the contract or an extended closing date mutually agreed to by the developer and the prospective purchaser or lessee, the developer shall,

except as provided in subdivisions (c) to (h), inclusive, order all of the money remitted by the prospective purchaser or lessee under the terms of the contract for acquisition of the time-share interest (purchase money) to be refunded to the prospective purchaser or lessee. Any extension of the closing of escrow shall be in writing and shall clearly and conspicuously disclose that the purchaser is not obligated to extend the closing of escrow.

(b) The contract may provide for disbursements or charges to be made against purchase money for payments to third parties for credit reports, escrow services, preliminary title reports, appraisals, and loan processing services by the parties if the contract includes the following:

(1) Specific enumeration of all of the disbursements or charges that may be made against purchase money.

(2) The developer's estimate of the total amount of the disbursements and charges.

(c) Any contractual provision that calls for disbursement or a charge against purchase money based upon the prospective purchaser's or lessee's alleged failure to complete the purchase of the time-share interest shall conform with Sections 1675, 1676, 1677, and 1678 of the Civil Code.

(d) Except for a disbursement made following substantial compliance with the procedures set forth in subdivision (f) or pursuant to a written agreement of the parties that either cancels the contract or is executed after the final closing date specified by the parties, a disbursement or charge against purchase money as liquidated damages may be done only pursuant to a determination by a court of law, or by an arbitrator if the parties have so provided by contract, that the developer is entitled to a disbursement or charge against purchase money as liquidated damages.

(e) A contractual provision for a determination by arbitration that the developer is entitled to a disbursement or charge against purchase money as liquidated damages shall require that the arbitration be conducted in accordance with procedures that are equivalent in substance to the Commercial Arbitration Rules of the American Arbitration Association, that any arbitration include every cause of action that has arisen between the prospective purchaser or lessee and the developer under the contract, and that the developer remit the fee to initiate arbitration with the costs of the arbitration ultimately to be borne as determined by the arbitrator.

(f) The contract of sale may include a procedure under which purchase money may be disbursed by the escrowholder to the developer as liquidated damages upon the prospective purchaser's or lessee's failure to timely give the escrowholder the prospective purchaser's or lessee's written objection to disbursement of purchase money as liquidated damages. This procedure shall contain at least the following elements:

(1) The developer shall give written notice, in the manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action, to the escrowholder and to the prospective purchaser or lessee that the prospective purchaser or lessee is in default under the contract that the developer is demanding that the escrowholder remit _____ dollars (\$____) from the purchase money to the developer as liquidated damages unless,

within 20 days, the prospective purchaser or lessee gives the escrowholder the prospective purchaser's or lessee's written objection to the disbursement of purchase money as liquidated damages.

(2) The prospective purchaser or lessee shall have a period of 20 days from the date of receipt of the developer's 20-day notice and demand in which to give the escrowholder the prospective purchaser or lessee written objection to the disbursement of purchase money as liquidated damages.

(g) The contract may not make the prospective purchaser's or lessee's failure to timely give the escrowholder the aforesaid written objection a waiver of any cause of action the prospective purchaser or lessee may have against the developer under the contract unless the waiver is conditioned upon service of the developer's 20-day notice and demand in a manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action.

(h) If the developer has had the use of purchase money pending consummation of the sale or lease transaction under authorization by the department pursuant to Section 11243, the developer shall immediately upon alleging the default of the prospective purchaser or lessee, transmit to the escrowholder, funds equal to all of the purchase money paid by the prospective purchaser or lessee. [2004]

§11265. Regular and Special Assessments

(a) For single site time-share plans and component sites of a specific time-share interest multisite time-share plan, the following requirements apply:

(1) Except as provided in paragraph (2), regular assessments to defray the expenses of maintaining the time-share property and operating the time-share plan shall be levied against each time-share interest owner according to the ratio that the number of time-share interests owned by a time-share interest owner assessed bears to the total number of time-share interests subject to assessments. Regular assessments levied by the association shall not exceed the amount necessary to defray the estimated expenses for which the assessments are levied.

(2) The assessment against each owner in the time-share plan may be determined according to a formula or schedule under which assessments against each time-share interest owner are equitably apportioned in accordance with operational and maintenance costs attributable to each time-share interest owner.

(3) A special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments except in the case where the special assessment is levied against a time-share interest owner for the purpose of reimbursing the association for costs incurred in bringing the time-share interest owner into compliance with provisions of the governing instruments for the time-share plan.

(4) All time-share interests in the time-share plan for which a public report has been issued including those time-share interests held by the

developer of the time-share plan are interests subject to the payment of regular and special assessments.

(5) The governing body of the association may be authorized by the governing instruments to impose, without the vote or written assent of the association, a regular annual assessment per time-share interest that is as much as 20 percent greater than the regular annual assessment for the immediately preceding fiscal year. An annual assessment for each time-share interest that is more than 20 percent greater than the regular assessment per time-share interest for the immediately preceding fiscal year may not be levied without the vote or written assent of a majority of the voting power of the association residing in members other than the developer. An increase in the annual assessment attributable to an increase in real property taxes against accommodations of the time-share property shall be excluded in determining whether the annual assessment is more than 20 percent greater than the regular assessment per interest for the preceding fiscal year.

(6) Except as provided in this section, special assessments against time-share interest owners in a time-share plan may not be imposed without the vote or written assent of a majority of the voting power of the association residing in members other than the developer. The governing body of the association may be authorized by the governing instruments to impose special assessments without the vote or written assent of the association as follows:

(A) Special assessments against all time-share interest owners in the time-share plan, other than a special assessment to restore or rebuild because of damage or destruction to an accommodation, which in the aggregate in any fiscal year do not exceed 5 percent of the budgeted gross expenses of the association for that fiscal year.

(B) A special assessment for the repair or rebuilding of an accommodation that does not exceed 10 percent of the budgeted gross expenses of the association for the fiscal year in which the assessment is levied.

(C) Special assessments against a time-share interest owner or owners for the purpose of reimbursing the association for costs incurred in bringing the time-share interest owner into compliance with provisions of the governing instruments for the time-share plan.

(7) Regular assessments against all of the time-share interests in an accommodation of the time-share plan shall commence on the same date. Regular assessments shall commence on the first day of the month following the closing of the escrow of the first sale of a time-share interest in the time-share plan, but may be delayed to the date of commencement of time-share interest owners' occupancy rights in the accommodation or to a date that is not more than six months later than the date of closing of the first sale involving a right to use the accommodation, whichever occurs earlier in time.

(b) For single site time-share plans and component sites of a multisite time-share plan located outside of the state the time-share instruments shall include the subject matter set forth in paragraphs (1) to (4), inclusive, of subdivision (a). The time-share instruments shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or

component site is located, and if a conflict exists between the affirmative standards of the laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the time-share instruments provide for the matters contained in paragraphs (1) to (4), inclusive, of subdivision (a), the time-share instruments shall be deemed to be in compliance with the requirements of paragraphs (1) to (4), inclusive, of subdivision (a) and this subdivision and the developer shall not be required to make revisions in order to comply with paragraphs (1) to (4), inclusive, of subdivision (a) and this subdivision. If the maximum increase in annual assessments for a time-share plan located outside of this state is greater than the 20 percent set forth in paragraph (5) of subdivision (a), the public report shall include the following disclosure in conspicuous 14-point type:⁴⁹

YOUR ANNUAL ASSESSMENTS ARE NOT SUBJECT TO THE CALIFORNIA LIMITATION OF A 20% ANNUAL INCREASE WITHOUT THE VOTE OF THE OWNERS OTHER THAN THE DEVELOPER. YOUR ASSESSMENT MAY BE INCREASED BY AS MUCH AS ____% PER YEAR.

(c) For nonspecific time-share interest multisite time-share plans the following requirements apply:

(1) Except as provided in paragraph (2), regular assessments to defray the expenses of maintaining and operating the multisite time-share plan shall be levied against each time-share interest owner according to the ratio that the number of time-share interests owned by a time-share interest owner assessed bears to the total number of time-share interests subject to assessments.

(2) The assessment against each time-share interest owner in the multisite time-share plan may be determined according to a formula or schedule under which assessments against each time-share interest owner are equitably apportioned in accordance with operational and maintenance costs attributable to each time-share interest owner.

(3) A special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments except in the case where the special assessment is levied against a time-share interest owner for the purpose of reimbursing the association for costs incurred in bringing the time-share interest owner into compliance with provisions of the governing instruments for the time-share plan.

(4) All time-share interests in the multisite time-share plan for which a public report has been issued including those time-share interests held by the developer of the multisite time-share plan are interests subject to the payment of regular and special assessments. [2004]

§11265.1. Delinquent Assessments and Association’s Recovery Rights

(a) Regular and special assessments levied pursuant to the time-share instrument are delinquent 30 days after they become due, unless the time-share instrument provides a longer time period, in which case the longer time

⁴⁹ See example in footnote 30, page 208 in Civil Code §5300.

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 attorneys' fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the time-share instrument specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the governing instrument.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorneys' fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the assessment becomes due, unless the time-share instrument specifies the recovery of interest at a lower rate, in which case, the lower rate of interest shall apply.

(b) Regular assessments imposed or collected to perform the obligations of an association under the governing documents of this title 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. This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by the owners of the association, constituting a quorum, casting a majority of the votes at a meeting or election of the association, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

(c) The association shall provide notice by first-class mail to the owners of the time-share interests of any increase in the regular or special assessments of the association, not less than 30 days nor more than 60 days prior to the increased assessment becoming due.

(d) Associations are hereby exempted from interest rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section. [2006]

§11266. Amending Declaration

(a) An amendment of a provision of the declaration or other document establishing the time-share plan may not be adopted without the vote or written assent of at least 25 percent of the voting power of the association residing in members other than the developer.

(b) An amendment of the articles of incorporation or association may not be enacted without the vote or written assent of at least 25 percent of the governing body and 25 percent of the voting power of the association residing in members other than the developer.

(c) An amendment of the bylaws of the association may not be enacted without the vote or written assent of at least 10 percent of the voting power of the association residing in members other than the developer.

(d) An amendment to the rules and regulations of the association may not be enacted without the vote or written assent of at least a majority of the governing body of the association.

(e) The percentage of the voting power necessary to amend a specific clause or provision in the time-share instrument, articles, or bylaws shall not be less than the prescribed percentage of affirmative votes or written assents required for action to be taken under that clause.

(f) In addition to the restrictions upon the enactment of amendments of the governing instruments set forth in this section, the governing instruments may include provisions consistent with subdivision (c) of Section 11269 whereby the vote of the developer must be given effect in the amendatory process.

(g) For a single site time-share plan or a component site of a specific time-share interest time-share plan or a nonspecific time-share interest multisite time-share plan located outside this state, that is being offered in this state, the public report shall include the following disclosure in conspicuous 14-point type:⁵⁰

THE DECLARATION OR OTHER DOCUMENT ESTABLISHING THIS TIME-SHARE PLAN MAY BE AMENDED BY A VOTE OF ____% OF THE MEMBERS OF THE ASSOCIATION. THE BYLAWS OF THE ASSOCIATION MAY BE AMENDED BY A VOTE OF ____% OF THE MEMBERS. [2004]

§11267. Managing Entity Required; Management Agreement Provisions

(a) The time-share instruments shall require the employment of a managing entity for the time-share plan or component site pursuant to a written management agreement that shall include all of the following provisions:

(1) Delegation of authority to the managing entity to carry out the duties and obligations of the association or the developer to the time-share interest owners.

(2) Authority of the managing entity to employ subagents, if applicable.

(3) A term of not more than five years with automatic renewals for successive three-year periods after expiration of the first term unless the association by the vote or written assent of a majority of the voting power residing in members other than the developer determines not to renew the contract and gives appropriate notice of that determination. However, in those time-share plans where the association is controlled by owners other than the developer, the management agreement shall not be subject to the term limitations set forth in this section, and any longer term shall not be grounds for denial of a public report, unless the longer term of the management contract is the result of the developer exercising control.

(4) Termination for cause at any time by the governing body of the association. If the single site time-share plan or the component site of a

⁵⁰ See example in footnote 30, page 208 in Civil Code §5300.

multisite time-share plan is located within the state, then that termination provision shall include a provision for arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association if requested by or on behalf of the managing entity.

(5) Not less than 90 days' written notice to the association of the intention of the managing entity to resign.

(6) Enumeration of the powers and duties of the managing entity in the operation of time-share plan and the maintenance of the accommodations comprising the time-share plan.

(7) Compensation to be paid to the managing entity.

(8) Records to be maintained by the managing entity.

(9) A requirement that the managing entity provide a policy for fidelity insurance or bond for the activities of the managing entity, payable to the association, which shall be in an amount no less than the sum of the largest amount of funds expected to be held or controlled by the managing entity at any time during the year, pursuant to the budget. The commissioner may provide a reduction in the insurance policy or bond amounts required by this paragraph.

(10) Errors and omissions insurance coverage for the managing entity, if available.

(11) Delineation of the authority of the managing entity and persons authorized by the managing entity to enter into accommodations of the time-share plan for the purpose of cleaning, maid service, maintenance and repair including emergency repairs, and for the purpose of abating a nuisance or dangerous, unlawful, or prohibited activity being conducted in the accommodation.

(12) Description of the duties of the managing entity, including, but not limited to, the following:

(A) Collection of all assessments as provided in the time-share instruments.

(B) Maintenance of all books and records concerning the time-share plan.

(C) Scheduling occupancy of accommodations, when purchasers are not entitled to use specific time-share periods, so that all purchasers will be provided the opportunity for use and possession of the accommodations of the time-share plan, that they have purchased.

(D) Providing for the annual meeting of the association of owners.

(E) Performing any other functions and duties related to the maintenance of the accommodations or that are required by the time-share instrument.

(b) Any written management agreement in existence as of the effective date of this chapter shall not be subject to the term limitations set forth above.

(c) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the time-share instruments shall include the subject matter set forth in subdivision (a). The time-share instruments shall be in compliance with the applicable laws of the state or

jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the time-share instruments provide for the matters contained in subdivision (a), the time-share instruments shall be deemed to be in compliance with the requirements of subdivision (a) and the developer shall not be required to make revisions in order to comply with subdivision (a) and this subdivision. [2006]

§11268. Regular and Special Meetings of Members

(a) Unless impracticable because of the number of members of the association, their places of residence in relation to each other, the international nature of the offering, or other factors, provision shall be made for regular meetings of members of the association of time-share interest owners. Ordinarily regular meetings of members shall be scheduled not less frequently than once each calendar year at a time and place to be fixed by the bylaws or by resolution of the governing body. The first meeting of the association shall be scheduled not later than one year after the closing of the escrow for the first sale of a time-share interest in the time-share plan or completion of construction, whichever shall first occur.

(b) Provision shall be made for special meetings of the association to be promptly called by the governing body upon either of the following:

(1) The vote of a majority of the governing body.

(2) Receipt of a written request signed by members representing at least 5 percent of the voting power of the association residing in members other than the developer.

(c) Meetings of the association shall be held at a suitable location that is readily accessible at reasonable cost to the largest possible number of members.

(d) Written notice of regular and special meetings shall be given to members by first-class mail. This notice shall be given not less than 14 days and not more than 90 days before the scheduled date of the meeting. The notice, whether for a regular or special meeting shall specify the place, day, and hour of the meeting and a brief statement of the matters which the governing body intends to present, or believes that others will present, for action by the members.

(e) (1) The bylaws of the association shall establish the quorum for a meeting of members at not less than 5 percent nor more than 33 1/3 percent, of the voting power of the association residing in members other than the developer, represented in person or by proxy.

(2) In the absence of a quorum as prescribed by the bylaws, no business shall be conducted and the presiding officer shall adjourn the meeting sine die.

(3) If less than one-third of the total voting power of the association is in attendance, in person or by proxy, at a regular or special meeting of the association, only those matters of business, the general nature of which was given in the notice of the meeting may be voted upon by the members.

(f) Any action that may be taken at any regular or special meeting of members may be taken without a meeting if the following requirements are met:

(1) A written ballot is distributed to every member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal, and providing a reasonable time for the members to return the ballot to the association.

(2) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action.

(3) The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

(4) The written ballot distributed to members of the association affords an opportunity for the member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the association and further provides that the vote of the members shall be cast in accordance with the choice specified.

(g) The bylaws of the association may provide that governing body members may be elected by written ballot.

(h) A form of proxy may be distributed to each member to afford him or her the opportunity to vote in absentia at a meeting of members of the association provided that it meets the requirements for a written ballot set forth in paragraph (4) of subdivision (f) and includes the name or names of members who expect to be in attendance in person at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent member's vote as specified in the form of proxy. [2004]

§11269. Voting

(a) A member of an association including associations that provide for unequal assessments against members, shall be entitled to one vote for each time-share interest owned.

(b) An association may have two classes of members for voting purposes according to the following provisions:

(1) Each time-share interest owner other than the developer of the time-share plan shall be a class A member. If a time-share interest is owned by more than one person, each time-share interest owner shall be a class A member, but only one vote may be cast for each interest.

(2) The developer shall be the class B member and shall have one vote for each time-share interest owned by him or her which has been authorized to be offered for sale by the issuance of a public report.

(3) Class B membership shall be automatically converted to class A membership, and class B membership shall thereafter cease to exist, when the total outstanding votes held by the class B member falls below 20 percent of the total voting power of the association.

(c) Except as otherwise expressly provided, no regulation which requires the approval of a prescribed percentage of the voting power residing in members other than the developer or a prescribed percentage of the voting power of class A members, for action to be taken by the association, is intended to preclude the developers from casting votes attributable to the time-share interests which he or she owns. Governing instruments may specify the following with respect to approval of action by the membership of the association other than an action to enforce an obligation of the developer:

(1) In those associations in which class A and class B memberships exist, the vote or written assent of a prescribed percentage of the class A voting power and the vote or written assent of the class B member.

(2) In those associations in which a single class of voting membership exists, either as originally established or after the conversion of the class B membership to class A memberships, the vote or written assent of a prescribed percentage of the total voting power of the association and the vote or written assent of a prescribed percentage of the voting power of members other than the developer. [2004]

§11270. Governing Body of Association

(a) The governing body shall consist of three directors for an association that does not contemplate more than 100 members and either five or seven directors for an association that contemplates more than 100 members.

(b) (1) The first governing body shall consist of directors appointed by the developer. These directors shall serve until the first meeting of the association at which time an election of all of the directors for the association shall be conducted.

(2) A special procedure shall be established by the governing instruments to assure that at the first election of the governing body, and at all times thereafter, at least one of the incumbent directors has been elected solely by the votes of members other than the developer.

(3) A director who has been elected to office solely by the votes of the members of the association other than the developer may be removed from the governing body prior to the expiration of his or her term of office only by a vote of a prescribed percentage of the voting power residing in members other than the developer.

(c) The terms of office of governing body members may be staggered provided that no person may serve a term of more than three years without standing for reelection.

(d) For board of director members serving at the appointment of the developer, the developer may change the designated board member without the need of any further consent by the association. However, the term of the applicable director's seat on the governing body shall not be affected by that change. [2004]

§11271. Regular and Special Meeting of Governing Body

(a) Regular meetings of the governing body of the association shall be held as prescribed in the bylaws, but not less frequently than annually.

(b) (1) Regular and special meetings of the governing body shall be held in or near the location of the time-share plan unless a meeting at another location would significantly reduce the cost to the association or the inconvenience to directors.

(2) If the time and place of the regular meeting of the governing body is not fixed by the governing instruments, notice of the time and place of meeting shall be communicated in writing, including by facsimile, electronic mail, or other form of written or electronic communication, to directors not less than 14 days prior to the meeting. However, that notice of a meeting is not required to be given to any governing body member who has signed a waiver of notice or a written consent to the holding of the meeting.

(c) (1) A special meeting of the governing body may be called by written notice signed by any two members of the governing body.

(2) The notice of a special meeting shall specify the time and place of the meeting and the nature of any special business to be considered.

(3) Notice of a special meeting shall be communicated in writing, including by facsimile, electronic mail, or other form of written or electronic communication, to directors not less than 14 days prior to the meeting. However, notice of the meeting is not required to be given to any governing body member who signed a waiver of notice or a written consent to the holding of the meeting.

(d) (1) Regular and special meetings of the governing body shall be open to all members of the association provided that members who are not on the governing body may not participate in any deliberations or discussions unless expressly so authorized by the governing body.

(2) The governing body may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

(e) A bare majority of the total members of authorized members of the governing body shall constitute a quorum for the conduct of business.

(f) The governing instruments for the time-share plan shall provide for reimbursement by the association for transportation expenses incurred and reasonable per diem payments to governing body members for attendance at regular and special meetings of the governing body. [2004]

§11272. Documents Available to Time-Share Interest Owners

(a) The following information concerning the time-share plan shall be made available to all time-share interest owners in the time-share plan:

(1) A proposed budget for each fiscal year consisting of the information required by Section 11240 shall be distributed not less than 15 days prior to the beginning of the fiscal year to which the budget applies.

(2) An audit of the financial statements of the association by an independent certified public accountant shall be performed each year and shall be made available upon request by a time-share owner 120 days after the

close of the fiscal year. The audited financial statements shall be included in a report that includes all of the following:

(A) A balance sheet as of the end of the fiscal year.

(B) An operating (income) statement for the fiscal year.

(C) A statement of the net changes in the financial position of the time-share plan during the fiscal year.

(D) 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 annual report prepared in accordance with generally accepted ■ accounting principles.

(E) A list of the names and methods of contacting the members of the governing body of the association.

(3) A list of the orders of business to be considered at the annual meeting of members of the association shall be distributed not less than 14 days prior to the meeting date. This list shall include the name, address, and a brief biographical sketch if available of each member of the association who is a candidate for election to the governing body.

(b) In lieu of the distribution of the budget and report required by subdivision (a), the governing body may elect to distribute a summary of the budget and report to all time-share interest owners along with a written notice that the budget and report 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 time-share interest owner requests that a copy of the budget and report required by subdivision (a) be provided to the time-share interest owner, the association shall provide the copy to the time-share interest owner by facsimile, electronic mail, or first-class United States mail at the expense of the association and delivered within 10 days. The written notice that is distributed to each of the time-share interest owners shall be in conspicuous 14-point type⁵¹ on the front page of the summary of the budget and report.

(c) Delivery of the information specified in subdivision (a) may be combined where appropriate.

(d) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the association shall be subject to the provisions set forth in this section. The association must be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the association provides for the dissemination of information provided for in this section, the association shall be deemed to be in compliance with the requirements of this section and neither the developer nor the association shall be required to make revisions to the time-share instruments or budget in order to comply with this section. [2004]

⁵¹ See example in footnote 30, page 208 in Civil Code §5300.

§11273. Inspection of Books and Records

(a) The books of account, minutes of members and governing body meetings, and all other records of the time-share plan maintained by the association or the managing entity shall be made available for inspection and copying by any member, or by his or her duly appointed representative, at any reasonable time for a purpose reasonably related to membership in the association.

(b) The records shall be made available for inspection at the office where the records are maintained. Upon receipt of an authenticated written request from a member along with the fee prescribed by the governing body to defray the costs of reproduction, the managing entity or other custodian of records of the association or the time-share plan shall prepare and transmit to the member a copy of any and all records requested.

(c) The governing body shall establish reasonable rules with respect to all of the following:

(1) Notice to be given to the managing entity or other custodian of the records by the member desiring to make the inspection or to obtain copies.

(2) Hours and days of the week when a personal inspection of the records may be made.

(3) Payment of the cost of reproducing copies of records requested by a member.

(d) Every governing body member shall have the absolute right at any time to inspect all books, records, and documents of the association and all real and personal properties owned and controlled by the association.

(e) The association shall maintain among its records a complete list of the names and addresses of all owners of time-share interests in the time-share plan. The association shall update this list no less frequently than every six months. Unless otherwise provided in the time-share instruments, the association may not publish this owner's list or provide a copy of it to any time-share interest owner or to any third party or use or sell the list for commercial purposes.

(f) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the association shall be subject to the provisions set forth in this section. The association must be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the association and the time-share instruments provide for the matters contained in this section, the association shall be deemed to be in compliance with the requirements of this section and neither the developer nor the association shall be required to make revisions to the time-share instruments in order to comply with the section. [2004]

§11274. Limitations on Absolute Forfeiture

(a) The association shall not be authorized to cause the absolute forfeiture of a time-share interest owner's right, title, or interest in the time-share

plan on account of the time-share interest owner's failure to comply with provisions of the time-share instrument or the rules and regulations for the time-share plan except pursuant to either of the following:

(1) The judgment of a court or the decision of an arbitrator as provided in the time-share instrument.

(2) A foreclosure or sale under a power of sale for the failure of a time-share interest owner to pay assessments duly levied by the association.

(b) The time-share instrument may authorize the governing body of the association, or the managing entity acting on behalf of the governing body, to suspend a time-share interest owner's right to the occupancy of an accommodation, and all related rights and privileges as a time-share interest owner of a time-share interest in the time-share plan, during the period of time that the time-share interest owner is delinquent in the payment of regular or special assessments or other charges duly levied by the association. The time-share interest owner shall be given written notice of the suspension of his or her rights and privileges immediately after the decision to suspend has been made.

(c) The time-share instrument may authorize the association to impose a monetary penalty to suspend a time-share interest owner's right to use an accommodation or other facility that is part of the time-share plan or to take other disciplinary action that is appropriate, short of the forfeiture of the time-share interest owner's right, title, and interest in the time-share plan, for violations of the provisions of the time-share instrument and of the rules and regulations for operation of the time-share plan by the time-share interest owner, his or her guests or persons under his or her control, including, but not limited to, all of the following:

(1) Failure to vacate an accommodation upon expiration of the time-share interest owner's use period.

(2) Damage to an accommodation or any other real or personal property that is part of the time-share plan.

(3) Permitting a time-share interest to be subject to a lien, other than the lien of nondelinquent real property taxes or assessments, claim, or charge that could result in the sale of time-share interests of other time-share interest owners.

(4) Creating a disturbance that interferes with the use and enjoyment of facilities of the time-share plan by other time-share interest owners.

(d) Before disciplinary action authorized under subdivision (c) can be imposed by the association, the time-share interest owner against whom the action is proposed to be taken shall be given 30-days prior written notice and the opportunity to present a written or oral defense to the charges.

(1) The governing body of the association shall decide whether the time-share interest owner's defense shall be oral or written.

(2) The time-share interest owner shall be notified of the decision of the governing body of the association before disciplinary action is taken.

(e) The association may delegate to the managing entity, the power and authority to carry out disciplinary actions duly imposed by the governing body.

(f) For single site time-share plans and component sites of specific time-share interest multisite time-share plans and nonspecific time-share interest multisite time-share plans located outside this state, and offered for sale in this state, the public report shall contain the following disclosure in conspicuous 14-point type:⁵²

THIS TIME SHARE PLAN MAY NOT BE SUBJECT TO THE SAME PROTECTIONS AGAINST FORFEITURE AND FORECLOSURE AS PROVIDED BY CALIFORNIA LAW. YOU SHOULD BECOME FAMILIAR WITH THE PROCEDURES PROVIDED BY THE LAWS OF THE STATE IN WHICH THE TIME-SHARE PLAN IS LOCATED.

[2004]

§11275. Dispute Resolution Between and Association and Developer

(a) Any contractual provision or other provision in the time-share instruments implemented after July 1, 2005, setting forth terms, conditions, and procedures for resolution of a dispute or claim between a time-share interest owner and a developer, or any provision in the time-share instruments implemented after July 1, 2005, setting forth terms, conditions, and procedures for resolution of a dispute of a claim between an association and the developer, shall, at a minimum, provide that the dispute or claim resolution process, proceeding, hearing, or trial be conducted in accordance with the following rules:

(1) For the developer to advance the fees necessary to initiate the dispute or claim resolution process, with the costs and fees, including ongoing costs and fees, if any, to be paid as agreed by the parties and if they cannot agree then the costs and fees are to be paid as determined by the person or persons presiding at the dispute or claim resolution proceeding or hearing.

(2) For a neutral or impartial person to administer and preside over the claim or dispute resolution process.

(3) For the appointment or selection, as designation, or assignment of the person to administer and preside over the claim or dispute resolution process within a specific period of time, which in no event shall be more than 60 days from initiation of the claim or dispute resolution process or hearing. The person appointed, selected, designated, or assigned to preside may be challenged for bias.

(4) For the venue of the claim or dispute resolution process to be in the county where the time-share is located unless the parties agree to some other location.

(5) For the prompt and timely commencement of the claim or dispute resolution process. When the contract provisions provide for a specific type of claim or dispute resolution process, the process shall be deemed to be promptly and timely commenced if it is to be commenced in accordance with

⁵² See example in footnote 30, page 208 in Civil Code §5300.

the rules applicable to that process. If the rules do not specify a date by which the proceeding or hearing is required to commence, then commencement shall be by a date agreed upon by the parties, and if they cannot agree, a date shall be determined by the person presiding over the dispute resolution process.

(6) For the claim or dispute resolution process to be conducted in accordance with rules and procedures that are reasonable and fair to the parties.

(7) For the prompt and timely conclusion of the claim or dispute resolution process, including the issuance of any decision or ruling following the proceeding or hearing.

(8) For the person presiding at the claim or dispute resolution process to be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the proceeding or hearing. The parties may authorize the limitation or prohibition of punitive damages.

(b) A copy of the rules applicable to the claim or dispute resolution process shall be submitted as part of the application for a public report.

(c) If the claim or dispute resolution process provides or allows for a judicial remedy in accordance with the laws of this state, it shall be presumed that the proceeding or hearing satisfies the provisions of subdivision (a). [2006]

§11280. Regulation of Time-Share Plans and Exchange Programs within Exclusive Power of the State

(a) Except as specifically provided in this section, the regulation of time-share plans and exchange programs is an exclusive power and function of the state. A unit of local government may not regulate time-share plans or exchange programs.

(b) Notwithstanding subdivision (a), no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, or building code or other real estate use law, ordinance, or regulation. [2004]

§11281. Acts Allowed by Commissioner to Effectuate Intent of Legislature

The commissioner may adopt, repeal, or amend forms and regulations that are necessary to effectuate the intent of the Legislature in carrying out this chapter. These forms and regulations and any order, permit, decision, demand, or requirement issued by the commissioner shall be in writing and adopted pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). [2004]

§11282. Investigatory Powers of Commissioner

The commissioner may investigate the actions or qualifications of any person or persons holding or claiming to hold a public report under this chapter. [2004]

§11283. Acts Triggering Desist and Refrain Order from Commissioner

(a) Whenever the commissioner determines from available evidence that a person has done any of the following, the commissioner may order the person to desist and refrain from those acts and omissions or from the further sale or lease of interests in the time-share plan until the condition has been corrected:

(1) The person has violated or caused the violation of any provision of this chapter or the regulations pertaining thereto.

(2) The person has violated or caused a violation of Section 17537, 17537.1, 17537.2, or 17539.1, in advertising or promoting the sale of time-share interests.

(3) The person has failed to fulfill representations or assurances with respect to the time-share plan or the time-share offering upon which the department relied in issuing a public report.

(4) The person has failed to inform the department of material changes that have occurred in the time-share or time-share offering that have caused the public report to be misleading or inaccurate or which would have caused the department to deny a public report if the conditions had existed at the time of issuance.

(b) Upon receipt of such an order, the person or persons to whom the order is directed shall immediately discontinue activities in accordance with the terms of the order.

(c) Any person to whom the order is directed may, within 30 days after service thereof upon him or her, file with the commissioner a written request for hearing to contest the order. The commissioner shall, after receipt of a request for hearing, assign the matter to the Office of Administrative Hearings to conduct a hearing for findings of fact and determinations of the issues set forth in the order. If the hearing is not commenced within 15 days after receipt of the request for hearing, or on the date to which continued with the agreement of the person requesting the hearing, or if the decision of the commissioner is not rendered within 30 days after completion of the hearing, the order shall be deemed to be vacated.

(d) Service and proof of service of an order issued by the commissioner pursuant to this section may be made in a manner and upon those persons as prescribed for the service of summons in Article 3 (commencing with Section 415.10), Article 4 (commencing with Section 416.10), and Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. [2004]

§11284. Disciplinary Consent Orders

Notwithstanding any other provisions of this chapter or of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the commissioner may negotiate agreements with registrants and applicants resulting in disciplinary consent orders. The consent order may provide for any form of discipline provided for in this chapter. The consent order shall provide that it is not entered into as a result of any coercion by the commissioner. The consent

order shall be accepted by signature or rejected by the commissioner in a timely manner. [2004]

§11285. Relief Under Act

An action for damages or for injunctive or declaratory relief for a violation of this chapter may be brought by any time-share interest owner or association against the developer, seller, or marketer of time-share interests, an escrow agent, or the managing entity. Relief under this section does not exclude other remedies provided by law. [2004]

§11286. Penalties for Fraudulent Public Report

(a) It shall be unlawful for any person to make, issue, publish, deliver, or transfer as true and genuine any public report that is forged, altered, false, or counterfeit, knowing it to be forged, altered, false, or counterfeit or to cause to be made or participate in the making, issuance, delivery, transfer, or publication of a public report with knowledge that it is forged, altered, false, or counterfeit.

(b) Any person who violates subdivision (a) is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.

(c) The penalty provided by this section is not an exclusive penalty, and does not affect any other penalty, relief, or remedy provided by law. [2004]

§11287. Punishment for Violation of Specific Sections of Act

Any person who violates Section 11226, 11227, 11234, 11244, 11245, or 11283, is guilty of a public offense punishable by a fine not to exceed ten thousand dollars (\$10,000), by imprisonment in the state prison or in a county jail not exceeding one year, or by both the fine and imprisonment. [2004]

§11288. Effective Date

This chapter shall take effect on July 1, 2005. [2004]

§11500. Definitions

■ For purposes of this chapter, the following definitions apply:

(a) “Common interest development” means a residential development identified in Section 4100 of the Civil Code.

(b) Association” has the same meaning as defined in Section 4080 of the Civil Code.

(c) “Financial services” means acts performed or offered to be performed, for compensation, for an association including, but not limited to, the preparation of internal unaudited financial statements, internal ■ accounting and bookkeeping functions, billing of assessments, and related services.

(d) “Management services” means acts performed or offered to be performed in an advisory capacity for an association including, but not limited to, the following:

(1) Administering or supervising the collection, reporting, and archiving of the financial or common area assets of an association or common interest development, at the direction of the association’s board of directors.

(2) Implementing resolutions and directives of the board of directors of the association elected to oversee the operation of a common interest development.

(3) Implementing provisions of governing documents, as defined in Section 4150 of the Civil Code, that govern the operation of the common interest development.

(4) Administering association contracts, including insurance contracts, within the scope of the association’s duties or with other common interest development managers, vendors, contractors, and other third-party providers of goods and services to an association or common interest development.

(e) “Professional association for common interest development managers” means an organization that meets all of the following:

(1) Has at least 200 members or certificants who are common interest development managers in California.

(2) Has been in existence for at least five years.

(3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

(4) Certifies that a common interest development manager has met the criteria set forth in Section 11502 without requiring membership in the association.

(5) Requires adherence to a code of professional ethics and standards of practice for certified common interest development managers.

[2012]

§11501. “Common Interest Development Manager” Defined

■ (a) “Common interest development manager” means an individual who for compensation, or in expectation of compensation, provides or contracts to provide management or financial services, or represents himself or herself to act in the capacity of providing management or financial services to an association. Notwithstanding any other provision of law, an individual may not be required to obtain a real estate or broker’s license in order to perform the services of a common interest development manager to an association.

(b) “Common interest development manager” also means any of the following:

(1) An individual who is a partner in a partnership, a shareholder or officer in a corporation, or who, in any other business entity acts in a capacity to advise, supervise, and direct the activity of a registrant or provisional registrant, or who acts as a principal on behalf of a company that provides the services of a common interest development manager.

(2) An individual operating under a fictitious business name who provides the services of a common interest development manager.

This section may not be construed to require an association to hire for compensation a common interest development manager, unless required to do so by its governing documents. Nothing in this part shall be construed to supersede any law that requires a license, permit, or any other form of registration, to provide management or financial services. Nothing in this section shall preclude a licensee of the California Board of Accountancy from providing financial services to an association within the scope of his or her license in addition to the preparation of reviewed and audited financial statements and the preparation of the association’s tax returns. [2007]

§11502. Qualifications for Manager Certification

■ In order to be called a “certified common interest development manager,” a person shall meet one of the following requirements:

(a) Prior to July 1, 2003, has passed a knowledge, skills, and aptitude examination as specified in Section 11502.5 or has been granted a certification or a designation by a professional association for common interest development managers, and who has, within five years prior to July 1, 2004, received instruction in California law pursuant to paragraph (1) of subdivision (b).

(b) On or after July 1, 2003, has successfully completed an educational curriculum that shall be no less than a combined 30 hours in coursework described in this subdivision and passed an examination or examinations that test competence in common interest development management in the following areas:

(1) The law that relates to the management of common interest developments, including, but not limited to, the following courses of study:

(A) Topics covered by the Davis-Stirling Common Interest Development Act, contained in Part 5 (commencing with Section 4000 of Division 4 of the Civil Code, including, but not limited to, the types of California common interest developments, disclosure requirements pertaining to common interest developments, meeting requirements, financial reporting requirements, and member access to association records.

(B) Personnel issues, including, but not limited to, general matters related to independent contractor or employee status, the laws on harassment, the Unruh Civil Rights Act, the California Fair Employment and Housing Act, and the Americans with Disabilities Act.

(C) Risk management, including, but not limited to, insurance coverage, maintenance, operations, and emergency preparedness.

(D) Property protection for associations, including, but not limited to, pertinent matters relating to environmental hazards such as asbestos, radon gas, and lead-based paint, the Vehicle Code, local and municipal regulations, family day care facilities, energy conservation, Federal Communications Commission rules and regulations, and solar energy systems.

(E) Business affairs of associations, including, but not limited to, necessary compliance with federal, state, and local laws.

(F) Basic understanding of governing documents, codes, and regulations relating to the activities and affairs of associations and common interest developments.

(2) Instruction in general management that is related to the managerial and business skills needed for management of a common interest development, including, but not limited to, the following:

(A) Finance issues, including, but not limited to, budget preparation; management; administration or supervision of the collection, reporting, and archiving of the financial or common area assets of an association or common interest development; bankruptcy laws; and assessment collection.

(B) Contract negotiation and administration.

(C) Supervision of employees and staff.

(D) Management of maintenance programs.

(E) Management and administration of rules, regulations, and parliamentary procedures.

(F) Management and administration of architectural standards.

(G) Management and administration of the association's recreational programs and facilities.

(H) Management and administration of owner and resident communications.

(I) Training and strategic planning for the association's board of directors and its committees.

(J) Implementation of association policies and procedures.

(K) Ethics for professional conduct and standards of practice for common interest development managers.

(L) Current issues relating to common interest developments.

(M) Conflict avoidance and resolution mechanisms.

[2012]

§11502.5. Development of Manager Education and Examination

■ The course related competency examination or examinations and education provided to a certified common interest development manager pursuant to Section 11502 by any professional association for common interest development managers, or any postsecondary educational institution, shall be developed and administered in a manner consistent with standards and requirements set forth by the American Educational Research Association's "Standards for Educational and Psychological Testing," and the Equal Employment Opportunity Commission's "Uniform Guidelines for Employee Selection Procedures," the Unruh Civil Rights Act, the California Fair Employment and Housing Act, and the Americans with Disabilities Act of 1990, or the course or courses that have been approved as a continuing education course or an equivalent course of study pursuant to the regulations of the Real Estate Commissioner. [2007]

§11503. Certification Not Applicable to Management Firm

■ A “certified common interest development manager” does not include a common interest development management firm. [2002]

§11504. Annual Disclosure by Manager

■ On or before September 1, 2003, and annually thereafter, a person who either provides or contemplates providing the services of a common interest development manager to an association shall disclose to the board of directors of the association the following information:

(a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a certified common interest development manager.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.

(c) The location of his or her primary office.

(d) Prior to entering into or renewing a contract with an association, the common interest development manager shall disclose to the board of directors of the association or common interest development whether the fidelity insurance of the common interest development manager or his or her employer covers the current year’s operating and reserve funds of the association. This requirement shall not be construed to compel an association to require a common interest development manager to obtain or maintain fidelity insurance.

(e) Whether the common interest development manager possesses an active real estate license.

This section may not preclude a common interest development manager from disclosing information as required in Section 5375 of the Civil Code. [2012]

§11505. Unfair Business Practices

■ It is an unfair business practice for a common interest development manager, a company that employs the common interest development manager, or a company that is controlled by a company that also has a financial interest in a company employing that manager, to do any of the following:

(a) On or after July 1, 2003, to hold oneself out or use the title of “certified common interest development manager” or any other term that implies or suggests that the person is certified as a common interest development manager without meeting the requirements of Section 11502.

(b) To state or advertise that he or she is certified, registered, or licensed by a governmental agency to perform the functions of a certified common interest development manager.

(c) To state or advertise a registration or license number, unless the license or registration is specified by a statute, regulation, or ordinance.

(d) To fail to comply with any item to be disclosed in Section 11504 of this code, or Section 5375 of the Civil Code. [2012]

§11506. Repeal of Statute (Repealed as of January 1, 2019)

This part shall be subject to review by the appropriate policy committees of the Legislature. This part shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date. [2014]

§19985. Nonprofit Entity Fundraising Through Gambling

■ (a) Nonprofit organizations provide important and necessary services to the people of the State of California with respect to educational and social services and there is a need to provide methods of fundraising to nonprofit organizations so as to enable them to meet their stated purposes.

(b) The playing of controlled games for the purpose of raising funds by nonprofit organizations is in the public interest.

(c) Uniform regulation for the conduct of controlled games is in the best interests of nonprofit organizations and the people of this state. [2006]

§19986. Gambling Requirements in Nonprofit Entity Fundraising

■ (a) Notwithstanding any other provision of state law a nonprofit organization may conduct a fundraiser using controlled games as a funding mechanism to further the purposes and mission of the nonprofit organization.

(b) A nonprofit organization holding a fundraiser pursuant to subdivision (a) shall not conduct more than one fundraiser per calendar year, and each fundraiser shall not exceed five consecutive hours. Each fundraiser shall be preapproved by the department.⁵³ Eligible nonprofit organizations that have multiple chapters may hold one fundraiser per chapter per calendar year.

(c) No cash prizes or wagers may be awarded to participants, however, the winner of each controlled game may be entitled to a prize from those donated to the fundraiser. An individual prize awarded to each winner shall not exceed a cash value of five hundred dollars (\$500). For each event, the total cash value of prizes awarded shall not exceed five thousand dollars (\$5,000).

(d) At least 90 percent of the gross revenue from the fundraiser shall go directly to a nonprofit organization. Compensation shall not be paid from revenues required to go directly to the nonprofit organization for the benefit of which the fundraiser is conducted, and no more than 10 percent of the gross receipts of a fundraiser may be paid as compensation to the entity or persons conducting the fundraiser for the nonprofit organization. If an eligible nonprofit organization does not own a facility in which to conduct a fundraiser and is required to pay the entity or person conducting the fundraiser a rental fee for the facility, the fair market rental value of the facility shall not be included when determining the compensation payable to the entity or person for purposes of this section. This section does not preclude an eligible organization from using funds from sources other than the gross revenue of the fundraiser to pay for the administration or other costs of conducting the fundraiser.

⁵³ “Department” means the Division of Gambling Control.

(e) An eligible nonprofit organization shall not conduct a fundraiser authorized by this section, unless it has been in existence and operation for at least three years and registers annually with the department. The department shall furnish a registration form on its Internet Web site or, upon request, to eligible nonprofit organizations. The department shall, by regulation, collect only the information necessary pursuant to this section on this form. This information shall include, but is not limited to, the following:

(1) The name and address of the eligible organization.

(2) The federal tax identification number, the corporate number issued by the Secretary of State, the organization number issued by the Franchise Tax Board, or the California charitable trust identification number of the eligible organization.

(3) The name and title of a responsible fiduciary of the organization.

(f) The department shall adopt regulations necessary to effectuate this section, including emergency regulations, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(g) The nonprofit organization shall maintain records for each fundraiser using controlled games, which shall include:

(1) An itemized list of gross receipts for the fundraiser.

(2) An itemized list of recipients of the net profit of the fundraiser, including the name, address, and purpose for which fundraiser proceeds are to be used.

(3) The number of persons who participated in the fundraiser.

(4) An itemized list of the direct cost incurred for each fundraiser.

(5) A list of all prizes awarded during each fundraiser.

(6) The date, hours, and location for each fundraiser held.

(h) As used in this article, “nonprofit organization” means an organization that has been qualified to conduct business in California for at least three years prior to conducting controlled games and is exempt from taxation pursuant to Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, or 23701w of the Revenue and Taxation Code.

(i) The department may take legal action against a registrant if it determines that the registrant has violated this section or any regulation adopted pursuant to this section, or that the registrant has engaged in any conduct that is not in the best interest of the public’s health, safety, or general welfare. Any action taken pursuant to this subdivision does not prohibit the commencement of an administrative or criminal action by the Attorney General, a district attorney, or county counsel.

(j) The department may require an eligible organization to pay an annual registration fee of up to one hundred dollars (\$100) per year to cover the actual costs of the department to administer and enforce this section. The annual registration fees shall be deposited by the department into the Gambling Control Fund.

(k) No fundraiser permitted under this section may be conducted by means of, or otherwise utilize, any gaming machine, apparatus, or device that meets the definition of a slot machine contained in Section 330b or 330.1 of the Penal Code.

(l) No more than four fundraisers at the same location, even if sponsored by different nonprofit organizations, shall be permitted in any calendar year, except in rural areas where preapproved by the department. For purposes of this section, “rural” shall mean any county with an urban influence code, as established by the latest publication of the Economic Research Service of the United States Department of Agriculture, of “3” or more.

(m) The authority to conduct a fundraiser, as well as the type of controlled games, may be governed by local ordinance.

(n) No person shall be permitted to participate in the fundraiser unless that person is at least 21 years of age.

(o) No fundraiser permitted under this section may be operated or conducted over the Internet. [2007]

§19987. Gambling Entity Registration May Be Required

■ (a) The department, by regulation or order, may require any person or entity set forth in subdivision (b), to register with the department.

(b) “Person or entity” means one who, directly or indirectly, manufactures, distributes, supplies, vends, leases, or otherwise provides, supplies, devices, or other equipment designed for use in the playing of controlled games by any nonprofit organization registered to conduct controlled games. [2007]

§116.110. Small Claims

This chapter shall be known and may be cited as “The Small Claims Act.” [1990]

§116.120. Legislative Findings and Declarations

The Legislature hereby finds and declares as follows:

(a) Individual minor civil disputes are of special importance to the parties and of significant social and economic consequence collectively.

(b) In order to resolve minor civil disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in resolving these disputes.

(c) The small claims divisions have been established to provide a forum to resolve minor civil disputes, and for that reason constitute a fundamental element in the administration of justice and the protection of the rights and property of individuals.

(d) The small claims divisions, the provisions of this chapter, and the rules of the Judicial Council regarding small claims actions shall operate to ensure that the convenience of parties and witnesses who are individuals shall prevail, to the extent possible, over the convenience of any other parties or witnesses. [1998]

§116.130. Definitions

In this chapter, unless the context indicates otherwise:

(a) “Plaintiff” means the party who has filed a small claims action. The term includes a defendant who has filed a claim against a plaintiff.

(b) “Defendant” means the party against whom the plaintiff has filed a small claims action. The term includes a plaintiff against whom a defendant has filed a claim.

(c) “Judgment creditor” means the party, whether plaintiff or defendant, in whose favor a money judgment has been rendered.

(d) “Judgment debtor” means the party, whether plaintiff or defendant, against whom a money judgment has been rendered.

(e) “Person” means an individual, corporation, partnership, limited liability partnership, limited liability company, firm, association, or other entity.

(f) “Individual” means a natural person.

(g) “Party” means a plaintiff or defendant.

(h) “Motion” means a party’s written request to the court for an order or other action. The term includes an informal written request to the court, such as a letter.

(i) “Declaration” means a written statement signed by an individual which includes the date and place of signing, and a statement under penalty of perjury under the laws of this state that its contents are true and correct.

(j) “Good cause” means circumstances sufficient to justify the requested order or other action, as determined by the judge.

(k) “Mail” means first-class mail with postage fully prepaid, unless stated otherwise. [2003]

§116.210. Creation of Small Claims Division

In each superior court there shall be a small claims division. The small claims division may be known as the small claims court. [2003]

§116.220. Jurisdiction

■ (a) The small claims court has jurisdiction in the following actions:

(1) ■ Except as provided in subdivisions (c), (e), and (f), for recovery of money, if the amount of the demand does not exceed five thousand dollars (\$5,000).

(2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars (\$5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars (\$5,000).

(4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars (\$5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars (\$5,000) in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

(5) For an injunction or other equitable relief only when a statute expressly authorizes a small claims court to award that relief.

(b) In any action seeking relief authorized by paragraphs (1) to (4), inclusive, of subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims court has jurisdiction over a defendant guarantor as follows:

(1) For any action brought by a natural person against the Registrar of the Contractors’ State License Board as the defendant guarantor, the small claims jurisdictional limit stated in Section 116.221 shall apply.

(2) For any action against a defendant guarantor that does not charge a fee for its guarantor or surety services, if the amount of the demand does not exceed two thousand five hundred dollars (\$2,500).

(3) For any action brought by a natural person against a defendant guarantor that charges a fee for its guarantor or surety services, if the

amount of the demand does not exceed six thousand five hundred dollars (\$6,500).

(4) For any action brought by an entity other than a natural person against a defendant guarantor that charges a fee for its guarantor or surety services or against the Registrar of the Contractors' State License Board as the defendant guarantor, if the amount of the demand does not exceed four thousand dollars (\$4,000).

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver is not operative until judgment.

(e) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated in a Department of Corrections and Rehabilitation facility, the small claims court has jurisdiction over a defendant only if the plaintiff has alleged in the complaint that he or she has exhausted his or her administrative remedies against that department, including compliance with Sections 905.2 and 905.4 of the Government Code. The final administrative adjudication or determination of the plaintiff's administrative claim by the department may be attached to the complaint at the time of filing in lieu of that allegation.

(f) In any action governed by subdivision (e), if the plaintiff fails to provide proof of compliance with the requirements of subdivision (e) at the time of trial, the judicial officer shall, at his or her discretion, either dismiss the action or continue the action to give the plaintiff an opportunity to provide that proof.

(g) For purposes of this section, "department" includes an employee of a department against whom a claim has been filed under this chapter arising out of his or her duties as an employee of that department. [2009]

§116.221. Jurisdiction up to \$10,000 in Cases Filed by Natural Persons

■ In addition to the jurisdiction conferred by Section 116.220, the small claims court has jurisdiction in an action brought by a natural person, if the amount of the demand does not exceed ten thousand dollars (\$10,000), except for actions specified in Section 116.224⁵⁴ or otherwise prohibited by subdivision (c) of Section 116.220 or subdivision (a) of Section 116.231. [2011]

§116.222. Complaint to State Original Debt, Payments and Charges (repealed as of January 1, 2016) [2015]

§116.230. Fees

■ (a) In a small claims case, the clerk of the court shall charge and collect only those fees authorized under this chapter.

(b) If the party filing a claim has filed 12 or fewer small claims in the state within the previous 12 months, the filing fee is the following:

⁵⁴ Section 116.224 limits jurisdiction to \$7,500 for bodily injuries resulting from an automobile accident but only if the defendant is covered by an automobile insurance policy that has a duty to defend.

(1) Thirty dollars (\$30) if the amount of the demand is one thousand five hundred dollars (\$1,500) or less.

(2) Fifty dollars (\$50) if the amount of the demand is more than one thousand five hundred dollars (\$1,500) but less than or equal to five thousand dollars (\$5,000).

(3) Seventy-five dollars (\$75) if the amount of the demand is more than five thousand dollars (\$5,000).

(c) If the party has filed more than 12 other small claims in the state within the previous 12 months, the filing fee is one hundred dollars (\$100).

(d) (1) If, after having filed a claim and paid the required fee under paragraph (1) of subdivision (b), a party files an amended claim or amendment to a claim that raises the amount of the demand so that the filing fee under paragraph (2) of subdivision (b) would be charged, the filing fee for the amended claim or amendment is twenty dollars (\$20).

(2) If, after having filed a claim and paid the required fee under paragraph (2) of subdivision (b), a party files an amended claim or amendment to a claim that raises the amount of the demand so that the filing fee under paragraph (3) of subdivision (b) would be charged, the filing fee for the amended claim or amendment is twenty-five dollars (\$25).

(3) If, after having filed a claim and paid the required fee under paragraph (1) of subdivision (b), a party files an amended claim or amendment to a claim that raises the amount of the demand so that the filing fee under paragraph (3) of subdivision (b) would be charged, the filing fee for the amended claim or amendment is forty-five dollars (\$45).

(4) The additional fees paid under this subdivision are due upon filing. The court shall not reimburse a party if the party's claim is amended to demand a lower amount that falls within the range for a filing fee lower than that originally paid.

(e) Each party filing a claim shall file a declaration with the claim stating whether that party has filed more than 12 other small claims in the state within the last 12 months.

(f) The clerk of the court shall deposit fees collected under this section into a bank account established for this purpose by the Administrative Office of the Courts and maintained under rules adopted by or trial court financial policies and procedures authorized by the Judicial Council under subdivision (a) of Section 77206 of the Government Code. The deposits shall be made as required under Section 68085.1 of the Government Code and trial court financial policies and procedures authorized by the Judicial Council.

(g) (1) The Administrative Office of the Courts shall distribute six dollars (\$6) of each thirty-dollar (\$30) fee, eight dollars (\$8) of each fifty-dollar (\$50) fee, ten dollars (\$10) of each seventy-five-dollar (\$75) fee, and fourteen dollars (\$14) of each one hundred-dollar (\$100) fee collected under subdivision (b) or (c) to a special account in the county in which the court is located to be used for the small claims advisory services described in Section 116.940, or, if the small claims advisory services are administered by the court, to the court. The Administrative Office of the Courts shall also distribute two

dollars (\$2) of each seventy-five-dollar (\$75) fee collected under subdivision (b) to the law library fund in the county in which the court is located.

(2) From the fees collected under subdivision (d), the Administrative Office of the Courts shall distribute two dollars (\$2) to the law library fund in the county in which the court is located, and three dollars (\$3) to the small claims advisory services described in Section 116.940, or, if the small claims advisory services are administered by the court, to the court.

(3) Records of these moneys shall be available from the Administrative Office of the Courts for inspection by the public on request.

(4) Nothing in this section precludes the court or county from contracting with a third party to provide small claims advisory services as described in Section 116.940.

(h) The remainder of the fees collected under subdivisions (b), (c), and (d) shall be transmitted monthly to the Controller for deposit in the Trial Court Trust Fund.

(i) All money distributed under this section to be used for small claims advisory services shall be used only for providing those services as described in Section 116.940. Nothing in this section shall preclude the county or the court from procuring other funding to comply with the requirements of Section 116.940. [2007]

§116.231. Actions in Which Demand Exceeds \$2,500; Filing Restrictions

(a) Except as provided in subdivision (d), no person may file more than two small claims actions in which the amount demanded exceeds two thousand five hundred dollars (\$2,500), anywhere in the state in any calendar year.

(b) Except as provided in subdivision (d), if the amount demanded in any small claims action exceeds two thousand five hundred dollars (\$2,500), the party making the demand shall file a declaration under penalty of perjury attesting to the fact that not more than two small claims actions in which the amount of the demand exceeded two thousand five hundred dollars (\$2,500) have been filed by that party in this state within the calendar year.

(c) The Legislature finds and declares that the pilot project conducted under the authority of Chapter 1196 of the Statutes of 1991 demonstrated the efficacy of the removal of the limitation on the number of actions public entities may file in the small claims courts on claims exceeding two thousand five hundred dollars (\$2,500).

(d) The limitation on the number of filings exceeding two thousand five hundred dollars (\$2,500) does not apply to filings where the claim does not exceed five thousand dollars (\$5,000) that are filed by a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity. If any small claims action is filed by a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity pursuant to this section, and the defendant informs the court either in advance of the hearing by written notice or at the time of the hearing, that he or she is represented in the action by legal counsel, the action shall be transferred

out of the small claims division. A city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity may not file a claim within the small claims division if the amount of the demand exceeds five thousand dollars (\$5,000). [1998]

§116.232. Fee for Court to Mail Copy of Claim

A fee of fifteen dollars (\$15) shall be charged and collected from the plaintiff for each defendant to whom the court clerk mails a copy of the claim under Section 116.340. This fee shall be distributed to the court in which it was collected. [2013]

§116.240. Case Heard by Temporary Judge

(a) With the consent of the parties who appear at the hearing, the court may order a case to be heard by a temporary judge who is a member of the State Bar, and who has been sworn and empowered to act until final determination of the case.

(b) Prior to serving as a temporary judge in small claims court, on and after July 1, 2006, and at least every three years thereafter, each temporary judge shall take the course of study offered by the courts on ethics and substantive law under rules adopted by the Judicial Council. The course shall include, but not be limited to, state and federal consumer laws, landlord-tenant law along with any applicable county specific rent deposit law, the state and federal Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal Fair Credit Billing Act, the federal Electronic Fund Transfer Act, tort law, and contract law, including defenses to contracts and defenses to debts. On substantive law, the courts may receive assistance from the Department of Consumer Affairs, to the extent that the department is fiscally able to provide that assistance. [2005]

§116.250. Sessions

(a) Sessions of the small claims court may be scheduled at any time and on any day, including Saturdays, but excluding other judicial holidays.

(b) Each small claims division of a superior court with seven or more judicial officers, shall conduct at least one night session or Saturday session each month for the purpose of hearing small claims cases other than small claims appeals. The term “session” includes, but is not limited to, a proceeding conducted by a member of the State Bar acting as a mediator or referee. [2003]

§116.260. Small Claims Assistance

In each county, individual assistance shall be made available to advise small claims litigants and potential litigants without charge as provided in Section 116.940 and by rules adopted by the Judicial Council. [1990]

§116.270. Assistance of Law Clerks

Any small claims division may use law clerks to assist the judge with legal research of small claims cases. [1990]

§116.310. Requirements for Initiating Action

(a) No formal pleading other than the claim described in Section 116.320 or 116.360, is necessary to initiate a small claims action.

(b) The pretrial discovery procedures described in Section 2019.010 are not permitted in small claims actions. [2003]

§116.320. Commencement of Action

(a) A plaintiff may commence an action in the small claims court by filing a claim under oath with the clerk of the small claims court in person, by mail by facsimile transmission if authorized pursuant to Section 1010.5, or by electronic means as authorized by Section 1010.6.

(b) The claim form shall be a simple nontechnical form approved or adopted by the Judicial Council. The claim form shall set forth a place for (1) the name and address of the defendant, if known; (2) the amount and the basis of the claim; (3) that the plaintiff, where possible, has demanded payment and, in applicable cases, possession of the property; (4) that the defendant has failed or refused to pay, and, where applicable, has refused to surrender the property; and (5) that the plaintiff understands that the judgment on his or her claim will be conclusive and without a right of appeal.

(c) The form or accompanying instructions shall include information that the plaintiff (1) may not be represented by an attorney, (2) has no right of appeal, and (3) may ask the court to waive fees for filing and serving the claim on the ground that the plaintiff is unable to pay them, using the forms approved by the Judicial Council for that purpose. [2007]

§116.330. Filing of Claim Form; Order to Appear; Hearing Date

(a) When a claim is filed, the clerk shall schedule the case for hearing and shall issue an order directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense. The case shall be scheduled for hearing no earlier than 20 days but not more than 70 days from the date of the order.

(b) In lieu of the method of setting the case for hearing described in subdivision (a), at the time a claim is filed the clerk may do all of the following:

(1) Cause a copy of the claim to be mailed to the defendant by any form of mail providing for a return receipt.

(2) On receipt of proof that the claim was served as provided in paragraph (1), issue an order scheduling the case for hearing in accordance with subdivision (a) and directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense.

(3) Cause a copy of the order setting the case for hearing and directing the parties to appear, to be served upon the parties by any form of mail providing for a return receipt. [2005]

§116.340. Service on Defendant; Actions on Guaranty or Surety Contracts

(a) Service of the claim and order on the defendant may be made by any one of the following methods:

(1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.

(2) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.

(3) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt personal service on the defendant. For these purposes, substituted service as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or marshal who shall deliver a copy of the claim and order to any person authorized by the defendant to receive service, as provided in Section 416.90, who is at least 18 years of age, and thereafter mailing a copy of the claim and order to the defendant's usual mailing address.

(4) The clerk may cause a copy of the claim to be mailed, the order to be issued, and a copy of the order to be mailed as provided in subdivision (b) of Section 116.330.

(b) Service of the claim and order on the defendant shall be completed at least 5 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 20 days before the hearing date if the defendant resides outside the county in which the action is filed.

(c) Proof of service of the claim and order shall be filed with the small claims court at least five days before the hearing.

(d) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established by other competent evidence, whichever applies to the method of service used.

(e) Service shall be made within this state, except as provided in subdivisions (f) and (g).

■ (f) The owner of record of real property in California who resides in another state and who has no lawfully designated agent in California for service of process may be served by any of the methods described in this section if the claim relates to that property.

(g) A nonresident owner or operator of a motor vehicle involved in an accident within this state may be served pursuant to the provisions on constructive service in Sections 17450 to 17461, inclusive, of the Vehicle Code without regard to whether the defendant was a nonresident at the time of the accident or when the claim was filed. Service shall be made by serving both the Director of the California Department of Motor Vehicles and the defendant, and may be made by any of the methods authorized by this chapter or by registered mail as authorized by Section 17454 or 17455 of the Vehicle Code.

(h) If an action is filed against a principal and his or her guaranty or surety pursuant to a guarantor or suretyship agreement, a reasonable attempt shall be made to complete service on the principal. If service is not completed

on the principal, the action shall be transferred to the court of appropriate jurisdiction. [2005]

§116.360. Defendant’s Counterclaim

(a) The defendant may file a claim against the plaintiff in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231. The claim need not relate to the same subject or event as the plaintiff’s claim.

(b) The defendant’s claim shall be filed and served in the manner provided for filing and serving a claim of the plaintiff under Sections 116.330 and 116.340.

(c) The defendant shall cause a copy of the claim and order to be served on the plaintiff at least five days before the hearing date, unless the defendant was served 10 days or less before the hearing date, in which event the defendant shall cause a copy of the defendant’s claim and order to be served on the plaintiff at least one day before the hearing date. [2006]

§116.370. Venue

(a) Venue in small claims actions shall be the same as in other civil actions.

(b) A defendant may challenge venue by writing to the court and mailing a copy of the challenge to each of the other parties to the action, without personally appearing at the hearing.

(c) In all cases, including those in which the defendant does not either challenge venue or appear at the hearing, the court shall inquire into the facts sufficiently to determine whether venue is proper, and shall make its determination accordingly.

(1) If the court determines that the action was not commenced in the proper venue, the court, on its own motion, shall dismiss the action without prejudice unless all defendants are present and agree that the action may be heard.

(2) If the court determines that the action was commenced in the proper venue, the court may hear the case if all parties are present. If the defendant challenged venue and all parties are not present, the court shall postpone the hearing for at least 15 days and shall notify all parties by mail of the court’s decision and the new hearing date, time, and place. [2006]

§116.390. Transfer of Claim Exceeding Small Claims Jurisdictional Limits

(a) If a defendant has a claim against a plaintiff that exceeds the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231, and the claim relates to the contract, transaction, matter, or event which is the subject of the plaintiff’s claim, the defendant may commence an action against the plaintiff in a court of competent jurisdiction and request the small claims court to transfer the small claims action to that court.

(b) The defendant may make the request by filing with the small claims court in which the plaintiff commenced the action, at or before the time

set for the hearing of that action, a declaration stating the facts concerning the defendant's action against the plaintiff with a true copy of the complaint so filed by the defendant against the plaintiff. The defendant shall cause a copy of the declaration and complaint to be personally delivered to the plaintiff at or before the time set for the hearing of the small claims action.

(c) In ruling on a motion to transfer, the small claims court may do any of the following: (1) render judgment on the small claims case prior to the transfer; (2) not render judgment and transfer the small claims case; (3) refuse to transfer the small claims case on the grounds that the ends of justice would not be served. If the small claims action is transferred prior to judgment, both actions shall be tried together in the transferee court.

(d) When the small claims court orders the action transferred, it shall transmit all files and papers to the transferee court.

(e) The plaintiff in the small claims action shall not be required to pay to the clerk of the transferee court any transmittal, appearance, or filing fee unless the plaintiff appears in the transferee court, in which event the plaintiff shall be required to pay the filing fee and any other fee required of a defendant in the transferee court. However, if the transferee court rules against the plaintiff in the action filed in that court, the court may award to the defendant in that action the costs incurred as a consequence of the transfer, including ■ attorney's fees and filing fees. [2006]

§116.410. Standing; Minors and Incompetent Persons

(a) Any person who is at least 18 years of age, or legally emancipated, and mentally competent may be a party to a small claims action.

(b) A minor or incompetent person may appear by a guardian ad litem appointed by a judge of the court in which the action is filed. [2004]

§116.420. Assignee Filing Claim

(a) No claim shall be filed or maintained in small claims court by the assignee of the claim.

(b) This section does not prevent the filing or defense of an action in the small claims court by (1) a trustee in bankruptcy in the exercise of the trustee's duties as trustee, or (2) by the holder of a security agreement, retail installment contract, or lien contract subject to the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code) or the Automobile Sales Finance Act (Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code), purchased by the holder for the holder's portfolio of investments, provided that the holder is not an assignee for the purpose of collection.

(c) This section does not prevent the filing in small claims court by a local government which is self-insured for purposes of workers' compensation and is seeking subrogation pursuant to Section 3852 of the Labor Code. [1994]

§116.430. Fictitious Business Names

(a) If the plaintiff operates or does business under a fictitious business name and the claim relates to that business, the claim shall be accompanied by the filing of a declaration stating that the plaintiff has complied with the fictitious business name laws by executing, filing, and publishing a fictitious business name statement as required.

(b) A small claims action filed by a person who has not complied with the applicable fictitious business name laws by executing, filing, and publishing a fictitious business name statement as required shall be dismissed without prejudice.

(c) For purposes of this section, “fictitious business name” means the term as defined in Section 17900 of the Business and Professions Code, and “fictitious business name statement” means the statement described in Section 17913 of the Business and Professions Code. [1991]

§116.510. Manner of Conducting Hearing

The hearing and disposition of the small claims action shall be informal, the object being to dispense justice promptly, fairly, and inexpensively. [1991]

§116.520. Evidence; Witnesses

(a) The parties have the right to offer evidence by witnesses at the hearing or, with the permission of the court, at another time.

(b) If the defendant fails to appear, the court shall still require the plaintiff to present evidence to prove his or her claim.

(c) The court may consult witnesses informally and otherwise investigate the controversy with or without notice to the parties. [1990]

§116.530. Prosecution or Defense by Attorneys

■ (a) Except as permitted by this section, no attorney may take part in the conduct or defense of a small claims action.

(b) Subdivision (a) does not apply if the attorney is appearing to maintain or defend an action in any of the following capacities:

(1) By or against himself or herself.

(2) By or against a partnership in which he or she is a general partner and in which all the partners are attorneys.

(3) By or against a professional corporation of which he or she is an officer or director and of which all other officers and directors are attorneys.

(c) Nothing in this section shall prevent an attorney from doing any of the following:

(1) Providing advice to a party to a small claims action, either before or after the commencement of the action.

(2) Testifying to facts of which he or she has personal knowledge and about which he or she is competent to testify.

(3) Representing a party in an appeal ■ to the superior court.

(4) Representing a party in connection with the enforcement of a judgment. [2003]

§116.531. Assistance and Testimony of Experts

Nothing in this article shall prevent a representative of an insurer or other expert in the matter before the small claims court from rendering assistance to a party in the litigation except during the conduct of the hearing, either before or after the commencement of the action, unless otherwise prohibited by law; nor shall anything in this article prevent those individuals from testifying to facts of which they have personal knowledge and about which they are competent to testify. [1990]

§116.540. Participation by Individuals Other than Plaintiff and Defendant; Corporations

■ (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) Except as additionally provided in subdivision (i), a corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his or her behalf, if (1) the plaintiff is serving on active duty in the United States Armed Forces outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an

amount not to exceed the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections and Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) A party that is an association created to manage a common interest development, as defined in Section 4100 or in Sections 6528 and 6534 of the Civil Code, may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of that association.

(j) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (j), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. If the representative is appearing under subdivision (b), (c), (d), (h) or (j), the declaration also shall state that the individual is not employed solely to represent the party in small claims court. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(k) A husband or wife who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.

(l) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(m) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530. [2013]

§116.550. Use of Interpreters; List

(a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court may permit another individual (other than an attorney) to assist that party.

(b) Each small claims court shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court's experience.

(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.

(d) If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court. [1993]

§116.560. Fictitious Business Names; Amending to State Correct Legal Name

(a) Whenever a claim that is filed against a person operating or doing business under a fictitious business name relates to the defendant's business, the court shall inquire at the time of the hearing into the defendant's correct legal name and the name or names under which the defendant does business. If the correct legal name of the defendant, or the name actually used by the defendant, is other than the name stated on the claim, the court shall amend the claim to state the correct legal name of the defendant, and the name or names actually used by the defendant.

(b) The plaintiff may request the court at any time, whether before or after judgment, to amend the plaintiff's claim or judgment to include both the correct legal name and the name or names actually used by the defendant. Upon a showing of good cause, the court shall amend the claim or judgment to state the correct legal name of the defendant, and the name or names actually used by the defendant.

(c) For purposes of this section, "fictitious business name" means the term as defined in Section 17900 of the Business and Professions Code. [1993]

§116.570. Postponements

(a) Any party may submit a written request to postpone a hearing date for good cause.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) The request shall be filed at least 10 days before the hearing date, unless the court determines that the requesting party has good cause to file the request at a later date.

(3) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

(4) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. This subparagraph does not limit the discretion of the court to grant additional postponements under subparagraph (A).

(5) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) This section does not limit the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A fee of ten dollars (\$10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant. [2002]

§116.610. Judgments

(a) The small claims court shall give judgment for damages, or equitable relief, or both damages and equitable relief, within the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231, and may make any orders as to time of payment or otherwise as the court deems just and equitable for the resolution of the dispute.

(b) The court may, at its discretion or on request of any party, continue the matter to a later date in order to permit and encourage the parties to attempt resolution by informal or alternative means.

(c) The judgment shall include a determination whether the judgment resulted from a motor vehicle accident on a California highway caused by the defendant's operation of a motor vehicle, or by the operation by some other individual, of a motor vehicle registered in the defendant's name.

(d) If the defendant has filed a claim against the plaintiff, or if the judgment is against two or more defendants, the judgment, and the statement of decision if one is rendered, shall specify the basis for and the character and

amount of the liability of each of the parties, including, in the case of multiple judgment debtors, whether the liability of each is joint or several.

(e) If specific property is referred to in the judgment, whether it be personal or real, tangible or intangible, the property shall be identified with sufficient detail to permit efficient implementation or enforcement of the judgment.

(f) In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

(g) (1) The prevailing party is entitled to the costs of the action, including the costs of serving the order for the appearance of the defendant.

(2) Notwithstanding paragraph (1) of this subdivision and subdivision (b) of Section 1032, the amount of the small claims court fee paid by a party pursuant to subdivision (c) of Section 116.230 that exceeds the amount that would have been paid if the party had paid the fee pursuant to subdivision (b) of Section 116.230 shall not be recoverable as costs.

(h) When the court renders judgment, the clerk shall promptly deliver or mail notice of entry of the judgment to the parties, and shall execute a certificate of personal delivery or mailing and place it in the file.

(i) The notice of entry of judgment shall be on a form approved or adopted by the Judicial Council. [2006]

§116.620. Satisfaction of Judgment

(a) The judgment debtor shall pay the amount of the judgment either immediately or at the time and upon the terms and conditions, including payment by installments, which the court may order.

(b) The court may at any time, for good cause, upon motion by a party and notice by the clerk to all affected parties at their last known address, amend the terms and conditions for payment of the judgment to provide for payment by installment. The determination shall be made without regard to the nature of the underlying debt and without regard to whether the moving party appeared before entry of the judgment.

(c) In determining the terms and conditions of payment, the court may consider any factors which would be relevant to a claim of exemption under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2. [1990]

§116.630. Amendment of Party Name in Judgment

The court may, at any time after judgment, for good cause, upon motion by a party and notice by the clerk to all affected parties at their last known address, amend the name of any party to include both the correct legal name and the actually used name or names of that party. [1990]

§116.710. Right to Appeal

■ (a) The plaintiff in a small claims action shall have no right to appeal the judgment on the plaintiff's claim, but a plaintiff who did not appear at

the hearing may file a motion to vacate the judgment in accordance with Section 116.720.

(b) The defendant with respect to the plaintiff's claim, and a plaintiff with respect to a claim of the defendant, may appeal the judgment to the superior court in the county in which the action was heard.

(c) With respect to the plaintiff's claim, the insurer of the defendant may appeal the judgment to the superior court in the county in which the matter was heard if the judgment exceeds two thousand five hundred dollars (\$2,500) and the insurer stipulates that its policy with the defendant covers the matter to which the judgment applies.

(d) A defendant who did not appear at the hearing has no right to appeal the judgment, but may file a motion to vacate the judgment in accordance with Section 116.730 or 116.740 and also may appeal the denial of that motion. [1990]

§116.720. Plaintiff's Motion to Vacate Judgment

(a) A plaintiff who did not appear at the hearing in the small claims court may file a motion to vacate the judgment with the clerk of the small claims court. The motion shall be filed within 30 days after the clerk has mailed notice of entry of the judgment to the parties.

(b) The clerk shall schedule the hearing on the motion to vacate for a date no earlier than 10 days after the clerk has mailed written notice of the date, time, and place of the hearing to the parties.

(c) Upon a showing of good cause, the small claims court may grant the motion. If the defendant is not present, the court shall hear the motion in the defendant's absence.

(d) If the motion is granted, and if all parties are present and agree, the court may hear the case without rescheduling it. If the defendant is not present, the judge or clerk shall reschedule the case and give notice in accordance with Section 116.330. [1991]

§116.725. Correcting Errors and Vacating Judgments

(a) A motion to correct a clerical error in a judgment or to set aside and vacate a judgment on the ground of an incorrect or erroneous legal basis for the decision may be made as follows:

(1) By the court on its own motion at any time.

(2) By a party within 30 days after the clerk mails notice of entry of judgment to the parties.

(b) Each party may file only one motion to correct a clerical error or to set aside and vacate the judgment on the ground of an incorrect or erroneous legal basis for the decision. [2005]

§116.730. Defendant's Motion to Vacate Judgment for Lack of Appearance

(a) A defendant who did not appear at the hearing in the small claims court may file a motion to vacate the judgment with the clerk of the small

claims court. The motion shall be filed within 30 days after the clerk has mailed notice of entry of the judgment to the parties.

(b) The defendant shall appear at any hearing on the motion, or submit written justification for not appearing together with a declaration in support of the motion.

(c) Upon a showing of good cause, the court may grant the motion to vacate the judgment. If the plaintiff is not present, the court shall hear the motion in the plaintiff's absence.

(d) If the motion is granted, and if all parties are present and agree, the court may hear the case without rescheduling it. If the plaintiff is not present, the judge or clerk shall reschedule the case and give notice in accordance with Section 116.330.

(e) If the motion is denied, the defendant may appeal to the superior court only on the denial of the motion to vacate the judgment. The defendant shall file the notice of appeal with the clerk of the small claims court within 10 days after the small claims court has mailed or delivered notice of the court's denial of the motion to vacate the judgment.

(f) If the superior court determines that the defendant's motion to vacate the judgment should have been granted, the superior court may hear the claims of all parties without rescheduling the matter, provided that all parties are present and the defendant has previously complied with this article, or may order the case transferred to the small claims court for a hearing. [1991]

§116.740. Defendant's Motion to Vacate Judgment for Improper Service

(a) If the defendant was not properly served as required by Section 116.330 or 116.340 and did not appear at the hearing in the small claims court, the defendant may file a motion to vacate the judgment with the clerk of the small claims court. The motion shall be accompanied by a supporting declaration, and shall be filed within 180 days after the defendant discovers or should have discovered that judgment was entered against the defendant.

(b) The court may order that the enforcement of the judgment shall be suspended pending a hearing and determination of the motion to vacate the judgment.

(c) Upon a showing of good cause, the court may grant the motion to vacate the judgment. If the plaintiff is not present, the court shall hear the motion in the plaintiff's absence.

(d) Subdivisions (d), (e), and (f) of Section 116.730 apply to any motion to vacate a judgment. [1991]

§116.745. Fee for Motion to Vacate

The clerk shall collect a fee of twenty dollars (\$20) for the filing of a motion to vacate. [2006]

§116.750. Notice of Appeal

■ (a) An appeal from a judgment in a small claims action is taken by filing a notice of appeal with the clerk of the small claims court.

(b) A notice of appeal shall be filed not later than 30 days after the clerk has delivered or mailed notice of entry of the judgment to the parties. A notice of appeal filed after the 30-day period is ineffective for any purpose.

(c) The time for filing a notice of appeal is not extended by the filing of a request to correct a mistake or by virtue of any subsequent proceedings on that request, except that a new period for filing notice of appeal shall begin on the delivery or mailing of notice of entry of any modified judgment. [1991]

§116.760. Fee for Appeal

(a) The appealing party shall pay a fee of seventy-five dollars (\$75) for filing a notice of appeal.

(b) A party who does not appeal shall not be charged any fee for filing any document relating to the appeal.

(c) The fee shall be distributed as follows:

(1) To the county law library fund, as provided in Section 6320 of the Business and Professions Code, the amount specified in Section 6321 and 6322.1 of the Business and Professions Code.

(2) To the Trial Court Trust Fund, the remainder of the fee.

[2006]

§116.770. Appeal Procedure

(a) The appeal to the superior court shall consist of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division.

(b) The hearing on an appeal to the superior court shall be conducted informally. The pretrial discovery procedures described in Section 2019.010 are not permitted, no party has a right to a trial by jury, and no tentative decision or statement of decision is required.

(c) Article 5 (commencing with Section 116.510) on hearings in the small claims court applies in hearings on appeal in the superior court, except that attorneys may participate.

(d) The scope of the hearing shall include the claims of all parties who were parties to the small claims action at the time the notice of appeal was filed. The hearing shall include the claim of a defendant that was heard in the small claims court.

(e) The clerk of the superior court shall schedule the hearing for the earliest available time and shall mail written notice of the hearing to the parties at least 14 days prior to the time set for the hearing.

(f) The Judicial Council may prescribe by rule the practice and procedure on appeal and the time and manner in which the record on appeal shall be prepared and filed. [2004]

§116.780. Superior Court Judgment on Appeal; Enforcement

(a) The judgment of the superior court after a hearing on appeal is final and not appealable.

(b) Article 6 (commencing with Section 116.610) on judgments of the small claims court applies to judgments of the superior court after a hearing on appeal, except as provided in subdivisions (c) and (d).

(c) For good cause and where necessary to achieve substantial justice between the parties, the superior court may award a party to an appeal reimbursement of (1) ■ attorney's fees actually and reasonably incurred in connection with the appeal, not exceeding one hundred fifty dollars (\$150), and (2) actual loss of earnings and expenses of transportation and lodging actually and reasonably incurred in connection with the appeal, not exceeding one hundred fifty dollars (\$150). [2005]

§116.790. Bad-Faith Appeals; Award of Attorney's Fees

If the superior court finds that the appeal was without substantial merit and not based on good faith, but was intended to harass or delay the other party, or to encourage the other party to abandon the claim, the court may award the other party (a) ■ attorney's fees actually and reasonably incurred in connection with the appeal, not exceeding one thousand dollars (\$1,000), and (b) any actual loss of earnings and any expenses of transportation and lodging actually and reasonably incurred in connection with the appeal, not exceeding one thousand dollars (\$1,000), following a hearing on the matter. [1991]

§116.795. Dismissal for Failure to Appear or Lack of Timely Prosecution

(a) The superior court may dismiss the appeal if the appealing party does not appear at the hearing or if the appeal is not heard within one year from the date of filing the notice of appeal with the clerk of the small claims court.

(b) Upon dismissal of an appeal by the superior court, the small claims court shall thereafter have the same jurisdiction as if no appeal had been filed. [1990]

§116.798. Hearing on Writs Relating to Acts of Small Claims Division

(a) (1) A petition that seeks a writ of review, a writ of mandate, or a writ of prohibition relating to an act of the small claims division, other than a postjudgment enforcement order, may be heard by a judge who is assigned to the appellate division of the superior court.

(2) A petition described by paragraph (1) may also be heard by the court of appeal or by the Supreme Court.

(3) Where a judge described in paragraph (1) grants a writ directed to the small claims division, the small claims division is an inferior tribunal for purposes of Title 1 (commencing with Section 1067) of Part 3.

(4) The fee for filing a writ petition in the superior court under paragraph (1) is the same as the fee for filing a notice of appeal under Section 116.760.

(5) The Judicial Council shall promulgate procedural rules for a writ proceeding under paragraph (1).

(6) An appeal shall not be taken from a judgment granting or denying a petition under paragraph (1) for issuance of a writ. An appellate court may, in its discretion, upon petition for extraordinary writ, review the judgment.

(b) A petition that seeks a writ of review, a writ of mandate, or a writ of prohibition relating to an act of a superior court in a small claims appeal may be heard by the court of appeal or by the Supreme Court.

(c) A petition that seeks a writ of review, a writ of mandate, or a writ of prohibition relating to a postjudgment enforcement order of the small claims division may be heard by the appellate division of the superior court, by the court of appeal, or by the Supreme Court. [2012]

§116.810. Suspension of Judgment Enforcement Pending Appeal

(a) Enforcement of the judgment of a small claims court, including the issuance or recording of any abstract of the judgment, is automatically suspended, without the filing of a bond by the defendant, until the expiration of the time for appeal.

(b) If an appeal is filed as provided in Article 7 (commencing with Section 116.710), enforcement of the judgment of the small claims court is suspended unless (1) the appeal is dismissed by the superior court pursuant to Section 116.795, or (2) the superior court determines that the small claims court properly denied the defendant's motion to vacate filed under Section 116.730 or 116.740. In either of those events, the judgment of the small claims court may be enforced.

(c) The scope of the suspension of enforcement under this section and, unless otherwise ordered, of any suspension of enforcement ordered by the court, shall include any enforcement procedure described in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174. [1991]

§116.820. Enforcement of Judgments; Costs and Interest

(a) The judgment of a small claims court may be enforced as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts. A judgment of the superior court after a hearing on appeal, and after transfer to the small claims court under subdivision (d) of Section 116.780, may be enforced like other judgments of the small claims court, as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts.

(b) The clerk of the court shall charge and collect all fees associated with the enforcement of judgments under Title 9 (commencing with Section 680.010) of Part 2. The clerk shall immediately deposit all the fees collected under this section into a bank account established for this purpose by the Administrative Office of the Courts. The money shall be remitted to the State Treasury under rules adopted by, or trial court financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206 of the Government Code. The Controller shall distribute the fees to the Trial Court Trust Fund as provided in Section 68085.1 of the Government Code.

(c) The prevailing party in any action subject to this chapter is entitled to the costs of enforcing the judgment and accrued interest. [2009]

§116.830. Form for Disclosure of Judgment Debtor’s Assets

(a) At the time judgment is rendered, or notice of entry of the judgment is mailed to the parties, the clerk shall deliver or mail to the judgment debtor a form containing questions regarding the nature and location of any assets of the judgment debtor.

(b) Within 30 days after the clerk has mailed notice of entry of the judgment, unless the judgment has been satisfied, the judgment debtor shall complete the form and cause it to be delivered to the judgment creditor.

(c) In the event a motion is made to vacate the judgment or a notice of appeal is filed, a judgment debtor shall complete and deliver the form within 30 days after the clerk has delivered or mailed notice of denial of the motion to vacate, or notice of dismissal of or entry of judgment on the appeal, whichever is applicable.

(d) In case of the judgment debtor’s willful failure to comply with subdivision (b) or (c), the judgment creditor may request the court to apply the sanctions, including arrest and attorney’s fees, as provided in Section 708.170, on contempt of court.

(e) The Judicial Council shall approve or adopt the form to be used for the purpose of this section. [1991]

§116.840. Payment of Judgment; Entry of Satisfaction of Judgment

(a) At the option of the judgment debtor, payment of the judgment may be made either (1) to the judgment creditor in accordance with Section 116.850, or (2) to the court in which the judgment was entered in accordance with Section 116.860.

(b) The small claims court may order entry of satisfaction of judgment in accordance with subdivisions (c) and (d) of Section 116.850, or subdivision (b) of Section 116.860. [1990]

§116.850. Acknowledgment of Satisfaction of Judgment

(a) If full payment of the judgment is made to the judgment creditor or to the judgment creditor’s assignee of record, then immediately upon receipt of payment, the judgment creditor or assignee shall file with the clerk of the court an acknowledgment of satisfaction of the judgment.

(b) Any judgment creditor or assignee of record who, after receiving full payment of the judgment and written demand by the judgment debtor, fails without good cause to execute and file an acknowledgment of satisfaction of the judgment with the clerk of the court in which the judgment is entered within 14 days after receiving the request, is liable to the judgment debtor or the judgment debtor’s grantees or heirs for all damages sustained by reason of the failure and, in addition, the sum of fifty dollars (\$50).

(c) The clerk of the court shall enter a satisfaction of judgment at the request of the judgment debtor if the judgment debtor either (1) establishes a rebuttable presumption of full payment under subdivision (d), or (2) establishes

a rebuttable presumption of partial payment under subdivision (d) and complies with subdivision (c) of Section 116.860.

(d) A rebuttable presumption of full or partial payment of the judgment, whichever is applicable, is created if the judgment debtor files both of the following with the clerk of the court in which the judgment was entered:

(1) Either a canceled check or money order for the full or partial amount of the judgment written by the judgment debtor after judgment and made payable to and endorsed by the judgment creditor, or a cash receipt for the full or partial amount of the judgment written by the judgment debtor after judgment and signed by the judgment creditor.

(2) A declaration stating that (A) the judgment debtor has made full or partial payment of the judgment including accrued interest and costs; (B) the judgment creditor has been requested to file an acknowledgment of satisfaction of the judgment and refuses to do so, or refuses to accept subsequent payments, or the present address of the judgment creditor is unknown; and (c) the documents identified in and accompanying the declaration constitute evidence of the judgment creditor's receipt of full or partial payment. [1991]

§116.860. Payment of Judgment into Court; Unclaimed Payments

(a) A judgment debtor who desires to make payment to the court in which the judgment was entered may file a request to make payment, which shall be made on a form approved or adopted by the Judicial Council.

(b) Upon the filing of the request to make payment and the payment to the clerk of the amount of the judgment and any accrued interest and costs after judgment, plus any required fee authorized by this section, the clerk shall enter satisfaction of the judgment and shall remit payment to the judgment creditor as provided in this section.

(c) If partial payment of the judgment has been made to the judgment creditor, and the judgment debtor files the declaration and evidence of partial payment described in subdivision (d) of Section 116.850, the clerk shall enter satisfaction of the judgment upon receipt by the clerk of the balance owing on the judgment, including any accrued interest and costs after judgment, and the fee required by this section.

(d) If payment is made by means other than money order, certified or cashier's check, or cash, entry of satisfaction of the judgment shall be delayed for 30 days.

(e) The clerk shall notify the judgment creditor, at his or her last known address, that the judgment debtor has satisfied the judgment by making payment to the court. The notification shall explain the procedures which the judgment creditor has to follow to receive payment.

(f) For purposes of this section, "costs after judgment" consist of only those costs itemized in a memorandum of costs filed by the judgment creditor or otherwise authorized by the court.

(g) Payments that remain unclaimed for three years shall go to the superior court pursuant to Section 68084.1 of the Government Code.

(h) A fee of twenty dollars (\$20) shall be paid by the judgment debtor for the costs of administering this section. [2005]

§116.870. Suspending Judgment Debtor's Driving Privileges for Failing to Satisfy Judgment (to be repealed as of January 1, 2017)

(a) Sections 16250 to 16381, inclusive, of the Vehicle Code, regarding the suspension of the judgment debtor's privilege to operate a motor vehicle for failing to satisfy a judgment, apply if the judgment (1) was for damage to property in excess of seven hundred fifty dollars (\$750) or for bodily injury to, or death of, any person in any amount, and (2) resulted from the operation of a motor vehicle upon a California highway by the defendant, or by any other person for whose conduct the defendant was liable, unless the liability resulted from the defendant's signing the application of a minor for a driver's license.

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date. [2015]

§116.870. Suspending Judgment Debtor's Driving Privileges for Failing to Satisfy Judgment (operative on January 1, 2017)

(a) Sections 16250 to 16381, inclusive, of the Vehicle Code, regarding the suspension of the judgment debtor's privilege to operate a motor vehicle for failing to satisfy a judgment, apply if the judgment (1) was for damage to property in excess of **one thousand** dollars (**\$1,000.00**) or for bodily injury to, or death of, a person in any amount, and (2) resulted from the operation of a motor vehicle upon a California highway by the defendant, or by any other person for whose conduct the defendant was liable, unless the liability resulted from the defendant's signing the application of a minor for a driver's license.

(b) This section shall become operative on January 1, 2017. [2015]

§116.880. Requesting Suspension of Judgment Debtor's Driving Privileges (to be repealed as of January 1, 2017)

(a) If the judgment (1) was for seven hundred fifty dollars (\$750) or less, (2) resulted from a motor vehicle accident occurring on a California highway caused by the defendant's operation of a motor vehicle, and (3) has remained unsatisfied for more than 90 days after the judgment became final, the judgment creditor may file with the Department of Motor Vehicles a notice requesting a suspension of the judgment debtor's privilege to operate a motor vehicle.

(b) The notice shall state that the judgment has not been satisfied, and shall be accompanied by (1) a fee set by the department, (2) the judgment of the court determining that the judgment resulted from a motor vehicle accident occurring on a California highway caused by the judgment debtor's operation of a motor vehicle, and (3) a declaration that the judgment has not been satisfied.

The fee shall be used by the department to finance the costs of administering this section and **shall** not exceed the department's actual costs.

(c) Upon receipt of a notice, the department shall attempt to notify the judgment debtor by telephone, if possible, otherwise by certified mail, that the judgment debtor's privilege to operate a motor vehicle will be suspended for a period of 90 days, beginning 20 days after receipt of notice by the department from the judgment creditor, unless satisfactory proof, as provided in subdivision (e), is provided to the department before that date.

(d) At the time the notice is filed, the department shall give the judgment creditor a copy of the notice that **indicates** the filing fee paid by the judgment creditor, and **includes** a space to be signed by the judgment creditor acknowledging payment of the judgment by the judgment debtor. The judgment creditor shall mail or deliver a signed copy of the acknowledgment to the judgment debtor once the judgment is satisfied.

(e) The department shall terminate the suspension, or the suspension proceedings, upon the occurrence of one or more of the following:

(1) Receipt of proof that the judgment has been satisfied, either (A) by a copy of the notice required by this section signed by the judgment creditor acknowledging satisfaction of the judgment, or (B) by a declaration of the judgment debtor stating that the judgment has been satisfied.

(2) Receipt of proof that the judgment debtor is complying with a court-ordered payment schedule.

(3) Proof that the judgment debtor had insurance covering the accident sufficient to satisfy the judgment.

(4) A deposit with the department of the amount of the unsatisfied judgment, if the judgment debtor presents proof, satisfactory to the department, of inability to locate the judgment creditor.

(5) At the end of 90 days.

(f) **If** the suspension has been terminated under subdivision (e), the action is final and **shall** not be reinstated. **If** the suspension is terminated, Section 14904 of the Vehicle Code shall apply. Money deposited with the department under this section shall be handled in the same manner as money deposited under **paragraph (4) of** subdivision **(a)** of Section 16377 of the Vehicle Code.

(g) A public agency is not liable for an injury caused by the suspension, termination of suspension, or the failure to suspend a person's privilege to operate a motor vehicle as authorized by this section.

(h) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date. [2015]

§116.880. Requesting Suspension of Judgment Debtor's Driving Privileges (Operative on January 1, 2017)

(a) If the judgment (1) was for **one thousand** dollars (**\$1,000**) or less, (2) resulted from a motor vehicle accident occurring on a California highway caused by the defendant's operation of a motor vehicle, and (3) has remained unsatisfied for more than 90 days after the judgment became final, the

judgment creditor may file with the Department of Motor Vehicles a notice requesting a suspension of the judgment debtor's privilege to operate a motor vehicle.

(b) The notice shall state that the judgment has not been satisfied, and shall be accompanied by (1) a fee set by the department, (2) the judgment of the court determining that the judgment resulted from a motor vehicle accident occurring on a California highway caused by the judgment debtor's operation of a motor vehicle, and (3) a declaration that the judgment has not been satisfied. The fee shall be used by the department to finance the costs of administering this section and shall not exceed the department's actual costs.

(c) Upon receipt of a notice, the department shall attempt to notify the judgment debtor by telephone, if possible, otherwise by certified mail, that the judgment debtor's privilege to operate a motor vehicle will be suspended for a period of 90 days, beginning 20 days after receipt of notice by the department from the judgment creditor, unless satisfactory proof, as provided in subdivision (e), is provided to the department before that date.

(d) At the time the notice is filed, the department shall give the judgment creditor a copy of the notice indicates the filing fee paid by the judgment creditor, and includes a space to be signed by the judgment creditor acknowledging payment of the judgment by the judgment debtor. The judgment creditor shall mail or deliver a signed copy of the acknowledgment to the judgment debtor once the judgment is satisfied.

(e) The department shall terminate the suspension, or the suspension proceedings, upon the occurrence of one or more of the following:

(1) Receipt of proof that the judgment has been satisfied, either (A) by a copy of the notice required by this section signed by the judgment creditor acknowledging satisfaction of the judgment, or (B) by a declaration of the judgment debtor stating that the judgment has been satisfied.

(2) Receipt of proof that the judgment debtor is complying with a court-ordered payment schedule.

(3) Proof that the judgment debtor had insurance covering the accident sufficient to satisfy the judgment.

(4) A deposit with the department of the amount of the unsatisfied judgment, if the judgment debtor presents proof, satisfactory to the department, of inability to locate the judgment creditor.

(5) At the end of 90 days.

(f) If the suspension has been terminated under subdivision (e), the action is final and shall not be reinstated. If the suspension is terminated, Section 14904 of the Vehicle Code shall apply. Money deposited with the department under this section shall be handled in the same manner as money deposited under paragraph (4) of subdivision (a) of Section 16377 of the Vehicle Code.

(g) A public agency is not liable for an injury caused by the suspension, termination of suspension, or the failure to suspend a person's privilege to operate a motor vehicle as authorized by this section.

(h) This section shall become operative on January 1, 2017

[2015]

§116.920. Judicial Council Forms and Rules

(a) The Judicial Council shall provide by rule for the practice and procedure and for the forms and their use in small claims actions. The rules and forms so adopted shall be consistent with this chapter.

(b) The Judicial Council, in consultation with the Department of Consumer Affairs, shall adopt rules to ensure that litigants receive adequate notice of the availability of assistance from small claims advisors, to prescribe other qualifications and the conduct of advisors, to prescribe training standards for advisors and for temporary judges hearing small claims matters, to prescribe, where appropriate, uniform rules and procedures regarding small claims actions and judgments, and to address other matters that are deemed necessary and appropriate. [1991]

§116.930. Small Claims Court Publications

(a) Each small claims division shall provide in each courtroom in which small claims actions are heard a current copy of a publication describing small claims court law and the procedures that are applicable in the small claims courts, including the law and procedures that apply to the enforcement of judgments. The Small Claims Court and Consumer Law California Judge's Bench Book developed by the California Center for Judicial Education and Research is illustrative of a publication that satisfies the requirement of this subdivision.

(b) Each small claims division may formulate and distribute to litigants and the public a manual on small claims court rules and procedures. The manual shall explain how to complete the necessary forms, how to determine the proper court in which small claims actions may be filed, how to present and defend against claims, how to appeal, how to enforce a judgment, how to protect property that is exempt from execution, and such other matters that the court deems necessary or desirable.

(c) If the Department of Consumer Affairs determines there are sufficient private or public funds available in addition to the funds available within the department's current budget, the department, in cooperation with the Judicial Council, shall prepare a manual or information booklet on small claims court rules and procedures. The department shall distribute copies to the general public and to each small claims division.

(d) If funding is available, the Judicial Council, in cooperation with the Department of Consumer Affairs, shall prepare and distribute to each judge who sits in a small claims court a bench book describing all state and federal consumer protection laws reasonably likely to apply in small claims actions. [1990]

§116.940. Small Claims Court Advisory Services

(a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, which are consistent with the requirements of this section, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county, or by the superior court in

a county where the small claims advisory service is administered by the court, in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance. The topics covered by individual personal advisory services shall include, but not be limited to, preparation of small claims court filings, procedures, including procedures related to the conduct of the hearing, and information on the collection of small claims court judgments.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties, superior courts in adjacent counties, or any combination thereof, may provide advisory services jointly.

(c) In a county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county or the superior court may elect to exempt itself from the requirements set forth in subdivision (b). If the small claims advisory service is administered by the county, this exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If a county or court so exempts itself, the county shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisers may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisers may not appear in court as an advocate for any party.

(f) Advisers, including independent contractors, other employees and volunteers, have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

(g) This section does not preclude a court or county from contracting with a third party to provide small claims advisory services as described in this section. [2013]

§116.950. Small Claims Advisory Committee; Establishment; Composition of Committee

(a) This section shall become operative only if the Department of Consumer Affairs determines that sufficient private or public funds are available in addition to the funds available in the department's current budget to cover the costs of implementing this section.

(b) There shall be established an advisory committee, constituted as set forth in this section, to study small claims practice and procedure, with particular attention given to the improvement of procedures for the enforcement of judgments.

(c) The members of the advisory committee shall serve without compensation, but shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties.

(d) The advisory committee shall be composed as follows:

(1) The Attorney General or a representative.

(2) Two consumer representatives from consumer groups or agencies, appointed by the Secretary of the State and Consumer Services Agency.

(3) One representative appointed by the Speaker of the Assembly and one representative appointed by the President pro Tempore of the Senate.

(4) Two representatives appointed by the Board of Governors of the State Bar.

(5) Two representatives of the business community, appointed by the Secretary of Technology, Trade, and Commerce.

(6) Six judicial officers who have extensive experience presiding in small claims court, appointed by the Judicial Council. Judicial officers appointed under this subdivision may include judicial officers of the superior court, judges of the appellate courts, retired judicial officers, and temporary judges.

(7) One representative appointed by the Governor.

(8) Two clerks of the court appointed by the Judicial Council.

(e) Staff assistance to the advisory committee shall be provided by the Department of Consumer Affairs, with the assistance of the Judicial Council, as needed. [2002]

§335. Statutes of Limitations - Introduction

■ The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows: [1872]

§335.1. Two Years: Assault; Battery; Personal Injury; Wrongful Death

Within two years: An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another. [2002]

§336. Five Years: Mesne Profits of Real Property; Violation of Restrictive Covenant

Within five years:

(a) An action for mesne profits of real property.

(b) An action for violation of a restriction, as defined in Section 784 of the Civil Code. The period prescribed in this subdivision runs from the time the person seeking to enforce the restriction discovered or, through the exercise of reasonable diligence, should have discovered the violation. A failure to commence an action for violation of a restriction within the period prescribed in this subdivision does not waive the right to commence an action for any other violation of the restriction and does not, in itself, create an implication that the restriction is abandoned, obsolete, or otherwise unenforceable. This subdivision shall not bar commencement of an action for violation of a restriction before January 1, 2001, and until January 1, 2001, any other applicable statutory or common law limitation shall continue to apply to that action. [1998]

§337. Four Years: Contracts and Accounts

Within four years:

1. An action upon any contract, obligation or liability founded upon an instrument in writing, except as provided in Section 336a of this code; provided, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage.

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

3. An action based upon the rescission of a contract in writing. The time begins to run from the date upon which the facts that entitle the aggrieved party to rescind occurred. Where the ground for rescission is fraud or mistake, the time does not begin to run until the discovery by the aggrieved party of the facts constituting the fraud or mistake. Where the ground for rescission is misrepresentation under Section 359 of the Insurance Code, the time does not begin to run until the representation becomes false. [1961]

§337a. “Book Account” Defined

The term “book account” means a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of a contract or some fiduciary relation, and shows the debits and credits in connection therewith, and against whom and in favor of

whom entries are made, is entered in the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (1) in a bound book, or (2) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (3) on a card or cards of a permanent character, or is kept in any other reasonably permanent form and manner. [1959]

§337.1. Four Years: Injury or Death from Deficient Planning or Construction of Improvement to Real Property

(a) Except as otherwise provided in this section, no action shall be brought to recover damages from any person performing or furnishing the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to real property more than four years after the substantial completion of such improvement for any of the following:

(1) ■ Any patent deficiency in the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to, or survey of, real property;

(2) Injury to property, real or personal, arising out of any such patent deficiency; or

(3) Injury to the person or for wrongful death arising out of any such patent deficiency.

(b) If, by reason of such patent deficiency, an injury to property or the person or an injury causing wrongful death occurs during the fourth year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within one year after the date on which such injury occurred, irrespective of the date of death, but in no event may such an action be brought more than five years after the substantial completion of construction of such improvement.

(c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

(d) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

(e) As used in this section, “patent deficiency” means a deficiency which is apparent by reasonable inspection.

(f) Subdivisions (a) and (b) shall not apply to any owner-occupied single-unit residence. [1967]

§337.15. Ten Years: Damages from Latent Deficiencies in Planning or Construction of Real Property Improvements

■ (a) No action may be brought to recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property

more than 10 years after the substantial completion of the development or improvement for any of the following:

(1) Any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to, or survey of, real property.

(2) Injury to property, real or personal, arising out of any such latent deficiency.

(b) As used in this section, "latent deficiency" means a deficiency which is not apparent by reasonable inspection.

(c) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this section, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 in an action which has been brought within the time period set forth in subdivision (a) of this section.

(d) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for bringing any action.

(e) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to bring an action.

(f) This section shall not apply to actions based on willful misconduct or fraudulent concealment.

(g) The 10-year period specified in subdivision (a) shall commence upon substantial completion of the improvement, but not later than the date of one of the following, whichever first occurs:

(1) The date of final inspection by the applicable public agency.

(2) The date of recordation of a valid notice of completion.

(3) The date of use or occupation of the improvement.

(4) One year after termination or cessation of work on the improvement.

The date of substantial completion shall relate specifically to the performance or furnishing design, specifications, surveying, planning, supervision, testing, observation of construction or construction services by each profession or trade rendering services to the improvement. [1981]

§337.2. Four years: Breach of Lease

Where a lease of real property is in writing, no action shall be brought under Section 1951.2 of the Civil Code more than four years after the breach of the lease and abandonment of the property, or more than four years after the termination of the right of the lessee to possession of the property, whichever is the earlier time. [1970]

§337.5. Ten Years: Action upon Bonds; Judgments

Within 10 years:

1. An action upon any bonds or coupons issued by the State of California.
2. An action upon any general obligation bonds or coupons, not secured in whole or in part by a lien on real property, issued by any county, city and county, municipal corporation, district (including school districts), or other political subdivision of the State of California.
3. An action upon a judgment or decree of any court of the United States or of any state within the United States. [1953]

§338. Three Years: Suit based on Statute, Trespass, Fraud and Mistake, etc.

Within three years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for trespass upon or injury to real property.

(c) (1) An action for taking, detaining, or injuring goods or chattels, including actions for the specific recovery of personal property.

(2) The cause of action in the case of theft, as described in Section 484 of the Penal Code, of ***an*** article of historical, interpretive, scientific, or artistic significance is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or the law enforcement agency that originally investigated the theft.

(3) (A) Notwithstanding paragraphs (1) and (2), an action for the specific recovery of a work of fine art brought against a museum, gallery, auctioneer, or dealer, in the case of an unlawful taking or theft, as described in Section 484 of the Penal Code, of a work of fine art, including a taking or theft by means of fraud or duress, shall be commenced within six years of the actual discovery by the claimant or his or her agent, of both of the following:

(i) The identity and the whereabouts of the work of fine art. In the case where there is a possibility of misidentification of the object of fine art in question, the identity can be satisfied by the identification of facts sufficient to determine that the work of fine art is likely to be the work of fine art that was unlawfully taken or stolen.

(ii) Information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest in the work of fine art that was unlawfully taken or stolen.

(B) ***This*** paragraph shall apply to all pending and future actions commenced on or before December 31, 2017, including ***an action*** dismissed based on the expiration of statutes of limitation in effect prior to the date of enactment of this statute if the judgment in that action is not yet final or if the time for filing an appeal from a decision on that action has not expired, provided that the action concerns a work of fine art that was taken within 100 years prior to the date of enactment of this statute.

(C) For purposes of this paragraph:

(i) “Actual discovery,” notwithstanding Section 19 of the Civil Code, does not include constructive knowledge imputed by law.

(ii) “Auctioneer” means an individual who is engaged in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction as defined in subdivision (b) of Section 1812.601 of the Civil Code.

(iii) “Dealer” means a person who holds a valid seller’s permit and who is actively and principally engaged in, or conducting the business of, selling works of fine art.

(iv) “Duress” means a threat of force, violence, danger, or retribution against an owner of the work of fine art in question, or his or her family member, sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act that otherwise would not have been performed or to acquiesce to an act to which he or she would otherwise not have acquiesced.

(v) “Fine art” has the same meaning as defined in paragraph (1) of subdivision (d) of Section 982 of the Civil Code.

(vi) “Museum or gallery” shall include any public or private organization or foundation operating as a museum or gallery.

(4) Section 361 shall not apply to an action brought pursuant to paragraph (3).

(5) A party in an action to which paragraph (3) applies may raise all equitable and legal affirmative defenses and doctrines, including, without limitation, laches and unclean hands.

(d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

(e) An action upon a bond of a public official except any cause of action based on fraud or embezzlement is not deemed to have accrued until the discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action upon the bond.

(f) (1) An action against a notary public on his or her bond or in his or her official capacity except that a cause of action based on malfeasance or misfeasance is not deemed to have accrued until discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action.

(2) Notwithstanding paragraph (1), an action based on malfeasance or misfeasance shall be commenced within one year from discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action or within three years from the performance of the notarial act giving rise to the action, whichever is later.

(3) Notwithstanding paragraph (1), an action against a notary public on his or her bond or in his or her official capacity shall be commenced within six years.

(g) An action for slander of title to real property.

(h) An action commenced under Section 17536 of the Business and Professions Code. The cause of action in that case shall not be deemed to have accrued until the discovery by the aggrieved party, the Attorney General,

the district attorney, the county counsel, the city prosecutor, or the city attorney of the facts constituting grounds for commencing the action.

(i) An action commenced under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code). The cause of action in that case shall not be deemed to have accrued until the discovery by the State Water Resources Control Board or a regional water quality control board of the facts constituting grounds for commencing actions under their jurisdiction.

(j) An action to recover for physical damage to private property under Section 19 of Article I of the California Constitution.

(k) An action commenced under Division 26 (commencing with Section 39000) of the Health and Safety Code. These causes of action shall not be deemed to have accrued until the discovery by the State Air Resources Board or by a district, as defined in Section 39025 of the Health and Safety Code, of the facts constituting grounds for commencing the action under its jurisdiction.

(l) An action commenced under Section 1602, 1615, or 5650.1 of the Fish and Game Code. These causes of action shall not be deemed to have accrued until discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

(m) An action challenging the validity of the levy upon a parcel of a special tax levied by a local agency on a per parcel basis.

(n) An action commencing under Section 51.7 of the Civil Code.

[2015]

§339. Two Years: Oral Contracts; Title Insurance, Rescission, etc.

Within two years:

1. An action upon a contract, obligation or liability not founded upon an instrument of writing, except as provided in Section 2725 of the Commercial Code or subdivision 2 of Section 337 of this code; or an action founded upon a contract, obligation or liability, evidenced by a certificate, or abstract or guaranty of title of real property, or by a policy of title insurance; provided, that the cause of action upon a contract, obligation or liability evidenced by a certificate, or abstract or guaranty of title of real property or policy of title insurance shall not be deemed to have accrued until the discovery of the loss or damage suffered by the aggrieved party thereunder.

2. An action against a sheriff or coroner upon a liability incurred by the doing of an act in an official capacity and in virtue of office, or by the omission of an official duty including the nonpayment of money collected in the enforcement of a judgment.

3. An action based upon the rescission of a contract not in writing. The time begins to run from the date upon which the facts that entitle the aggrieved party to rescind occurred. Where the ground for rescission is fraud or mistake, the time does not begin to run until the discovery by the aggrieved party of the facts constituting the fraud or mistake. [1996]

§339.5. Two Years: Lease Not in Writing

Where a lease of real property is not in writing, no action shall be brought under Section 1951.2 of the Civil Code more than two years after the breach of the lease and abandonment of the property, or more than two years after the termination of the right of the lessee to possession of the property, whichever is the earlier time. [1970]

§340. One Year: Penalty, Forfeiture, Bail, Torts, and Escapes

■ Within one year:

(a) An action upon a statute for a penalty or forfeiture, if the action is given to an individual, or to an individual and the state, except if the statute imposing it prescribes a different limitation.

(b) An action upon a statute for a forfeiture or penalty to the people of this state.

(c) An action for libel, slander, false imprisonment, seduction of a person below the age of legal consent, or by a depositor against a bank for the payment of a forged or raised check, or a check that bears a forged or unauthorized endorsement, or against any person who boards or feeds an animal or fowl or who engages in the practice of veterinary medicine as defined in Section 4826 of the Business and Professions Code, for that person's neglect resulting in injury or death to an animal or fowl in the course of boarding or feeding the animal or fowl or in the course of the practice of veterinary medicine on that animal or fowl.

(d) An action against an officer to recover damages for the seizure of any property for a statutory forfeiture to the state, or for the detention of, or injury to property so seized, or for damages done to any person in making that seizure.

(e) An action by a good faith improver for relief under Chapter 10 (commencing with Section 871.1) of Title 10 of Part 2. The time begins to run from the date upon which the good faith improver discovers that the good faith improver is not the owner of the land upon which the improvements have been made. [2002]

§415.21. Access to Gated Community to Conduct Service of Process

■ (a) Notwithstanding any other law, any person shall be granted access to a gated community for a reasonable period of time for the sole purpose of performing lawful service of process or service of a subpoena upon displaying a current driver's license or other identification, and one of the following:

(1) A badge or other confirmation that the individual is acting in his or her capacity as a representative of a county sheriff or marshal.

(2) Evidence of current registration as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code or of licensure as a private investigator pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code.

(b) This section shall only apply to a gated community that is staffed at the time service of process is attempted by a guard or other security personnel assigned to control access to the community. [2014]

§425.15. Procedure for Filing Cause of Action Against Officer or Director of Nonprofit Corporation Serving Without Compensation

■ (a) No cause of action against a person serving without compensation as a director or officer of a nonprofit corporation described in this section, on account of any negligent act or omission by that person within the scope of that person’s duties as a director acting in the capacity of a board member, or as an officer acting in the capacity of, and within the scope of the duties of, an officer, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes that claim to be filed after the court determines that the party seeking to file the pleading has established evidence that substantiates the claim. The court may allow the filing of a pleading that includes that claim following the filing of a verified petition therefor accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading, and accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the petitioning party, shall permit the proposed pleading to be filed.

(b) Nothing in this section shall affect the right of the plaintiff to discover evidence on the issue of damages.

(c) Nothing in this section shall be construed to affect any action against a nonprofit corporation for any negligent action or omission of a ■ volunteer director or officer occurring within the scope of the person’s duties.

(d) For the purposes of this section, “compensation” means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or officer shall not constitute compensation.

(e) (1) This section applies only to officers and directors of nonprofit corporations that are subject to Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code that are organized to provide charitable, educational, scientific, social, or other forms of public service and that are exempt from federal income ■ taxation under Section 501(c) (1), except any credit union, or Section 501(c)(4), 501(c)(5), 501(c)(7), or 501(c)(19) of the Internal Revenue Code.

(2) This section does not apply to any corporation that unlawfully restricts membership, services, or benefits conferred on the basis of political affiliation, age, or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code. [2007]

§425.16. Free Speech Rights; Anti-SLAPP Motion to Strike

■ (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c) (1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her ■ attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and ■ reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to ■ attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259, or Section 11130.5 or 54960.5, of the Government Code.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place

open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media. [2014]

§527.6 Civil Harassment and Civil Restraining Order Sought by an Individual

■ (a) (1) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an *order after hearing* prohibiting harassment as provided in this section.

(2) A minor, under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, shall be permitted to appear in court without counsel for the limited purpose of requesting or opposing a request for a temporary restraining order or *order after hearing*, or both, under this section as provided in Section 374.

(b) For purposes of this section:

(1) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or

private mails, interoffice mail, facsimile, or computer email. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(2) “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) “Harassment” is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

(4) “Petitioner” means the person to be protected by the temporary restraining order and order after hearing and, if the court grants the petition, the protected person.

(5) “Respondent” means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person.

(6) “Temporary restraining order” and “order after hearing” mean orders that include any of the following restraining orders, whether issued ex parte or after notice and hearing:

(A) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls, as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner. On a showing of good cause, in an order issued pursuant to this subparagraph in connection with an animal owned, possessed, leased, kept, or held by the petitioner, or residing in the residence or household of the petitioner, the court may do either or both of the following:

(i) Grant the petitioner exclusive care, possession, or control of the animal.

(ii) Order the respondent to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

(B) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).

(7) “Unlawful violence” is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(c) In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members.

(d) Upon filing a petition for orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the restraining orders described in paragraph (6) of subdivision (b). A temporary restraining order may be issued with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm would result to the petitioner.

(e) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(f) A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 21 days, or, if the court extends the time for hearing under subdivision (g), not to exceed 25 days, unless otherwise modified or terminated by the court.

(g) Within 21 days, or, if good cause appears to the court, 25 days from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(h) The respondent may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-petition under this section.

(i) At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.

(j) (1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of not more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The order may be renewed, upon the request of a party, for a duration of not more than five additional years, without a showing of any further harassment since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. A request for renewal may be brought at any time within the three months before the expiration of the order.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the

requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice.

(k) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(l) In a proceeding under this section, if there are allegations of unlawful violence or credible threats of violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges he or she is a victim of violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings if the person who alleges he or she is a victim of violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(m) Upon the filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(n) A notice of hearing under this section shall notify the respondent that if he or she does not attend the hearing, the court may make orders against him or her that could last up to five years.

(o) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(p) (1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(q) (1) If a respondent, named in a restraining order issued after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the respondent by first-class mail sent to the respondent at the most current address for the respondent available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

“If you have been personally served with this temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this temporary restraining order except for the expiration date is issued at the hearing, a copy of the restraining order will be served on you by mail at the following address: _____.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court.”

(r) (1) Information on a temporary restraining order or order after hearing relating to civil harassment issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of an order issued under this section, or reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to a law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court’s discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

(5) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 29825 of the Penal Code.

(s) The prevailing party in any action brought under this section may be awarded court costs and ■ attorney's fees, if any.

(t) Any willful disobedience of any temporary restraining order or order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(u) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable pursuant to Section 29825 of the Penal Code.

(v) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a petitioner from using other existing civil remedies.

(w) (1) The Judicial Council shall develop forms, instructions, and rules relating to matters governed by this section. The petition and response

forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(2) A temporary restraining order or order after hearing relating to civil harassment issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(x) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, or stalked the petitioner, or acted or spoken in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. A fee shall not be paid for a subpoena filed in connection with a petition alleging these acts. A fee shall not be paid for filing a response to a petition alleging these acts.

(y) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall not be a fee for the service of process by a sheriff or marshal of a protective or restraining order to be issued, if either of the following conditions applies:

(A) The protective or restraining order issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The protective or restraining order issued pursuant to this section is based upon unlawful violence or a credible threat of violence.

(2) The Judicial Council shall prepare and develop forms for persons who wish to avail themselves of the services described in this subdivision. [2015]

§527.8 Civil Harassment and Civil Restraining Order Sought by an Employer or Other Entities

■ (a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an order after hearing on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

(b) For purposes of this section:

(1) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence

to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, facsimile, or computer email.

(2) “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) “Employer” and “employee” mean persons defined in Section 350 of the Labor Code. “Employer” also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. “Employee” also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, “employee” also includes a volunteer or independent contractor who performs services for the employer at the employer’s worksite.

(4) “Petitioner” means the employer that petitions under subdivision (a) for a temporary restraining order and order after hearing.

(5) “Respondent” means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person.

(6) “Temporary restraining order” and “order after hearing” mean orders that include any of the following restraining orders, whether issued ex parte or after notice and hearing:

(A) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the employee.

(B) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).

(7) “Unlawful violence” is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(c) This section does not permit a court to issue a temporary restraining order or order after hearing prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members, or other persons employed at the employee’s workplace or workplaces.

(e) Upon filing a petition under this section, the petitioner may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the petitioner also files a declaration that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful

violence or a credible threat of violence by the respondent, and that great or irreparable harm would result to an employee. The temporary restraining order may include any of the protective orders described in paragraph (6) of subdivision (b).

(f) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(g) A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 21 days, or if the court extends the time for hearing under subdivision (h), not to exceed 25 days, unless otherwise modified or terminated by the court.

(h) Within 21 days, or if good cause appears to the court, 25 days from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(i) The respondent may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence.

(j) At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the respondent is a current employee of the entity requesting the order, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the respondent. If the judge finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence, an order shall issue prohibiting further unlawful violence or threats of violence.

(k) (1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed, upon the request of a party, for a duration of not more than three years, without a showing of any further violence or threats of violence since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of

Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice.

(l) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(m) Upon filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(n) A notice of hearing under this section shall notify the respondent that, if he or she does not attend the hearing, the court may make orders against him or her that could last up to three years.

(o) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(p) (1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(q) (1) If a respondent, named in a restraining order issued under this section after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the person does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the person by first-class mail sent to that person at the most current address for the person available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

“If you have been personally served with this temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this restraining order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the following address: _____.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court.”

(r) (1) Information on a temporary restraining order or order after hearing relating to workplace violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court’s discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(5) At the request of the petitioner, an order issued under this section shall be served on the respondent, regardless of whether the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported unlawful violence or a credible threat of violence involving the parties to the proceedings. The petitioner shall provide the officer with an endorsed copy of the order and proof of service that the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of unlawful violence or a credible threat of violence that a protective order has been issued under this section, or that a person who has been taken into custody

is the subject of an order, if the petitioner or the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order and obtain the respondent's address. The law enforcement officer shall at that time also enforce the order, but may not arrest or take the respondent into custody for acts in violation of the order that were committed prior to the verbal notice of the terms and conditions of the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and constitutes sufficient notice for the purposes of this section and for the purposes of Section 29825 of the Penal Code. The petitioner shall mail an endorsed copy of the order to the respondent's mailing address provided to the law enforcement officer within one business day of the reported incident of unlawful violence or a credible threat of violence at which a verbal notice of the terms of the order was provided by a law enforcement officer.

(s) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable pursuant to Section 29825 of the Penal Code.

(t) Any intentional disobedience of any temporary restraining order or ***order after hearing*** granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(u) *This section shall not* be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(v) (1) The Judicial Council shall develop forms, instructions, and rules for⁵⁵ relating to matters governed by this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(2) A temporary restraining order or ***order after hearing*** relating to unlawful violence or a credible threat of violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

⁵⁵ It appears that the word "for" should have been deleted with the rest of a longer phrase that was part this paragraph before it was amended.

(w) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoken in any other manner that has placed the employee in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(x) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process by a sheriff or marshal of a temporary restraining order or order after hearing to be issued pursuant to this section if either of the following conditions applies:

(A) The temporary restraining order or order after hearing issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The temporary restraining order or order after hearing issued pursuant to this section is based on unlawful violence or a credible threat of violence.

(2) The Judicial Council shall prepare and develop forms for persons who wish to avail themselves of the services described in this subdivision. [2015]

§729.035. Right of Redemption after Assessment Lien Foreclosure

■ Notwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the association of a common interest development pursuant to Sections 5700, 5710, and 5735 of the Civil Code, subject to the conditions of Sections 5705, 5715, and 5720 of the Civil Code. [2012]

§731. Action for Damages or Abatement of Nuisance

■ An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by a nuisance, as defined in Section 3479 of the Civil Code, and by the judgment in that action the nuisance may be enjoined or abated as well as damages recovered therefor. A civil action may be brought in the name of the people of the State of California to abate a public nuisance, as defined in Section 3480 of the Civil Code, by the district attorney or county counsel of any county in which the nuisance exists, or by the city attorney of any town or city in which the nuisance exists. Each of those officers shall have concurrent right to bring an action for a public nuisance existing within a town or city. The district attorney, county counsel, or city attorney of any county or city in which the nuisance exists shall bring an action whenever directed by the board of supervisors of the county, or whenever directed by the legislative authority of the town or city. [2010]

§434.5. Right to Display Flag

■ (a) As used in this section, the following terms have the following meaning:

(1) “Legal right” means the freedom of use and enjoyment generally exercised by owners and occupiers of land.

(2) “Local government agency” means a county, city, whether general law or chartered, city and county, town, municipal corporation, school district or other district, political subdivision, or any board, commission, or agency thereof, or other local agency.

(b) (1) No person, private entity, or governmental agency shall adopt any rule, regulation, or ordinance, or enter into any agreement or covenant, that prevents any person or private entity that would otherwise have the legal right to display a Flag of the United States on private property from exercising that right, unless it is used as, or in conjunction with, an advertising display.

(2) As used in this subdivision, “legal right” means the freedom of use and enjoyment generally exercised by owners and occupiers of land.

(c) (1) A local government agency may not adopt any policy or regulation that prohibits or restricts an employee of that agency from displaying a Flag of the United States, or a pin of that flag, on his or her person, in his or her workplace, or on a local government agency vehicle operated by that employee.

(2) Nothing in this subdivision shall be construed to prevent a local government agency from imposing reasonable restrictions as to the time, place, and manner of placement or display of a Flag of the United States when necessary for the preservation of the order or discipline of the workplace.

(c) Nothing in this section shall be construed to prevent a city, county, or city and county from imposing reasonable restrictions as to the time, place, and manner of placement or display of a Flag of the United States when necessary for the preservation of the public’s health, safety, or order. However, no restrictions solely to promote aesthetic considerations may be imposed pursuant to paragraph (2) of subdivision (b) or paragraph (2) of subdivision (c). [2002]

§12191. Fees Paid for Corporate Filings

The miscellaneous business entity filing fees are the following:

(a) Foreign associations, as defined in Sections 170 and 171 of the Corporations Code:

(1) Filing the statement and designation upon the qualification of a foreign association pursuant to Section 2105 of the Corporations Code: One hundred dollars (\$100).

(2) Filing an amended statement and designation by a foreign association pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

(3) Filing a certificate showing the surrender of the right of a foreign association to transact intrastate business pursuant to Section 2112 of the Corporations Code: No fee.

■ (b) Unincorporated Associations:

(1) Filing a statement in accordance with Section 18200 of the Corporations Code as to principal place of office or place for sending notices or designating agent for service: Twenty-five dollars (\$25).

(2) Insignia Registrations: Ten dollars (\$10).

(c) Community Associations and Common Interest Developments:

■ (1) Filing a statement by a community association in accordance with Section 5405 or 6760 of the Civil Code to register the common interest development that it manages: An amount not to exceed thirty dollars (\$30).

(2) Filing an amended statement by a community association in accordance with Section 5405 or 6760 of the Civil Code: No fee. [2013]

§12926. Unlawful Employment Practices - Definitions

■ As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) “Affirmative relief” or “prospective relief” includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) “Age” refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) “Employee” does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) “Employer” includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

“Employer” does not include a religious association or corporation not organized for private profit.

(e) “Employment agency” includes any person undertaking for compensation to procure employees or opportunities to work.

(f) “Essential functions” means the fundamental job duties of the employment position the individual with a disability holds or desires. “Essential functions” does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) (1) ■ "Genetic information" means, with respect to any individual, information about any of the following:

(A) The individual's genetic tests.

(B) The genetic tests of family members of the individual.

(C) The manifestation of a disease or disorder in family members of the individual.

(2) ■ "Genetic information" includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(3) "Genetic information" does not include information about the sex or age of any individual.

(h) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(i) "Medical condition" means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or

disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(j) “Mental disability” includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) “Limits” shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(k) “Military and veteran status” means a member or veteran of the United States Armed Forces, United States Armed Forces Reserve, the United States National Guard, and the California National Guard.

(l) “On the bases enumerated in this part” means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, ■ genetic information, marital status, sex, age, sexual orientation, or military and veteran status.

(m) “Physical disability” includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) “Limits” shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) “Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(n) Notwithstanding subdivisions (j) and (m), if the definition of “disability” used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (j) or (m), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (j) and (m).

(o) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, ■ genetic information,

marital status, sex, age, sexual orientation, or military and veteran status” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(p) “Reasonable accommodation” may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(q) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious belief, observance, and practice, including religious dress and grooming practices. “Religious dress practice” shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed. “Religious grooming practice” shall be construed broadly to include all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed.

(r) (1) “Sex” includes, but is not limited to the following:

(A) Pregnancy or medical conditions related to pregnancy.

(B) Childbirth or medical conditions related to childbirth.

(C) Breastfeeding or medical conditions related to breastfeeding.

(2) “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(s) “Sexual orientation” means heterosexuality, homosexuality, and bisexuality.

(t) “Supervisor” means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(u) “Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors:

(1) The nature and cost of the accommodation needed.

(2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons

employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.

(3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.

(4) The type of operations, including the composition, structure, and functions of the workforce of the entity.

(5) The geographic separateness or administrative or fiscal relationship of the facility or facilities. [2013]

§12940. Unlawful Employment Practices; Discrimination

■ It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, ■ genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of

spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(A) This part does not prohibit an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, ■ genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, ■ genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, ■ genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin,

ancestry, physical disability, mental disability, medical condition, ■ genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any intent to make any such limitation, specification or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, ■ genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(5) For purposes of this subdivision, “a person providing services pursuant to a contract” means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer’s work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(l) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person’s religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926.

(2) An accommodation of an individual’s religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (t) of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law. [2015]

§12955. Unlawful Housing Discrimination

■ It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or ■ genetic information of that person.

(b) For the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, or ■ genetic information of any person seeking to purchase, rent, or lease any housing accommodation.

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or ■ genetic information or an intention to make that preference, limitation, or discrimination.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, gender, gender identity, gender expression, sexual orientation, color, race, religion, ancestry, national origin,

familial status, marital status, disability, ■ genetic information, source of income, or on any other basis prohibited by that section. Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing.

(e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or ■ genetic information in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

(f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

(h) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, ancestry, disability, ■ genetic information, source of income, familial status, or national origin.

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, source of income, familial status, disability, or ■ genetic information.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, ancestry, disability, ■ genetic information, familial status, source of income, or national origin.

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, source of income, disability, ■ genetic information, or national origin.

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, ■ genetic information, national origin, source of income, or

ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable. Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void.

(m) As used in this section, “race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or ■ genetic information” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) To use a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.

(p) (1) For the purposes of this section, “source of income” means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this section, a landlord is not considered a representative of a tenant.

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income. [2011]

§12955.2. Familial Status Defined

For purposes of this part, “familial status” means one or more individuals under 18 years of age who reside with a parent, another person with care and legal custody of that individual, a person who has been given care and custody of that individual by a state or local governmental agency that is responsible for the welfare of children, or the designee of that parent or other person with legal custody of any individual under 18 years of age by written consent of the parent or designated custodian. The protections afforded by this part against discrimination on the basis of familial status also apply to any individual who is pregnant, who is in the process of securing legal custody of any individual under 18 years of age, or who is in the process of being given care and custody of any individual under 18 years of age by a state or local governmental agency responsible for the welfare of children. [1992]

§12955.9. Housing for Older Persons Exempted

■ (a) The provisions of this part relating to discrimination on the basis of familial status shall not apply to housing for older persons.

(b) As used in this section, “housing for older persons” means any of the following:

(1) Housing provided under any state or federal program that the Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.

(2) Housing that meets the standards for senior housing in Sections 51.2, 51.3, and 51.4 of the Civil Code, except to the extent that those standards violate the prohibition of familial status discrimination in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations.

(3) Mobilehome parks that meet the standards for “housing for older persons” as defined in the federal Fair Housing Amendments Act of 1988 and implementing regulations.

(c) For purposes of this section, the burden of proof shall be on the owner to prove that the housing qualifies as housing for older persons. [1993]

§12956.1. Mandatory Disclaimer on Copies of Recorded Documents

■ (a) As used in this section, “association,” “governing documents,” and “declaration” have the same meanings as set forth in Sections 4080, 4135, and 4150 or Sections 6528, 6546, and 6552 of the Civil Code.

(b) (1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least ■ 14-point boldface type,⁵⁶ the following:

“If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, ■ genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal ■ fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”

(2) The requirements of paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

(c) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document. [2013]

⁵⁶ See example in footnote 30, page 208 in Civil Code §5300.

§12956.2. Removing Discriminatory Provisions from Recorded Documents

■ (a) A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may record a document titled Restrictive Covenant Modification. The county recorder may choose to waive the fee prescribed for recording and indexing instruments pursuant to Section 27361 in the case of the modification document provided for in this section. The modification document shall include a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive language stricken.

(b) Before recording the modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether the original document contains an unlawful restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability,⁵⁷ national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents and inform the county recorder of its determination. The county recorder shall refuse to record the modification document if the county counsel finds that the original document does not contain an unlawful restriction as specified in this paragraph.

(c) The modification document shall be indexed in the same manner as the original document being modified. It shall contain a recording reference to the original document in the form of a book and page or instrument number, and date of the recording.

(d) Subject to covenants, conditions, and restrictions that were recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the Restrictive Covenant Modification, the restrictions in the Restrictive Covenant Modification, once recorded, are the only restrictions having effect on the property. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(e) The county recorder shall make available to the public Restrictive Covenant Modification forms.

(f) If the holder of an ownership interest of record in property causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the holder of the ownership interest of record who caused the modified recordation.

⁵⁷ Note that “genetic information” was deleted from this location as part of SB-752, the Commercial and Industrial CID bill, in the 2013 legislative session. It was not deleted from all the other places that it had been added, as in Civil Code §51, Govt. Code 12926, etc. The deletion was not mentioned in the bill, is unrelated to the subject matter of the bill and appears to have been inadvertent.

(g) This section does not apply to persons holding an ownership interest in property that is part of a common interest development as defined in Section 4100 or 6534 of the Civil Code if the board of directors of that common interest development is subject to the requirements of Section 4225 or of subdivision (b) of Section 6606 of the Civil Code. [2013]

§53069.81. Supplemental Law Enforcement Services; Orange County Pilot Project (operative until January 1, 2017)

■ (a) The Board of Supervisors of the County of Orange or the city council of a city within that county may, as part of a pilot project, contract to provide supplemental law enforcement services to homeowners' associations, as defined in Section 4080 of the Civil Code, on an occasional or ongoing basis to enforce the Vehicle Code on a homeowners' association's privately owned and maintained road, as provided by Section 21107.7 of the Vehicle Code.

(b) Contracts entered into pursuant to this section shall provide for full reimbursement to the county or city of the actual costs of providing those services, as determined by the county auditor or auditor-controller or the city auditor.

(c) (1) The services provided pursuant to this section shall be rendered by regularly appointed full-time peace officers, as defined in Section 830.1 of the Penal Code.

(2) Notwithstanding paragraph (1), services provided in connection with special events or occurrences, as specified in paragraph (1) of subdivision (a) of Section 830.6 of the Penal Code, may be rendered by Level I reserve peace officers, as defined in paragraph (2) of subdivision (a) of Section 830.6 of the Penal Code, who are authorized to exercise the powers of a peace officer, as defined in Section 830.1 of the Penal Code, if regularly appointed full-time peace officers are not available to fill the positions as required in the contract.

(d) Peace officer rates of pay shall be governed by a memorandum of understanding.

(e) A contract entered into pursuant to this section shall encompass only law enforcement duties and not services authorized to be provided by a private patrol operator, as defined in Section 7582.1 of the Business and Professions Code.

(f) Contracting for law enforcement services, as authorized by this section, shall not reduce the normal and regular ongoing service that the county or city or agency of the county or city otherwise would provide.

(g) Prior to contracting for ongoing services under subdivision (a), the board of supervisors or city council shall discuss the contract and the requirements of this section at a duly noticed public hearing.

(h) On or before June 30, 2016, if the board of supervisors or city council enters into the contract authorized pursuant to subdivision (a), the Department of Justice shall prepare and submit to the Legislature a report on the impact that a contract entered into pursuant to this section has on the provision of law enforcement services to people in communities within the county that are not served by supplemental police services provided pursuant to this section.

This report shall be submitted in compliance with Section 9795. If the board of supervisors or city council enters into the contract, the board of supervisors or city council, as appropriate, shall reimburse the department for the costs of preparing and submitting the report and may seek reimbursement from the homeowners' association for these costs.

(i) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date. [2013]

1267.8. Intermediate Care Facility for Six or Fewer Developmentally Disabled Persons is Residential Use of Property

■ (a) An intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing or a congregate living health facility shall meet the same fire safety standards adopted by the State Fire Marshal pursuant to Sections 13113, 13113.5, 13143, and 13143.6 that apply to community care facilities, as defined in Section 1502, of similar size and with residents of similar age and ambulatory status. No other state or local regulations relating to fire safety shall apply to these facilities and the requirements specified in this section shall be uniformly enforced by state and local fire authorities.

(b) An intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing or a congregate living health facility shall meet the same seismic safety requirements applied to community care facilities of similar size with residents of similar age and ambulatory status. No additional requirements relating to seismic safety shall apply to such facilities.

(c) Whether or not unrelated persons are living together, an intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing which serves six or fewer persons or a congregate living health facility shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance that is related to the residential use of property pursuant to this article.

(d) For the purposes of all local ordinances, an intermediate care facility/developmentally disabled habilitative that serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing that serves six or fewer persons or a congregate living health facility shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or persons with mental health disorders, foster care home, guest home, rest home, community residence, or other similar term that implies that the intermediate care facility/developmentally disabled habilitative or intermediate care facility/developmentally disabled—nursing or a congregate living health facility is a business run for profit or differs in any other way from a single-family residence.

(e) This section does not forbid a city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of an intermediate care facility/developmentally disabled habilitative that serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing that serves six or fewer persons or a congregate living health facility as long as those restrictions are identical to those applied to other single-family residences.

(f) This section does not forbid the application to an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing or a congregate living health facility of any local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity, as long as that ordinance does not distinguish intermediate care facility/developmentally disabled habilitative that serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing or a congregate living health facility from other single-family dwellings and that the ordinance does not distinguish residents of the intermediate care facility/developmentally disabled habilitative or intermediate care facility/developmentally disabled—nursing that serves six or fewer persons or a congregate living health facility from persons who reside in other single-family dwellings.

(g) No conditional use permit, zoning variance, or other zoning clearance shall be required of an intermediate care facility/developmentally disabled habilitative that serves six or fewer persons or an intermediate care facility/developmentally disabled—nursing that serves six or fewer persons or a congregate living health facility that is not required of a single-family residence in the same zone.

(h) Use of a single-family dwelling for purposes of an intermediate care facility/developmentally disabled habilitative serving six or fewer persons or an intermediate care facility/developmentally disabled—nursing that serves six or fewer persons or a congregate living health facility shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section supersedes Section 13143 to the extent these provisions are applicable to intermediate care facility/developmentally disabled habilitative providing care for six or fewer residents or an intermediate care facility/developmentally disabled—nursing serving six or fewer persons or a congregate living health facility. [2014]

1566.3. Residential Care Facility for Six or Fewer Persons is Residential Use of Property

■ (a) Whether or not unrelated persons are living together, a residential facility that serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance that relates to the residential use of property pursuant to this article.

(b) For the purpose of all local ordinances, a residential facility that serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or persons with mental health disorders, foster care home, guest home, rest home, community residence, or other similar term that implies that the residential facility is a business run for profit or differs in any other way from a family dwelling.

(c) This section shall not be construed to prohibit a city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential facility that serves six or fewer persons as long as those restrictions are identical to those applied to other family dwellings of the same type in the same zone.

(d) This section shall not be construed to prohibit the application to a residential care facility of any local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities that serve six or fewer persons from other family dwellings of the same type in the same zone and if the ordinance does not distinguish residents of the residential care facilities from persons who reside in other family dwellings of the same type in the same zone. Nothing in this section shall be construed to limit the ability of a local public entity to fully enforce a local ordinance, including, but not limited to, the imposition of fines and other penalties associated with violations of local ordinances covered by this section.

(e) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility that serves six or fewer persons that is not required of a family dwelling of the same type in the same zone.

(f) Use of a family dwelling for purposes of a residential facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1. 5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent such sections are applicable to residential facilities providing care for six or fewer residents.

(g) For the purposes of this section, "family dwelling," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments. [2014]

§1566.5. Residential Facility for Six or Fewer Persons is Residential Use of Property under Contracts, Deeds or Covenants⁵⁸

■ For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, a residential facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary. [1978]

⁵⁸ Section 1566.5 applies to all residential care facilities covered by the California Community Care Facilities Act (H&S Code §§1500-1567.87).

§1568.0831. Residential Care Facility for Six or Fewer Persons with Chronic-Life Threatening Illness is Residential Use of Property

■ (a) (1) Whether or not unrelated persons are living together, a residential care facility that serves six or fewer persons shall be considered a residential use of property for the purposes of this chapter. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance that relates to the residential use of property pursuant to this chapter.

(2) For the purpose of all local ordinances, a residential care facility that serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution, guest home, rest home, community residence, or other similar term that implies that the residential care facility is a business run for profit or differs in any other way from a family dwelling.

(3) This section shall not be construed to prohibit a city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential care facility that serves six or fewer persons as long as the restrictions are identical to those applied to other family dwellings of the same type in the same zone.

(4) This section shall not be construed to prohibit the application to a residential care facility of any local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities that serve six or fewer persons from other family dwellings of the same type in the same zone and if the ordinance does not distinguish residents of residential care facilities from persons who reside in other family dwellings of the same type in the same zone.

(5) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential care facility that serves six or fewer persons that is not required of a family dwelling of the same type in the same zone.

(6) Use of a family dwelling for purposes of a residential care facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent these sections are applicable to residential care facilities serving six or fewer persons.

(b) No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to a residential care facility because of a failure to comply with local ordinances from which the facilities are exempt under subdivision (a), provided that the applicant otherwise qualifies for the fire clearance, license, permit, or similar authorization.

(c) For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, a residential care facility that serves six or fewer persons shall be considered a residential

use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

(d) Nothing in this chapter shall authorize the imposition of rent regulations or controls for licensed residential care facilities.

(e) Licensed residential care facilities shall not be subject to controls on rent imposed by any state or local agency or other local government or entity. [2014]

1569.85. Residential Care Facility for the Elderly with Six or Fewer Persons is Residential Use of Property

■ (a) Whether or not unrelated persons are living together, a residential care facility for the elderly that serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance that relates to the residential use of property pursuant to this article.

(b) For the purpose of all local ordinances, a residential care facility for the elderly that serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of the aged, guest home, rest home, community residence, or other similar term that implies that the residential care facility for the elderly is a business run for profit or differs in any other way from a family dwelling.

(c) This section shall not be construed to forbid a city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential care facility for the elderly that serves six or fewer persons as long as the restrictions are identical to those applied to other family dwellings of the same type in the same zone.

(d) This section shall not be construed to forbid the application to a residential care facility for the elderly of any local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities for the elderly that serve six or fewer persons from other family dwellings of the same type in the same zone and if the ordinance does not distinguish residents of the residential care facilities for the elderly from persons who reside in other family dwellings of the same type in the same zone.

(e) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential care facility for the elderly that serves six or fewer persons that is not required of a family dwelling of the same type in the same zone.

(f) Use of a family dwelling for purposes of a residential care facility for the elderly serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent these sections are applicable to residential care facilities for the elderly providing care for six or fewer residents.

(g) For the purposes of this section, “family dwelling,” includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments. [2014]

§1596.775. Family Day Care; Legislative Finding and Declarations

■ The Legislature finds and declares all of the following:

(a) There is a severe shortage of child care for schoolage children throughout California, with many schoolage children going home to an empty, unsupervised setting after school.

(b) For nearly five years several counties have participated in a pilot program that allows for a family day care home to care for two additional children above the current number allowed pursuant to licensing regulations.

(c) As part of the pilot program, a study was conducted by the Assembly Office of Research. The results of the study demonstrated that the pilot program achieved all of the following results:

(1) Increased access to care for schoolage children.

(2) Participating providers encountered few problems and strongly support expansion of the program.

(3) Parents of children in the pilot program family day care homes strongly support the program.

(4) Participating providers with additional children were no more likely to receive substantiated complaints from licensing officials than nonparticipants.

(5) Local governments and planning officials saw little or no impact on their licensing policies and procedures.

(6) Overall quality of care was not adversely affected. [1996]

§1596.78. Family Day Care Home

(a) “Family day care home” means a home that regularly provides care, protection, and supervision for 14 or fewer children, in the provider’s own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family day care home or a small family day care home.

(b) “Large family day care home” means a home that provides family day care for 7 to 14 children, inclusive, including children under the age of 10 years who reside at the home, as set forth in Section 1597.465 and as defined in regulations.

(c) “Small family day care home” means a home that provides family day care for eight or fewer children, including children under the age of 10 years who reside at the home, as set forth in Section 1597.44 and as defined in regulations. [1996]

§1596.790. Planning Agency Defined

“Planning agency” means the agency designated pursuant to Section 65100 of the Government Code. [1984]

§1597.30. Legislative Findings and Declarations

The Legislature finds and declares:

(a) It has a responsibility to ensure the health and safety of children in family homes that provide day care.

(b) That there are insufficient numbers of regulated family day care homes in California.

(c) There will be a growing need for child day care facilities due to the increase in working parents.

(d) Many parents prefer child day care located in their neighborhoods in family homes.

(e) There should be a variety of child care settings, including regulated family day care homes, as suitable alternatives for parents.

(f) That the program to be operated by the state should be cost effective, streamlined, and simple to administer in order to ensure adequate care for children placed in family day care homes, while not placing undue burdens on the providers.

(g) That the state should maintain an efficient program of regulating family day care homes that ensures the provision of adequate protection, supervision, and guidance to children in their homes. [1983]

§1597.36. Written Documentation to Providers of Need for Repairs, Renovations, or Additions

The department shall provide written documentation to providers of the need for repairs, renovations, or additions when requested for an application for a loan guarantee pursuant to subdivision (d) of Section 8277.6 of the Education Code whenever the repairs, renovations, or additions are required by the department in order for the licensee to maintain or obtain a license for more than six children. [1997]

§1597.40. Exclusion of Municipal Zoning, Building, and Fire Codes and Regulations; Invalidity of Restrictive Covenants

■ (a) It is the intent of the Legislature that family day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development. It is the public policy of this state to provide children in a family day care home the same home environment as provided in a traditional home setting.

The Legislature declares this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal ■ zoning, building and fire codes and regulations governing the use or occupancy of family day care homes for children, except as specifically provided for in this chapter, and to prohibit any restrictions relating to the use of single-family

residences for family day care homes for children except as provided by this chapter.

(b) Every provision in a written instrument entered into relating to real property which purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family day care home for children, is void and every restriction or prohibition in any such written instrument as to the use or occupancy of the property as a family day care home for children is void.

(c) Except as provided in subdivision (d), every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.

(d) (1) A prospective family day care home provider, who resides in a rental property, shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family day care home.

(2) For family day care home providers who have relocated an existing licensed family day care home program to a rental property on or after January 1, 1997, less than 30 days' written notice may be provided in cases where the department approves the operation of the new location of the family day care home in less than 30 days, or the home is licensed in less than 30 days, in order that service to the children served in the former location not be interrupted.

(3) A family day care home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.

(4) Notwithstanding any other provision of law, upon commencement of, or knowledge of, the operation of a family day care home on his or her property, the landlord or property owner may require the family day care home provider to pay an increased security deposit for operation of the family day care home. The increase in deposit may be required notwithstanding that a lesser amount is required of tenants who do not operate family day care homes. In no event, however, shall the total security deposit charged exceed the maximum allowable under existing law.

(5) Section 1596.890 shall not apply to this subdivision.

[1996]

§1597.43. Family Day Care Homes; Definition and Distinction

The Legislature finds and declares all of the following:

(a) Family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses. Family day care homes draw clients and vehicles to their sites during a limited time of day and do not require the attendance of a large number of employees and equipment.

(b) The uses of congregate care facilities are distinguishable from the uses of family day care homes operated under the standards of state law. For purposes of this section, a “congregate care facility” means a “residential facility,” as defined in paragraph (1) of subdivision (a) of Section 1502. Congregate care facilities are used throughout the day and night, and the institutional uses of these facilities are primary uses of the facilities, not accessory uses, and draw a large number of employees, vehicles, and equipment compared to that drawn to family day care homes.

(c) The expansion permitted for family day care homes by Sections 1597.44 and 1597.465 is not appropriate with respect to congregate care facilities, or any other facilities with quasi-institutional uses. Therefore, with these provisions, the Legislature does not intend to alter the legal standards governing congregate care facilities and these provisions are not intended to encourage, or be a precedent for, changes in statutory and case law governing congregate care facilities. [1996]

§1597.44. Small Family Day Care Homes

A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

(a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.

(b) No more than two infants are cared for during any time when more than six children are cared for.

(c) The licensee notifies each parent that the facility is caring for two additional schoolage children and that there may be up to seven or eight children in the home at one time.

(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented. [2003]

§1597.45. Small Family Day Care Homes – Requirements and Limitations

All of the following shall apply to small family day care homes:

(a) The use of a single-family residence as a small family day care home shall be considered a residential use of property for the purposes of all local ordinances.

(b) No local jurisdiction shall impose a business license, fee, or tax for the privilege of operating a small family day care home.

(c) Use of a single-family dwelling for purposes of a small family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law) or for purposes of local building codes.

(d) A small family day care home shall not be subject to Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of Chapter 1 of Part 2 of Division 12, except that a small family day care home shall contain a fire extinguisher and smoke detector device that meet

standards established by the State Fire Marshal and one or more functioning carbon monoxide detectors that meet the requirements of Chapter 8 (commencing with Section 13260) of Part 2 of Division 12. The department shall account for the presence of the carbon monoxide detectors during inspections. [2014]

§1597.46. Large Family Day Care Homes

All of the following shall apply to large family day care homes:

(a) A city, county, or city and county shall not prohibit large family day care homes on lots zoned for single-family dwellings, but shall do one of the following:

(1) Classify these homes as a permitted use of residential property for ■ zoning purposes.

(2) Grant a nondiscretionary permit to use a lot ■ zoned for a single-family dwelling to any large family day care home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to those homes, and complies with subdivision (e) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise level generated by children. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, or if there is no zoning administrator by the person or persons designated by the planning agency to grant these permits, upon the certification without a hearing.

(3) Require any large family day care home to apply for a permit to use a lot ■ zoned for single-family dwellings. The zoning administrator, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits shall review and decide the applications. The use permit shall be granted if the large family day care home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes, and complies with subdivision (e) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise levels generated by children. The local government shall process any required permit as economically as possible.

Fees charged for review shall not exceed the costs of the review and permit process. An applicant may request a verification of fees, and the city, county, or city and county shall provide the applicant with a written breakdown within 45 days of the request. Beginning July 1, 2007, the application form for large family day care home permits shall include a statement of the applicant's right to request the written fee verification.

Not less than 10 days prior to the date on which the decision will be made on the application, the zoning administrator or person

designated to handle the use permits shall give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a 100-foot radius of the exterior boundaries of the proposed large family day care home. A hearing on the application for a permit issued pursuant to this paragraph shall not be held before a decision is made unless a hearing is requested by the applicant or other affected person. The applicant or other affected person may appeal the decision. The appellant shall pay the cost, if any, of the appeal.

(b) In connection with any action taken pursuant to paragraph (2) or (3) of subdivision (a), a city, county, or city and county shall do all of the following:

(1) Upon the request of an applicant, provide a list of the permits and fees that are required by the city, county, or city and county, including information about other permits that may be required by other departments in the city, county, or city and county, or by other public agencies. The city, county, or city and county shall, upon request of any applicant, also provide information about the anticipated length of time for reviewing and processing the permit application.

(2) Upon the request of an applicant, provide information on the breakdown of any individual fees charged in connection with the issuance of the permit.

(3) If a deposit is required to cover the cost of the permit, provide information to the applicant about the estimated final cost to the applicant of the permit, and procedures for receiving a refund from the portion of the deposit not used.

(c) A large family day care home shall not be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) Use of a single-family dwelling for the purposes of a large family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law), or for purposes of local building and fire codes.

(e) Large family day care homes shall be considered as single-family residences for the purposes of the State Uniform Building Standards Code and local building and fire codes, except with respect to any additional standards specifically designed to promote the fire and life safety of the children in these homes adopted by the State Fire Marshal pursuant to this subdivision. The State Fire Marshal shall adopt separate building standards specifically relating to the subject of fire and life safety in large family day care homes which shall be published in Title 24 of the California Code of Regulations. These standards shall apply uniformly throughout the state and shall include, but not be limited to: (1) the requirement that a large family day care home contain a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal; (2) specification as to the number of required exits from the home; and (3) specification as to the floor or floors on which day care may be provided. Enforcement of these provisions shall be in accordance with Sections 13145 and 13146. No city, county, city and county, or

district shall adopt or enforce any building ordinance or local rule or regulation relating to the subject of fire and life safety in large family day care homes which is inconsistent with those standards adopted by the State Fire Marshal, except to the extent the building ordinance or local rule or regulation applies to single-family residences in which day care is not provided.

(f) The State Fire Marshal shall adopt the building standards required in subdivision (d) and any other regulations necessary to implement this section. [2007]

§1597.465. Large Family Day Care Homes—Requirements and Limitations

A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

(a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.

(b) No more than three infants are cared for during any time when more than 12 children are being cared for.

(c) The licensee notifies a parent that the facility is caring for two additional schoolage children and that there may be up to 13 or 14 children in the home at one time.

(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented. [2003]

§1597.47. Applicability of Chapter

The provisions of this chapter shall not be construed to preclude any city, county, or other local public entity from placing restrictions on building heights, setback, or lot dimensions of a family day care facility as long as such restrictions are identical to those applied to other single-family residences. The provisions of this chapter shall not be construed to preclude the application to a family day care facility for children of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. The provisions of this chapter also shall not be construed to prohibit or restrict the abatement of nuisances by a city, county, or city and county. However, such ordinance or nuisance abatement shall not distinguish family day care facilities from other single-family dwellings, except as otherwise provided in this chapter. [1983]

§1597.52. Limitation on Licensing Reviews; Restrictions Regarding Large Family Day Care Homes

(a) Licensing reviews of a family day care home for children shall be limited to health and safety considerations and shall not include any reviews of the content of any educational or training programs of the facility.

(b) No home shall be licensed or registered as a large family day care home after January 1, 1984, unless the provider has at least one year's experience as a regulated small family day care home operator or as an

administrator of a licensed day care center. The director may waive this requirement upon a finding that the applicant has sufficient qualifying experience. [1985]

§1597.53. Exclusive Licensing Authority

No family day care home for children shall be licensed under Chapter 3 (commencing with Section 1500), but shall be subject to licensure exclusively in accordance with this chapter and Chapter 3.4 (commencing with Section 1596.70) which shall apply to family day care homes. [1984]

§1597.531. Mandatory Liability Insurance or Bond

■ (a) All family day care homes for children shall maintain in force either liability insurance covering injury to clients and guests in the amount of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) in the total annual aggregate, sustained on account of the negligence of the licensee or its employees, or a bond in the aggregate amount of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or the bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home which meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to standards established by the state. If the provider does not own the premises used as the family day care home, the affidavit shall also state that the parent has been informed that the liability insurance, if any, of the owner of the property or the homeowners' association, as appropriate, may not provide coverage for losses arising out of, or in connection with, the operation of the family day care home, except to the extent that the losses are caused by, or result from, an action or omission by the owner of the property or the homeowners' association, for which the owner of the property or the homeowners' association would otherwise be liable under the law. These affidavits shall be on a form provided by the department and shall be reviewed at each licensing inspection.

(b) A family day care home that maintains liability insurance or a bond pursuant to this section, and that provides care in premises that are rented or leased or uses premises which share common space governed by a homeowners' association, shall ■ name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:

(1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.

(2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.

(3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.

(c) As used in this section, “homeowners’ association” means an association of a common interest development, as defined in Sections 4080 and 4100 of the Civil Code. [2012]⁵⁹

§1597.54. Applications for Initial Licensure; Preexisting Licenses

All family day care homes for children, shall apply for a license under this chapter, except that any home which on June 28, 1981, had a valid and unexpired license to operate as a family day care home for children under other provisions of law shall be deemed to have a license under this chapter for the unexpired term of the license at which time a new license may be issued upon fulfilling the requirements of this chapter.

An applicant for licensure as a family day care home for children shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, all of the following:

(a) A brief statement confirming that the applicant is financially secure to operate a family day care home for children. The department shall not require any other specific or detailed financial disclosure.

(b) (1) Evidence that the small family day care home contains a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal under subdivision (d) of Section 1597.45, or evidence that the large family day care home meets the standards established by the State Fire Marshal under subdivision (d) of Section 1597.46.

(2) Evidence satisfactory to the department that there is a fire escape and disaster plan for the facility and that fire drills and disaster drills will be conducted at least once every six months. The documentation of these drills shall be maintained at the facility on a form prepared by the department and shall include the date and time of the drills.

(c) The fingerprints of any applicant of a family day care home license, and any other adult, as required under subdivision (b) of Section 1596.871.

(d) Evidence of a current tuberculosis clearance, as defined in regulations that the department shall adopt, for any adult in the home during the time that children are under care. *This requirement may be satisfied by a current certificate, as defined in subdivision (f) of Section 121525, that indicates freedom from infectious tuberculosis as set forth in Section 121525.*

(e) Commencing September 1, 2016, evidence of current immunity or exemption from immunity, as described in Section 1597.622, for the applicant and any other person who provides care and supervision to the children.

⁵⁹ We have omitted H&S §§1597.54-1597.55b which pertain more to licensing of family day care homes. These sections are included on the Digital Version of the Resource Book. If you wish to see the full text, you can retrieve it at <http://leginfo.legislature.ca.gov/faces/codes.xhtml> by clicking the Health & Safety Code, then “Expand all” and scrolling to the line that includes the sections you wish to see and clicking on those links.

(f) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and Chapter 3.4 (commencing with Section 1596.70) and the regulations adopted pursuant to those chapters.

(g) Evidence satisfactory to the department that the applicant and all other persons residing in the home are of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references.

(h) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(i) Other information as may be required by the department for the proper administration and enforcement of the act. **[2015]**

§1597.541. Regulations Relating to Age-appropriate Immunizations

(a) The department shall adopt regulations regarding age-appropriate immunization requirements for enrolled children for family day care homes.

(b) All family day care homes for children shall maintain evidence that enrolled children have met the age-appropriate immunization requirements adopted pursuant to this section. [1992]

§1597.542. Review of Regulations Relating to Operation of Child Day Care Facilities

(a) The Division of Child Care Licensing in the department shall clearly differentiate degrees of violations of the regulations adopted for purposes of this chapter by the impact upon children in care.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the ■ Welfare and Institutions Code. [1993]

§1597.55a. Site Visits, Unannounced Visits, and Spot Checks (effective June 24, 2015, operative January 1, 2016, inoperative and repealed as of January 1, 2017)

Every family day care home shall be subject to unannounced ***inspections*** by the department as provided in this section. The department shall ***inspect*** these facilities as often as necessary to ensure the quality of care provided.

(a) The department shall conduct an announced site visit prior to the initial licensing of the applicant.

(b) The department shall conduct an annual unannounced ***inspection of*** a facility under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual ***inspection***.

(3) When an accusation against a licensee is pending.

(4) In order to verify that a person who has been ordered out of a family day care home by the department is no longer at the facility.

(c) (1) The department shall conduct annual unannounced inspections of no less than 20 percent of facilities not subject to an inspection under subdivision (b). These unannounced inspections shall be conducted based on a random sampling methodology developed by the department.

(2) If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by 10 percent of the facilities not subject to an inspection under subdivision (b). The department may request additional resources to increase the random sample by 10 percent.

(d) Under no circumstance shall the department inspect a licensed family day care home less often than once every five years.

(e) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.

(f) The department or licensing agency shall make an unannounced site inspection on the basis of a complaint and a followup inspection as provided in Section 1596.853.

(g) An unannounced site inspection shall adhere to both of the following conditions:

(1) The inspection shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(h) The department shall implement this section during periods that Section 1597.55b is not being implemented in accordance with Section 18285.5 of the ■ Welfare and Institutions Code.

(i) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date. [2015]

§1597.55a. Site Visits, Unannounced Visits, and Spot Checks (effective June 24, 2015, operative January 1, 2017)

Every family day care home shall be subject to unannounced inspections by the department as provided in this section. The department shall inspect these facilities as often as necessary to ensure the quality of care provided.

(a) The department shall conduct an announced site inspection prior to the initial licensing of the applicant.

(b) The department shall conduct an annual unannounced inspection of a facility under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual inspection.

(3) When an accusation against a licensee is pending.

(4) In order to verify that a person who has been ordered out of a family day care home by the department is no longer at the facility.

(c) (1) The department shall conduct annual unannounced inspections of no less than 30 percent of facilities not subject to an inspection under subdivision (b).

(2) These unannounced inspections shall be conducted based on a random sampling methodology developed by the department.

(d) The department shall inspect a licensed family day care home at least once every three years.

(e) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.

(f) The department or licensing agency shall make an unannounced site inspection on the basis of a complaint and a followup inspection as provided in Section 1596.853.

(g) An unannounced site inspection shall adhere to both of the following conditions:

(1) The inspection shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(h) The department shall implement this section during periods that Section 1597.55b is not being implemented in accordance with Section 18285.5 of the ■ Welfare and Institutions Code.

(i) This section shall become operative on January 1, 2017.

[2015]

§1597.55b. Site Visitation

No site visits, unannounced visits or spot checks, shall be made under this chapter except as provided in this section.

(a) An announced site visit shall be required prior to the licensing of the applicant.

(b) A public agency under contract with the department may make spot checks if they do not result in any cost to the state. However, spot checks shall not be required by the department.

(c) An unannounced site visit to all licensed family day care homes shall be made annually and as often as necessary to ensure compliance.

(d) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a follow-up visit as provided in Section 1596.853. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint.

(e) The department shall annually make unannounced spot visits on 20 percent of all family day care homes for children licensed under this chapter. The unannounced visits may be made at any time, and shall be in addition to the visits required by subdivisions (b) and (c).

(f) An unannounced site visit shall comply with both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(g) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the ■ Welfare and Institutions Code. [2003]

§1597.56. Notice of Deficiencies; Time for Compliance; Correction

(a) The department shall notify a family day care home in writing of all deficiencies in its compliance with this act and the rules and regulations adopted pursuant to this act, and shall set a reasonable length of time for compliance by the family day care home.

Upon a finding of noncompliance, the department may levy a civil penalty that shall be paid to the department each day until the department finds the family day care home in compliance.

(b) In developing a plan of correction, both the licensee and the department shall give due consideration to the following factors:

(1) The gravity of the violation.

(2) The history of previous violations.

(3) The possibility of a threat to the health or safety of any child in the facility.

(4) The number of children affected by the violation.

(5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) The department shall adopt regulations establishing procedures for the imposition of civil penalties under this section. [1993]

§1597.57. Duties of Department

The department shall do all of the following:

(a) Develop and utilize one application form for all family day care homes for children requesting a new license. [1992]

(b) Establish for parents a consumer education program annually on the law and regulations governing family day care homes for children under this chapter and the role of the state and other public entities and local associations in relation to family day care homes for children. In planning this program, the department shall seek the assistance of other public entities and local associations.

(c) Administer an orientation program for new operators of family day care homes for children that may be conducted directly by the department or by contract with local governments or family day care home associations. [1992]

§1597.59. Period Within Which to Grant or Deny License; Criminal Records

The department and the local agencies with which it contracts for the licensing of family day care homes for children shall grant or deny a license to a family day care home for children within 30 days after receipt of all appropriate licensing application materials as determined by the department, provided both of the following conditions are met:

(a) A site visit has been completed and the family day care home has been found to be in compliance with licensing standards.

(b) The applicant and each person described by subdivision (b) of Section 1596.871 has obtained a criminal record clearance, or been granted a criminal record exemption by the department or the local contracting agency.

The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials. [1997]

§1597.61. Operation of Unlicensed Facility; Cease and Desist Orders

(a) When the department determines that a family day care home for children is operating without a license and notifies the unlicensed provider of the requirement for the license, the licensing agency may issue a cease and desist order only if it finds and documents that continued operation of the facility will be dangerous to the health and safety of the children or if a license held by the facility has been revoked by the department within two years preceding the determination of unlicensed operation. In all other cases where the licensing agency determines such a facility is operating without a license and notifies the unlicensed provider of the requirements for the license, the licensing agency may issue a cease and desist order only if the unlicensed provider does not apply for a license within a reasonable time after the notice.

(b) If an unlicensed family day care home fails to respond to a cease and desist order issued pursuant to subdivision (a), or if the department determines it necessary to protect the immediate health and safety of the children, the licensing agency may bring an action to enjoin such a home from continuing to operate pursuant to Section 1596.89.

(c) The district attorney of a county shall, upon application by the department, institute and conduct the prosecution of any action brought by the licensing agency against an unlicensed family day care home located in that county. [1988]

§1597.62. Civil Penalty for Violation of Chapter

(a) The department may impose civil penalties of twenty-five dollars (\$25) per day for uncorrected violations that present an immediate or potential risk to the health and safety of children in care. The penalties shall be imposed in accordance with Section 1596.893.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the ■ Welfare and Institutions Code. [1993]

§1597.621. Operating Family Day Care Homes Deemed to Have Been Issued License; Requirements

■ Family day care homes that, on December 31, 1983, have a valid unexpired registration to operate as a family day care home for children pursuant to Section 1597.62 in one of the pilot counties shall be deemed to be issued a family day care license effective January 1, 1984. Licensure pursuant to this section shall not require a visit pursuant to the requirement set forth in subdivision (a) of Section 1597.55. However, all other requirements of licensing shall continue to be met. Complaint and revocation procedures may be enforced. [1992]

§1597.622 Employees and Volunteers Must Be Immunized Against Influenza

(a) (1) Commencing September 1, 2016, a person shall not be employed or volunteer at a family day care home if he or she has not been immunized against influenza, pertussis, and measles. Each employee and volunteer shall receive an influenza vaccination between August 1 and December 1 of each year.

(2) If a person meets all other requirements for employment or volunteering, as applicable, but needs additional time to obtain and provide his or her immunization records, the person may be employed or volunteer conditionally for a maximum of 30 days upon signing and submitting a written statement attesting that he or she has been immunized as required.

(b) A person is exempt from the requirements of this section only under any of the following circumstances:

(1) The person submits a written statement from a licensed physician declaring that because of the person's physical condition or medical circumstances, immunization is not safe.

(2) The person submits a written statement by a licensed physician providing that the person has evidence of current immunity to the diseases described in subdivision (a).

(3) The person submits a written declaration that he or she has declined the influenza vaccination. This exemption applies only to the influenza vaccine.

(4) The person was hired after December 1 of the previous year and before August 1 of the current year. This exemption applies only to the influenza vaccine during the first year of employment or volunteering.

(c) The family day care home shall maintain documentation of the required immunizations or exemptions from immunization, as set forth in this section, in the person's personnel record that is maintained by the family day care home.

(d) For purposes of this section, "volunteer" means any nonemployee who provides care and supervision to children in care.

§1799.102. Good Samaritan Law

■ (a) No person who in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency

shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This subdivision applies only to the medical, law enforcement, and emergency personnel specified in this chapter.

(b) (1) It is the intent of the Legislature to encourage other individuals to volunteer, without compensation, to assist others in need during an emergency, while ensuring that those volunteers who provide care or assistance act responsibly.

(2) Except for those persons specified in subdivision (a), no person who in good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency shall be liable for civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This subdivision shall not be construed to alter existing protections from liability for licensed medical or other personnel specified in subdivision (a) or any other law.

(c) Nothing in this section shall be construed to change any existing legal duties or obligations, nor does anything in this section in any way affect the provisions in Section 1714.5 of the Civil Code, as proposed to be amended by Senate Bill 39 of the 2009-10 Regular Session of the Legislature.

(d) The amendments to this section made by the act adding subdivisions (b) and (c) shall apply exclusively to any legal action filed on or after the effective date of that act. [2009]

§1799.103. Emergency Medical Services; Employer Policies

■ (a) An employer shall not adopt or enforce a policy prohibiting an employee from voluntarily providing emergency medical services, including, but not limited to, cardiopulmonary resuscitation, in response to a medical emergency, except as provided in subdivisions (b) and (c).

(b) Notwithstanding subdivision (a), an employer may adopt and enforce a policy authorizing employees trained in emergency services to provide those services. However, in the event of an emergency, any available employee may voluntarily provide emergency medical services if a trained and authorized employee is not immediately available or is otherwise unable or unwilling to provide emergency medical services.

(c) Notwithstanding subdivision (a), an employer may adopt and enforce a policy prohibiting an employee from performing emergency medical services, including, but not limited to, cardiopulmonary resuscitation, on a person who has expressed the desire to forgo resuscitation or other medical interventions through any legally recognized means, including, but not limited to, a do-not-resuscitate order, a Physician Orders for Life Sustaining Treatment form, an advance health care directive, or a legally recognized health care decisionmaker.

(d) This section does not impose any express or implied duty on an employer to train its employees regarding emergency medical services or cardiopulmonary resuscitation. [2013]

11834.23. Alcoholism or Drug Abuse Recovery or Treatment Facility for Six or Fewer Persons is Residential Use of Property

■ (a) Whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance that relates to the residential use of property pursuant to this article.

(b) For the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or persons with mental health disorders, foster care home, guest home, rest home, community residence, or other similar term that implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a single-family residence.

(c) This section shall not be construed to forbid a city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of an alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons as long as the restrictions are identical to those applied to other single-family residences.

(d) This section shall not be construed to forbid the application to an alcoholism or drug abuse recovery or treatment facility of any local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. However, the ordinance shall not distinguish alcoholism or drug abuse recovery or treatment facilities that serve six or fewer persons from other single-family dwellings or distinguish residents of alcoholism or drug abuse recovery or treatment facilities from persons who reside in other single-family dwellings.

(e) No conditional use permit, zoning variance, or other zoning clearance shall be required of an alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons that is not required of a single-family residence in the same zone.

(f) Use of a single-family dwelling for purposes of an alcoholism or drug abuse recovery facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent those sections are applicable to alcoholism or drug abuse recovery or treatment facilities serving six or fewer residents. [2014]

11834.25. Alcoholism or Drug Abuse Recovery or Treatment Facility for Six or Fewer Persons is Residential Use of Property under Covenants

■ **For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary. [1989]**

§13113.7. Smoke Alarms

(a) (1) Except as otherwise provided in this section, smoke alarms, approved and listed by the State Fire Marshal pursuant to Section 13114 at the time of installation, shall be installed, in accordance with the manufacturer's instructions in each dwelling intended for human occupancy.

(2) For all dwelling units intended for human occupancy for which a building permit is issued on or after January 1, 2014, for alterations, repairs, or additions exceeding one thousand dollars (\$1,000), the permit issuer shall not sign off on the completion of work until the permittee demonstrates that all smoke alarms required for the dwelling unit are devices approved and listed by the State Fire Marshal pursuant to Section 13114.

(3) However, if any local rule, regulation, or ordinance, adopted prior to January 1, 1987, requires installation in a dwelling unit intended for human occupancy of smoke alarms which receive their power from the electrical system of the building and requires compliance with the local rule, regulation, or ordinance at a date subsequent to the dates specified in this section, the compliance date specified in the rule, regulation, or ordinance shall, but only with respect to the dwelling units specified in this section, take precedence over the date specified in this section.

(4) Unless prohibited by local rules, regulations, or ordinances, a battery-operated smoke alarm, which otherwise met the standards adopted pursuant to Section 13114 for smoke alarms at the time of installation, satisfies the requirements of this section.

(5) A fire alarm system with smoke detectors installed in accordance with the State Fire Marshal's regulations may be installed in lieu of smoke alarms required pursuant to paragraph (1) or (2) of this subdivision, or paragraph (3) of subdivision (d).

(b) "Dwelling units intended for human occupancy," as used in this section, includes a one- or two-unit dwelling, lodging house, apartment complex, hotel, motel, condominium, stock cooperative, time-share project, or dwelling unit of a multiple-unit dwelling complex, or factory-built housing as defined in Section 19971. For the purpose of this part, "dwelling units intended for human occupancy" does not include manufactured homes as defined in Section 18007, mobilehomes as defined in Section 18008, and commercial coaches as defined in Section 18001.8.

(c) A high-rise structure, as defined in subdivision (b) of Section 13210 and regulated by Chapter 3 (commencing with Section 13210), and which is used for purposes other than as dwelling units intended for human occupancy, is exempt from the requirements of this section.

(d) (1) The owner shall be responsible for testing and maintaining alarms in hotels, motels, lodging houses, apartment complexes, and other multiple-dwelling complexes in which units are neither rented nor leased.

(2) The owner of a hotel, motel, lodging house, apartment complex, or other multiple-dwelling complex in which units are rented or leased, and commencing January 1, 2014, the owner of a single-family dwelling that is rented or leased, shall be responsible for testing and maintaining alarms required by this section as follows:

(A) An owner or the owner's agent may enter any dwelling unit, efficiency dwelling unit, guest room, and suite owned by the owner for the purpose of installing, repairing, testing, and maintaining single station smoke alarms required by this section. Except in cases of emergency, the owner or owner's agent shall give the tenants of each such unit, room, or suite reasonable notice in writing of the intention to enter and shall enter only during normal business hours. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary.

(B) At the time that a new tenancy is created, the owner shall ensure that smoke alarms are operable. The tenant shall be responsible for notifying the manager or owner if the tenant becomes aware of an inoperable smoke alarm within his or her unit. The owner or authorized agent shall correct any reported deficiencies in the smoke alarm and shall not be in violation of this section for a deficient smoke alarm when he or she has not received notice of the deficiency.

(3) On or before January 1, 2016, the owner of a dwelling unit intended for human occupancy in which one or more units is rented or leased shall install additional smoke alarms, as needed, to ensure that smoke alarms are located in compliance with current building standards. Existing alarms need not be replaced unless the alarm is inoperable. New smoke alarms installed in compliance with current building standards may be battery operated provided the alarms have been approved by the State Fire Marshal for sale in the state. This paragraph shall not apply to fire alarm systems with smoke detectors, fire alarm devices that connect to a panel, or other devices that use a low-power radio frequency wireless communication signal.

(e) A violation of this section is an infraction punishable by a maximum fine of two hundred dollars (\$200) for each offense.

(f) This section shall not affect any rights which the parties may have under any other provision of law because of the presence or absence of a smoke alarm. [2012]

§13113.8. Smoke Alarms; Transfer Disclosures

(a) On and after January 1, 1986, every single-family dwelling and factory-built housing, as defined in Section 19971, which is sold shall have an operable smoke alarm. At the time of installation, the alarm shall be approved and listed by the State Fire Marshal and installed in accordance with the State Fire Marshal's regulations. Unless prohibited by local rules, regulations, or ordinances, a battery-operated smoke alarm that met the standards adopted

pursuant to Section 13114 for smoke alarms at the time of installation shall be deemed to satisfy the requirements of this section.

(b) On and after January 1, 1986, the transferor of any real property containing a single-family dwelling, as described in subdivision (a), whether the transfer is made by sale, exchange, or real property sales contract, as defined in Section 2985 of the Civil Code, shall deliver to the transferee a written statement indicating that the transferor is in compliance with this section. The disclosure statement shall be either included in the receipt for deposit in a real estate transaction, an addendum attached thereto, or a separate document.

(c) The transferor shall deliver the statement referred to in subdivision (b) as soon as practicable before the transfer of title in the case of a sale or exchange, or prior to execution of the contract where the transfer is by a real property sales contract, as defined in Section 2985. For purposes of this subdivision, "delivery" means delivery in person or by mail to the transferee or transferor, or to any person authorized to act for him or her in the transaction, or to additional transferees who have requested delivery from the transferor in writing. Delivery to the spouse of a transferee or transferor shall be deemed delivery to a transferee or transferor, unless the contract states otherwise.

(d) This section does not apply to any of the following:

(1) Transfers which are required to be preceded by the furnishing to a prospective transferee of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code.

(2) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain, or transfers resulting from a decree for specific performance.

(3) Transfers to a mortgagee by a mortgagor in default, transfers to a beneficiary of a deed of trust by a trustor in default, transfers by any foreclosure sale after default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, or transfers by a sale under a power of sale after a default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale.

(4) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(5) Transfers from one coowner to one or more coowners.

(6) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(7) Transfers between spouses resulting from a decree of dissolution of a marriage, from a decree of legal separation, or from a property settlement agreement incidental to either of those decrees.

(8) Transfers by the Controller in the course of administering the Unclaimed Property Law provided for in Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(9) Transfers under the provisions of Chapter 7 (commencing with Section 3691) or Chapter 8 (commencing with Section 3771) of Part 6 of Division 1 of the Revenue and Taxation Code.

(e) No liability shall arise, nor any action be brought or maintained against, any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow, for any error, inaccuracy, or omission relating to the disclosure required to be made by a transferor pursuant to this section. However, this subdivision does not apply to a licensee, as defined in Section 10011 of the Business and Professions Code, where the licensee participates in the making of the disclosure required to be made pursuant to this section with actual knowledge of the falsity of the disclosure.

(f) Except as otherwise provided in this section, this section shall not be deemed to create or imply a duty upon a licensee, as defined in Section 10011 of the Business and Professions Code, or upon any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow, to monitor or ensure compliance with this section.

(g) No transfer of title shall be invalidated on the basis of a failure to comply with this section, and the exclusive remedy for the failure to comply with this section is an award of actual damages not to exceed one hundred dollars (\$100), exclusive of any court costs and attorney's fees.

(h) Local ordinances requiring smoke alarms in single-family dwellings may be enacted or amended. However, the ordinances shall satisfy the minimum requirements of this section.

(i) For the purposes of this section, "single-family dwelling" includes a one- or two-unit dwelling, but does not include a manufactured home as defined in Section 18007, a mobilehome as defined in Section 18008, or a commercial coach as defined in Section 18001.8. [2012]

§17920.3. Substandard Buildings

Any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

(a) Inadequate sanitation shall include, but not be limited to, the following:

(1) Lack of, or improper water closet, lavatory, or bathtub or shower in a dwelling unit.

(2) Lack of, or improper water closets, lavatories, and bathtubs or showers per number of guests in a hotel.

(3) Lack of, or improper kitchen sink.

(4) Lack of hot and cold running water to plumbing fixtures in a hotel.

(5) Lack of hot and cold running water to plumbing fixtures in a dwelling unit.

(6) Lack of adequate heating.

(7) Lack of, or improper operation of required ventilating equipment.

(8) Lack of minimum amounts of natural light and ventilation required by this code.

(9) Room and space dimensions less than required by this code.

(10) Lack of required electrical lighting.

(11) Dampness of habitable rooms.

(12) Infestation of insects, vermin, or rodents as determined by a health officer or, if an agreement does not exist with an agency that has a health officer, the infestation can be determined by a code enforcement officer, as defined in Section 829.5 of the Penal Code, upon successful completion of a course of study in the appropriate subject matter as determined by the local jurisdiction.

(13) Visible mold growth, as determined by a health officer or a code enforcement officer, as defined in Section 829.5 of the Penal Code, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their properly functioning and intended use.

(14) General dilapidation or improper maintenance.

(15) Lack of connection to required sewage disposal system.

(16) Lack of adequate garbage and rubbish storage and removal facilities, as determined by a health officer or, if an agreement does not exist with an agency that has a health officer, the lack of adequate garbage and rubbish removal facilities can be determined by a code enforcement officer as defined in Section 829.5 of the Penal Code.

(b) Structural hazards shall include, but not be limited to, the following:

(1) Deteriorated or inadequate foundations.

(2) Defective or deteriorated flooring or floor supports.

(3) Flooring or floor supports of insufficient size to carry imposed loads with safety.

(4) Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration.

(5) Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety.

(6) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.

(7) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.

(8) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration.

(9) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.

(c) Any ■ nuisance.

(d) All wiring, except that which conformed with all applicable laws in effect at the time of installation if it is currently in good and safe condition and working properly.

(e) All plumbing, except plumbing that conformed with all applicable laws in effect at the time of installation and has been maintained in good condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly, and that is free of cross connections and siphonage between fixtures.

(f) All mechanical equipment, including vents, except equipment that conformed with all applicable laws in effect at the time of installation and that has been maintained in good and safe condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly.

(g) Faulty weather protection, which shall include, but not be limited to, the following:

(1) Deteriorated, crumbling, or loose plaster.

(2) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors.

(3) Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering.

(4) Broken, rotted, split, or buckled exterior wall coverings or roof coverings.

(h) Any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation that, in the opinion of the chief of the fire department or his deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.

(i) All materials of construction, except those that are specifically allowed or approved by this code, and that have been adequately maintained in good and safe condition.

(j) Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rodent harborages, stagnant water, combustible materials, and similar materials or conditions constitute fire, health, or safety hazards.

(k) Any building or portion thereof that is determined to be an unsafe building due to inadequate maintenance, in accordance with the latest edition of the Uniform Building Code.

(l) All buildings or portions thereof not provided with adequate exit facilities as required by this code, except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of their construction and that have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

(m) All buildings or portions thereof that are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this code, except those buildings or portions thereof that conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately

maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

(n) All buildings or portions thereof occupied for living, sleeping, cooking, or dining purposes that were not designed or intended to be used for those occupancies.

(o) Inadequate structural resistance to horizontal forces.

“Substandard building” includes a building not in compliance with Section 13143.2.

However, a condition that would require displacement of sound walls or ceilings to meet height, length, or width requirements for ceilings, rooms, and dwelling units shall not by itself be considered sufficient existence of dangerous conditions making a building a substandard building, unless the building was constructed, altered, or converted in violation of those requirements in effect at the time of construction, alteration, or conversion.

[2015]

§17926. Requirement to Install Carbon Monoxide Detectors

(a) An owner of a dwelling unit intended for human occupancy shall install a carbon monoxide device, approved and listed by the State Fire Marshal pursuant to Section 13263, in each existing dwelling unit having a fossil fuel burning heater or appliance, fireplace, or an attached garage, within the earliest applicable time period as follows:

(1) For all existing single-family dwelling units intended for human occupancy on or before July 1, 2011.

(2) For all existing hotel and motel dwelling units intended for human occupancy on or before January 1, 2016.

(3) For all other existing dwelling units intended for human occupancy on or before January 1, 2013.

(b) With respect to the number and placement of carbon monoxide devices, an owner shall install the devices in a manner consistent with building standards applicable to new construction for the relevant type of occupancy or with the manufacturer’s instructions, if it is technically feasible to do so.

(c) (1) Notwithstanding Section 17995, and except as provided in paragraph (2), a violation of this section is an infraction punishable by a maximum fine of two hundred dollars (\$200) for each offense.

(2) Notwithstanding paragraph (1), a property owner shall receive a 30-day notice to correct. If an owner receiving notice fails to correct within that time period, the owner may be assessed the fine pursuant to paragraph (2).

(d) No transfer of title shall be invalidated on the basis of a failure to comply with this section, and the exclusive remedy for the failure to comply with this section is an award of actual damages not to exceed one hundred dollars (\$100), exclusive of any court costs and attorney’s fees. This subdivision is not intended to affect any duties, rights, or remedies otherwise available at law.

(e) A local ordinance requiring carbon monoxide devices may be enacted or amended if the ordinance is consistent with this chapter.

(f) On or before July 1, 2014, the department shall submit for adoption and approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, building standards for the installation of carbon monoxide detectors in hotel and motel dwelling units intended for human occupancy. In developing these standards, the department shall do both of the following:

(1) Convene and consult a stakeholder group that includes members with expertise in multifamily dwellings, lodging, maintenance, and construction.

(2) Review and consider the most current national codes and standards available related to the installation of carbon monoxide detection.

(g) For purposes of this section and Section 17926.1, “dwelling unit intended for human occupancy” has the same meaning as that term is defined in Section 13262. [2012]

§17926.1 Inspection for Operable Carbon Monoxide Detectors; Timeshares

(a) An owner or owner’s agent of a dwelling unit intended for human occupancy who rents or leases the dwelling unit to a tenant shall maintain carbon monoxide devices in that dwelling unit consistent with this section and Section 17926.

(b) An owner or the owner’s agent may enter any dwelling unit intended for human occupancy owned by the owner for the purpose of installing, repairing, testing, and maintaining carbon monoxide devices required by this section, pursuant to the authority and requirements of Section 1954 of the Civil Code.

(c) The carbon monoxide device shall be operable at the time that the tenant takes possession. A tenant shall be responsible for notifying the owner or owner’s agent if the tenant becomes aware of an inoperable or deficient carbon monoxide device within his or her unit. The owner or owner’s agent shall correct any reported deficiencies or inoperabilities in the carbon monoxide device and shall not be in violation of this section for a deficient or inoperable carbon monoxide device when he or she has not received notice of the deficiency or inoperability.

(d) This section shall not affect any rights which the parties may have under any other provision of law because of the presence or absence of a carbon monoxide device.

(e) For purposes of this section, with respect to a time-share project, “owner” means the homeowners’ association of the time-share project. [2010]

§17926.2 Effect of Changing Carbon Monoxide Detector Standards

(a) If the department, in consultation with the State Fire Marshal, determines that a sufficient amount of tested and approved carbon monoxide devices are not available to property owners to meet the requirements of the Carbon Monoxide Poisoning Prevention Act of 2009 and Sections 17926 and

17926.1, the department may suspend enforcement of the requirements of Sections 17926 and 17926.1 for up to six months. If the department elects to suspend enforcement of these requirements, the department shall notify the Secretary of State of its decision and shall post a public notice that describes its findings and decision on the departmental Internet Web site.

(b) If the California Building Standards Commission adopts or updates building standards relating to carbon monoxide devices, the owner or owner's agent, who has installed a carbon monoxide device as required by Section 17926 or 17926.1, shall not be required to install a new device meeting the requirements of those building standards within an individual dwelling unit until the owner makes application for a permit for alterations, repairs, or additions to that dwelling unit, the cost of which will exceed one thousand dollars (\$1,000). [2010]

§17959. Developing Universal Design Guidelines for Home Construction

■ (a) No later than December 31, 2003, the department shall consider proposed universal design guidelines for home construction or home modifications which may be submitted by the California Department of Aging, the California Commission on Aging, the Department of Rehabilitation, the office of the State Architect of the Department of General Services, the office of the State Fire Marshal, the California Building Standards Commission, or other state departments. Thereafter, the department, without significantly impacting housing cost and affordability, shall, in consultation with these agencies, develop guidelines and at least one model ordinance for new construction and home modifications that is consistent with the principles of universal design as promulgated by the Center for Universal Design at North Carolina State University or other similar design guidelines that enhance the full life cycle use of housing without regard to the physical abilities or disabilities ■ of a home's occupants or guests in order to accommodate a wide range of individual preferences and functional abilities. In developing these guidelines and model ordinances, the department also shall meet with, and solicit information from, individuals and organizations representing individuals and entities with interests in construction, local governments, the health and welfare of senior citizens and persons with disabilities, architects, and others with expertise in these design and living issues. The department shall ensure that at least three meetings subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of the Government Code) shall occur, that shall include opportunities for government agencies, individuals, and organizations identified in this subdivision to participate and comment on proposed guidelines or draft model ordinances.

(b) (1) In addition to the authority granted by Sections 17958.5 and 18941.5, and for the purposes of this section, a city, county, or city and county may, by ordinance, make changes or modifications in addition to or in excess of the requirements contained in the California Building Standards Code adopted pursuant to Sections 17922 and 18928 if the city, county, or city and county makes a finding that the changes and modifications are reasonably

necessary and are substantially the same as the guidelines or model ordinances adopted pursuant to subdivision (a). In no case shall the changes or modifications be less restrictive than the requirements published in the California Building Standards Code.

(2) A city, county, or city and county adopting an ordinance pursuant to this subdivision shall file a copy of the ordinance and the findings with the department. No such ordinance shall become effective or operative for any purpose until the findings and the ordinance have been filed with the department. The department may review the findings and each ordinance to evaluate their consistency with this subdivision, and shall provide written comments to the adopting entity as to any such evaluation.

(c) (1) In a city, county, or city and county where a universal design ordinance has not been adopted pursuant to subdivision (b), developers of housing for senior citizens, persons with disabilities, and other persons and families are encouraged, but not required, to seek information and assistance from the department and the California Department of Aging regarding the principles of universal design specified in subdivision (a) and consider those principles in their construction.

(2) The department, the California Department of Aging, and any other interested state agency also may, to the extent feasible, disseminate information to interested persons and entities in all parts of the state regarding the principles of universal design and their relationship to new construction and home modifications.

(d) Subdivision (b) shall become operative on January 1, 2005. [2002]

§18949.6. State Building Standards; Regulations for Adoption

(a) The commission shall adopt regulations setting forth the procedure for the adoption of building standards and administrative regulations that apply directly to the implementation or enforcement of building standards.

(b) Regulatory adoption shall be accomplished so as to facilitate the triennial adoption of the specified model codes pursuant to Section 18928.

(c) The regulations shall allow for the distribution of proposed building standards and regulatory changes to the public for review in compliance with the requirements of the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) and for the acceptance of responses from the public. [2004]

§25915. Asbestos; Notice by Building Owners to Employees of Existence and Hazards of Asbestos

■ (a) Notwithstanding any other provision of law, the owner of any building constructed prior to 1979, who knows that the building contains asbestos-containing construction materials, shall provide notice to all employees of that owner working within the building concerning all of the following:

(1) The existence of, conclusions from, and a description or list of the contents of, any survey known to the owner conducted to determine

the existence and location of asbestos-containing construction materials within the building, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Specific locations within the building known to the owner, or identified in a survey known to the owner, where asbestos-containing construction materials are present in any quantity.

(3) General procedures and handling restrictions necessary to prevent, and, if appropriate, to minimize disturbance, release, and exposure to the asbestos. If detailed handling instructions are necessary to ensure employee safety, the notice required by this section shall indicate where those instructions can be found.

(4) A summary of the results of any bulk sample analysis, or air monitoring, or monitoring conducted pursuant to Section 5208 of Title 8 of the California Code of Regulations, conducted for or by the owner or within the owner's control, including reference to sampling and laboratory procedures utilized, and information describing when and where the specific monitoring data and sampling procedures are available pursuant to Section 25917.

(5) Potential health risks or impacts that may result from exposure to the asbestos in the building as identified in surveys or tests referred to in this section, or otherwise known to the owner.

The notice may contain a description and explanation of the health action levels or exposure standards established by the state or federal government. However, if the notice contains this description, the notice shall include, at least, a description and explanation of the no significant risk level established pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20, and specified in Section 12711 of Title 22 of the California Code of Regulations, the school abatement clearance level specified in Section 49410.7 of the Education Code, and the action levels established by state and federal Occupational Safety and Health Act regulations.

The notice requirements specified in this subdivision shall not apply to an owner who elects to prepare an asbestos management plan pursuant to Section 25915.1. In those cases, the notice requirements specified in Section 25915.1 shall apply.

(b) If the owner has no special knowledge of the information required pursuant to paragraphs (3) and (5), of subdivision (a), the owner shall specifically inform his or her employees in the notice required by this section, that he or she lacks knowledge regarding handling instructions necessary to prevent and minimize release of, and exposure to, asbestos and the potential health impacts resulting from exposure to asbestos in the building, and shall encourage employees to contact local or state public health agencies. [1989]

§25915.1. Asbestos; Management Plan; Requirements

■ (a) An owner may elect to prepare an asbestos management plan for any building subject to this chapter, and in that case may, upon implementation of that plan, comply with the notification requirements of this chapter by providing notice to other owners and all employees of that owner working within the building of the following:

(1) The specific locations within the building where asbestos-containing construction materials are present in any quantity.

(2) Potential health risks or impacts that may result from exposure to the asbestos.

(3) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an employee who is not qualified to handle asbestos-containing construction material.

(4) The existence and availability of the management plan and a description of its contents.

(b) For purposes of this chapter, an asbestos management plan shall be designed to minimize the potential for release of asbestos fibers and to outline a schedule of actions to be undertaken with respect to the asbestos. The plan shall be prepared by a person accredited to prepare management plans for schools pursuant to Section 2646 of Title 15 of the United States Code and shall contain all of the following:

(1) The information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915.

(2) A description of an ongoing operations and maintenance program which shall include, but not be limited to, periodic reinspection and surveillance, suggested fiber release episode procedures, measures to minimize potential fiber releases, and information and training programs for building engineering and maintenance staff.

(3) Recordkeeping procedures to demonstrate implementation of the plan which shall be maintained for the life of the building to which they apply. [1989]

§25915.2. Asbestos; Notice to Owners and Employees

■ (a) Notice provided pursuant to this chapter shall be provided in writing to each individual employee, and shall be mailed to other owners designated to receive the notice pursuant to subdivision (a) of Section 25915.5, within 15 days of the first receipt by the owner of information identifying the presence or location of asbestos-containing construction materials in the building. This notice shall be provided annually thereafter. In addition, if new information regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915 has been obtained within 90 days after the notice required by this subdivision is provided or any subsequent 90-day period, then a supplemental notice shall be provided within 15 days of the close of that 90-day period.

(b) Notice provided pursuant to this chapter shall be provided to new employees within 15 days of commencement of work in the building.

(c) Notice provided pursuant to this chapter shall be mailed to any new owner designated to receive the notice pursuant to subdivision (a) of Section 25915.5 within 15 days of the effective date of the agreement under which a person becomes a new owner.

(d) Subdivisions (a) and (c) shall not be construed to require owners of a building or part of a building within a residential common interest development to mail written notification to other owners of a building or part of a building within the residential common interest development, if all the following conditions are met:

■ (1) The association conspicuously posts, in each building or part of a building known to contain asbestos-containing materials, a large sign in a prominent location that fully informs persons entering each building or part of a building within the common interest development that the association knows the building contains asbestos-containing materials. The sign shall also inform persons of the location where further information, as required by this chapter, is available about the asbestos-containing materials known to be located in the building.

(2) The owners or association ■ disclose, as soon as practicable before the transfer of title of a separate interest in the common interest development, to a transferee the existence of asbestos-containing material in a building or part of a building within the common interest development.

Failure to comply with this section shall not invalidate the transfer of title of real property. This paragraph shall only apply to transfers of title of separate interests in the common interest development of which the owners have knowledge. As used in this section, “association” and “common interest development” are defined in Sections 4080 and 4100 or Sections 6528 and 6534 of the Civil Code.

(e) If a person contracting with an owner receives notice pursuant to this chapter, that contractor shall provide a copy of the notice to his or her employees or contractors working within the building.

(f) If the asbestos-containing construction material in the building is limited to an area or areas within the building that meet all the following criteria:

(1) Are unique and physically defined.

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated throughout the building.

(3) Are not connected to other areas through a common ventilation system; then, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or 25915.1 may provide that notice only to the employees working within or entering that area or those areas of the building meeting the conditions above.

(g) If the asbestos-containing construction material in the building is limited to an area or areas within the building that meet all the following criteria:

(1) Are accessed only by building maintenance employees or contractors and are not accessed by tenants or employees in the building, other than on an incidental basis.

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated in areas of the building which are accessed by tenants and employees.

(3) The owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from the material; then, as to that asbestos-containing construction material, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may provide that notice only to its building maintenance employees and contractors who have access to that area or those areas of the building meeting the conditions above.

(h) In those areas of a building where the asbestos-containing construction material is composed only of asbestos fibers which are completely encapsulated, if the owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from that material in its present condition and has no knowledge that other asbestos-containing material is present, then an owner required to give notice pursuant to subdivision (a) of Section 25915 shall provide the information required in paragraph (2) of subdivision (a) of Section 25915 and may substitute the following notice for the requirements of paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 25915:

(1) The existence of, conclusions from, and a description or list of the contents of, that portion of any survey conducted to determine the existence and location of asbestos-containing construction materials within the building that refers to the asbestos materials described in this subdivision, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an unqualified employee. The notice shall identify the appropriate person the employee is required to contact if the condition of the asbestos-containing construction material deteriorates. [1992]

§25915.5. Asbestos; Notice to Building Co-owners; Immunity from Liability

■ (a) An owner required to give notice to employees pursuant to this chapter, in addition to notifying his or her employees, shall mail, in accordance with this subdivision, a copy of that notice to all other persons who are owners of the building or part of the building, with whom the owner has privity of contract. Receipt of a notice pursuant to this section by an owner, lessee, or operator shall constitute knowledge that the building contains asbestos-containing construction materials for purposes of this chapter. Notice to an owner shall be delivered by first-class mail addressed to the person and at the address designated for the receipt of notices under the lease, rental agreement, or contract with the owner.

(b) The delivery of notice under this section or negligent failure to provide that notice shall not constitute a breach of any covenant under the lease

or rental agreement, and nothing in this chapter enlarges or diminishes any rights or duties respecting constructive eviction.

(c) No owner who, in good faith, complies with the provisions of this section shall be liable to any other owner for any damages alleged to have resulted from his or her compliance with the provisions of this section.

(d) This section shall not be construed to apply to owners of a building or part of a building within a residential common interest development or association, if the owners comply with the provisions of subdivision (d) of Section 25915.2. For purposes of this section, “association” and “common interest development” are defined in Sections 4080 and 4100 of the Civil Code. [2012]

§25916. Asbestos; Construction, Maintenance, or Remodeling; Warning Notice

■ If any construction, maintenance, or remodeling is conducted in an area of the building area where there is the potential for employees to come into contact with, or release or disturb, asbestos or asbestos-containing construction materials, the owner responsible for the performance of, or contracting for, any construction, maintenance, or remodeling in the area shall post that area with a clear and conspicuous warning notice. The posted warning notice shall read, in print which is readily visible because of its large size and bright color, as specified in either subdivision (a) or (b).

(a) “CAUTION. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.”

(b) “DANGER. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. AUTHORIZED PERSONNEL ONLY. RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA.” [1989]

§25916.5. Asbestos; Multiple Owners

■ (a) When there is more than one owner of a building or part of a building subject to this chapter, the owners may agree in writing to designate one particular owner to prepare any notice required pursuant to this chapter.

(b) Any owner, other than the owner preparing the notice, may use a notice prepared by another owner to satisfy the requirements of this chapter if all of the following are satisfied:

(1) The notice fully complies with that owner’s obligations under this chapter.

(2) That owner does not know that the notice contains false or misleading information.

(3) That owner does not know that the owner who prepared the notice has failed to comply with this chapter. [1989]

§25917. Asbestos; Employee Access to Asbestos Survey and Monitoring Data

■ An owner shall make available, for review and photocopying, to other owners and all of his or her employees or those employees’ representatives

at an accessible place and time, all existing asbestos survey and monitoring data and any asbestos management plan which has been prepared, specific to the building. This place shall be within the building, or another building which is leased or also owned by the owner, located on the same property as the building, and accessible and convenient to employees, and shall be available during employee working hours, including lunch and break periods, if any owner maintains an office or similar facility in the building; if not, the survey, data, and asbestos management plan shall be available at another place, and at a time accessible and convenient to employees and their representatives. Any owner may enter into an agreement with another owner to provide the location where the survey, data, and asbestos management plan is available to employees within one building pursuant to this section. [1989]

§25917.5. Asbestos Information System or Statewide Register

■ If an asbestos information system or statewide asbestos register, or both, is established subsequent to the designing of the system and register pursuant to paragraphs (5) and (6) of subdivision (a) of Section 25927, the system or register, or both, as the case may be, shall integrate, be consistent with, and, at a minimum, include all of the requirements of this chapter. [1988]

§25918. Asbestos

■ “Asbestos,” as used in this chapter, has the same meaning as defined in Section 6501.7 of the Labor Code. [1988]

§25919. Asbestos-containing Construction Material

■ “Asbestos-containing construction material,” as used in this chapter, means any manufactured construction material, including structural, mechanical and building material, which contains more than one-tenth of 1 percent asbestos by weight. [1988]

§25919.2. Building

■ “Building,” as used in this chapter, means all or part of any “public and commercial building,” as defined in Section 2642 of Title 15 of the United States Code, as that section reads on January 1, 1989, except that “building” shall not mean residential dwellings. [1990]

§25919.3. Employee

■ “Employee,” as used in this chapter, means every person who is required or directed by any employer, to engage in any employment, and who performs that employment other than on a casual or incidental basis in any building subject to this chapter, or any person contracting with an owner who is required or directed to perform services, other than on a casual or incidental basis, in any building subject to this chapter. [1990]

§25919.4. Employee’s Representative

■ “Employee’s representative,” as used in this chapter, means an employee’s union representative, a member of the employee’s immediate

family, a nonrelated member of the employee's household, and an employee's attorney or a person with power of attorney. [1990]

§25919.5. Owner

■ "Owner," as used in this chapter, means an owner, lessee, sublessee, or agent of the owner of a building or part of a building, including, but not limited to, the state or another public entity. [1990]

§25919.6. Agent

■ "Agent," as used in this chapter, means a person acting in accordance with Title 9 (commencing with Section 2295) of Part 4 of Division 3 of the Civil Code for purposes of managing, operating, leasing, or performing a similar function with respect to a building subject to this chapter. [1990]

§25919.7. Punishment for Noncompliance

■ Any owner who knowingly or intentionally fails to comply with this chapter, or who knowingly or intentionally presents any false or misleading information to employees or any other owner, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000) or up to one year in the county jail, or both. This section shall become operative on July 1, 1989. [1990]

TOXIC MOLD PROTECTION ACT OF 2001 (COMMENT ONLY)

■ The California Legislature has adopted the Toxic Mold Protection Act of 2001 (SB 732, AB 284) adding Sections 26100 to 26204 to the Health & Safety Code. The majority of these new Sections deal with the procedures for adopting standards to be used in addressing the problem of toxic mold. Until such time as actual standards or guidelines are adopted, we are setting forth only the introduction to this new legislation, together with Sections 26100, 26147, and 26148 which deal with disclosure by residential landlords.

Existing law provides the State Department of Health Services with various powers to enforce its regulations, to promulgate regulations to protect the public health, and to enjoin and abate nuisances dangerous to public health. The department is vested with the power to perform studies, evaluate existing projects, disseminate information, and provide training programs to enforce regulations related to public health. This bill would enact the Toxic Mold Protection Act of 2001. The bill would require the department to convene a task force comprised of various individuals including, but not limited to, health officers, health and medical experts, mold abatement experts, representatives of government-sponsored enterprises, representatives from school districts or county offices of education, representatives of employees and representatives of employers, and affected consumers and affected industries including, residential, commercial, and industrial tenants, proprietors, managers or landlords, insurers, and builders, to advise the department on the development of permissible exposure limits to mold, standards for assessment of molds in indoor environments as well as alternative standards for hospitals, child care facilities,

and nursing homes, standards for identification, and remediation of mold. This bill would require the department to consider the feasibility of adopting permissible exposure limits to molds in indoor environments. If it is determined to be feasible, the department would be required to adopt, in consultation with the task force, permissible exposure limits to mold for indoor environments that avoid adverse health effects. The department would be required to report its progress on developing the permissible exposure limits for molds by July 1, 2003. This bill would require that, in the process of adopting the permissible exposure limits, the department would be required to conduct studies, consider specific delineated criteria, and consult with the task force to arrive at both permissible exposure limits to mold to avoid adverse effects on health on the general public and alternative permissible exposure limits to avoid adverse health effects for hospitals, child care facilities, and nursing homes, whose primary business is to serve members of a subgroup that is a meaningful portion of the general population. After the adoption of mold assessment standards, the department would review and revise the exposure limits at least once every 5 years and consider any new technological or treatment techniques or new scientific evidence that indicates that molds may present a different health risk than was previously determined. The bill would provide for specific protocol to allow the public to be involved in the process to determine permissible exposure limits to mold, guidelines for identification and remediation of mold, and the guidelines for the assessment of molds. This bill would require the department to develop public education materials and resources to inform the public about the health effects of molds, methods of prevention, methods of identification and remediation of mold growth, and contact information to organizations or governmental entities to assist public concerns. This bill would, except under specified circumstances, also require that any person who sells, transfers, or rents residential, commercial, or industrial real property or a public entity that owns, leases, or operates a building who knows, or in specified instances has reasonable cause to believe, that mold is present that affects the unit or building, and the mold exceeds the permissible exposure limits to molds, would be required to provide a written disclosure to potential buyers, prospective tenants, renters, landlords, or occupants of the mold conditions. However, this bill would not require a landlord, owner, seller, or transferor to conduct air or surface tests to determine whether the presence of molds exceeds the permissible exposure limits or for mold remediation. These disclosure duties and requirements would not apply until the January 1 or July 1 that occurs at least 6 months after the department adopts the requisite standards, and guidelines, as provided in the bill. This bill would authorize the enforcement of all conditions of this bill, including the disclosure provisions, by designated enforcement officers. The implementation of this bill would depend on the extent to which the department determines funds are available for its implementation.

TOXIC MOLD PROTECTION ACT OF 2001

§26100. Toxic Mold Protection Act of 2001

■ This chapter shall be known, and may be cited, as the Toxic Mold Protection Act of 2001. [2001]

§26147. Toxic Mold Written Disclosure Requirement

■ (a) Subject to subdivisions (b), (d), and (e), residential landlords shall provide written disclosure to prospective and current tenants of the affected units as specified in subdivision (b) when the residential landlord knows, or has reasonable cause to believe, that mold, both visible and invisible or hidden, is present that affects the unit or the building and the mold either exceeds the permissible exposure limits to molds established by subdivisions (a), (b), and (c) of Section 26103 or poses a health threat according to the department’s guidelines as developed pursuant to Section 26105.

(b) Notwithstanding subdivision (a), a residential landlord shall not be required to conduct air or surface tests of units or buildings to determine whether the presence of molds exceeds the permissible exposure limits to molds established by subdivisions (a) and (b) of Section 26103.

(c) The written disclosure required by subdivision (a) shall be provided:

(1) To prospective tenants prior to entering into the rental or lease agreement.

(2) To current tenants in affected units as soon as is reasonably practical.

(d) A residential landlord shall be exempt from providing written disclosure to prospective tenants pursuant to this section if the presence of mold was remediated according to the mold remediation guidelines developed by the department pursuant to Section 26130.

(e) The requirements of this section shall not apply until the first January 1 or July 1 that occurs at least six months after the department adopts standards pursuant to Sections 26103 and 26105 and develops guidelines pursuant to Section 26130. [2001]

§26148. Toxic Mold Consumer-oriented Booklet

(a) Residential landlords shall provide written ■ disclosure to prospective tenants of the potential health risks and the health impact that may result from exposure to mold by distributing a consumer-oriented booklet developed and disseminated by the department.

(b) The requirements of this section shall be provided to prospective residential tenants prior to entering the rental or lease agreement.

(c) The requirements of this section shall not apply until the first January 1 or July 1, that occurs at least six months after the department approves the consumer oriented booklet, as described in subdivision (a). [2002]

§104113. Defibrillators in Health Studios

■ (a) Every health studio, as defined in subdivision (h), shall acquire, maintain, and train personnel in the use of, an automatic external defibrillator pursuant to this section.

(b) An employee of a health studio who renders emergency care or treatment is not liable for civil damages resulting from the use, attempted use, or nonuse of an automatic external defibrillator, except as provided in subdivision (f). (c) When an employee uses, does not use, or attempts to use

an automatic external defibrillator consistent with the requirements of this section to render emergency care or treatment, the members of the board of directors of the facility shall not be liable for civil damages resulting from an act or omission in rendering the emergency care or treatment, including the use or nonuse of an automatic external defibrillator, except as provided in subdivision (f).

(d) Except as provided in subdivisions (f) and (g), when an employee of a health studio renders emergency care or treatment using an automatic external defibrillator, the owners, managers, employees, or otherwise responsible authorities of the facility shall not be liable for civil damages resulting from an act or omission in the course of rendering that emergency care or treatment, provided that the facility fully complies with subdivision (e).

(e) Notwithstanding Section 1797.196, in order to ensure public safety, a health studio shall do all of the following:

(1) Comply with all regulations governing the placement of an automatic external defibrillator.

(2) Ensure all of the following:

(A) The automatic external defibrillator is maintained and regularly tested according to the operation and maintenance guidelines set forth by the manufacturer, the American Heart Association, or the American Red Cross, and according to any applicable rules and regulations set forth by the governmental authority under the federal Food and Drug Administration and any other applicable state and federal authority.

(B) The automatic external defibrillator is checked for readiness after each use and at least once every 30 days if the automatic external defibrillator has not been used in the preceding 30 days. The health studio shall maintain records of these checks.

(C) A person who renders emergency care or treatment to a person in cardiac arrest by using an automatic external defibrillator activates the emergency medical services system as soon as possible, and reports the use of the automatic external defibrillator to the licensed physician and to the local EMS agency.

(D) For every automatic external defibrillator unit acquired, up to five units, no less than one employee per automatic external defibrillator unit shall complete a training course in cardiopulmonary resuscitation and automatic external defibrillator use that complies with the regulations adopted by the Emergency Medical Services Authority and the standards of the American Heart Association or the American Red Cross. After the first five automatic external defibrillator units are acquired, for each additional five automatic external defibrillator units acquired, a minimum of one employee shall be trained beginning with the first additional automatic external defibrillator unit acquired. Acquirers of automatic external defibrillator units shall have trained employees who should be available to respond to an emergency that may involve the use of an automatic external defibrillator unit during staffed operating hours. Acquirers of automatic external defibrillator units may need to train additional employees to ensure that a trained employee is available at all times.

(E) There is a written plan that exists that describes the procedures to be followed in the event of an emergency that may involve the use of an automatic external defibrillator, to ensure compliance with the requirements of this section. The written plan shall include, but not be limited to, immediate notification of 911 and trained office personnel at the start of automatic external defibrillator procedures.

(3) A health studio that allows its members access to its facility during times when it does not have an employee on the premises shall do all of the following:

(A) Require that all employees who work on the health studio's premises complete a training course, within 30 days of beginning employment, in cardiopulmonary resuscitation and automated external defibrillator use, that complies with the regulations adopted by the Emergency Medical Services Authority, and the Standards of the American Heart Association or the American Red Cross.

(B) Ensure that a trained employee is on the health studio's premises for no fewer than 50 hours per week.

(C) Inform a member, at the time the member contracts for the use of the health studio, that a trained employee will not be on the health studio's premises at all times.

(D) (i) On or before January 1, 2012, and before January 1 of each of the following three years, the health studio shall provide a report to the Assembly and Senate Judiciary Committees of the Legislature that contains the following:

(I) The average number of hours per week that the health studio is staffed.

(II) The average number of hours per week that the health studio was staffed prior to the adoption of this section.

(III) The total number of reported cardiac incidents that have occurred during unstaffed hours, and whether any of these incidents resulted in death.

(ii) The franchisor for a chain of franchised health studios shall collect and report the information pursuant to this subparagraph on behalf of its franchised health studios operated in this state.

(E) Deny access to the health studio when an employee is not present if the health studio operates in a space that is larger than 6,000 square feet.

(f) Subdivisions (b), (c), and (d) do not apply in the case of personal injury or wrongful death that results from gross negligence or willful or wanton misconduct on the part of the person who uses, attempts to use, or maliciously fails to use an automatic external defibrillator to render emergency care or treatment.

(g) A health studio that allows its members access to its facilities during operating hours when employees trained in the use of automatic external defibrillators are not on the facility premises, waives the provisions of subdivision (d) and the affirmative defense of primary assumption of the risk,

whether express or implied, as to a claim arising out of the absence of trained staff.

(h) For purposes of this section, “health studio” means a facility permitting the use of its facilities and equipment or access to its facilities and equipment, to individuals or groups for physical exercise, body building, reducing, figure development, fitness training, or any other similar purpose, on a membership basis. “Health studio” does not include a hotel or similar business that offers fitness facilities to its registered guests for a fee or as part of the hotel charges. [2010]

§115725. Playground Standards

■ (a) All new playgrounds open to the public built by a public agency or any other entity shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the United States Consumer Product Safety Commission.⁶⁰

(b) Replacement of equipment or modification of components inside existing playgrounds shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the United States Consumer Product Safety Commission.

(c) All public agencies operating playgrounds and all other entities operating playgrounds open to the public shall have a playground safety inspector, certified by the National Playground Safety Institute, conduct an initial inspection for the purpose of aiding compliance with the requirements set forth in subdivision (a) or (b), as applicable. Any inspection report may serve as a reference when the upgrades are made, but is not intended for any other use.

(d) Playgrounds installed between January 1, 1994, and December 31, 1999, shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the ■ United States Consumer Product Safety Commission not later than 15 years after the date those playgrounds were installed.

(e) For purposes of this section, all of the following shall apply:

(1) An “entity operating a playground open to the public” includes, but is not limited to, a church, subdivision, hotel, motel, resort, camp, office, hospital, shopping center, day care setting, and restaurant. An “entity operating a playground open to the public” shall not include a foster family home, certified family home, small family home, group home, or family day care home, which is licensed and regulated to meet child safety requirements enforced by the State Department of Social Services.

(2) “Playground” means an improved outdoor area designed, equipped, and set aside for children’s play that is not intended for use as an athletic playing field or athletic court, and shall include any playground

⁶⁰ There is a 60-page booklet by the Consumer Product Safety Commission at <http://www.cpsc.gov/cpscpub/pubs/325.pdf>.

equipment, fall zones, surface materials, access ramps, and all areas within and including the designated enclosure and barriers.

(f) Operators of playgrounds in child care centers regulated by the California Department of Social Services (CDSS) pursuant to Title 22 of Division 12 of Chapter 1 of the California Code of Regulations and facilities operated for the developmentally disabled, shall comply with the requirements established in this section.

(g) (1) No state funding shall be available for the planning, development, or redevelopment of any playground, unless the playground, after completion of the state-funded project, will conform to the requirements of subdivision (a) or (b), as applicable. However, where state funds have been appropriated to, or allocated for, a playground project prior to the effective date of this section but the section becomes effective prior to the completion of the project, that funding shall be maintained, as long as the playground is altered to conform to the requirements of subdivision (a) or (b), as applicable, to the extent the alterations can be made without adding significantly to the project cost.

(2) After the date by which an entity is required to conform its playground to satisfy requirements of this section, no state funding shall be available for the operation, maintenance, or supervision of the playground unless the playground conforms to the applicable requirements of the section. [2006]

§116049.1. Public Swimming Pool; Definition; Requirements

■ (a) “Public swimming pool,” as used in this section, means any swimming pool operated for the use of the general public with or without charge, or for the use of the members and guests of a private club, including any swimming pool located on the grounds of a hotel, motel, inn, an apartment complex, or any residential setting other than a single-family home. For purposes of this section, public swimming pool shall not include a swimming pool located on the grounds of a private single-family home.

(b) The design and installation of all underwater lighting systems, operating at more than 15 volts, supplied from a branch circuit either directly or by way of a transformer, shall be installed in a public swimming pool, as defined in this section, so that there is no shock hazard with any likely combination of fault conditions during normal use, and shall comply with both of the following requirements:

(1) An approved ground-fault circuit interrupter shall be installed in the branch circuit that supplies all fixtures operating at more than 15 volts.

(2) Only approved underwater lighting fixtures shall be used and no lighting fixtures shall be installed for operations at more than 150 volts between conductors.

(c) Any public swimming pool that does not meet the requirements specified in subdivision (b), shall be retrofitted to comply with these requirements by May 1, 1999.

(d) The ground-fault circuit interrupter required pursuant to this section shall comply with standards acceptable to the authority having jurisdiction.

(e) The owner or operator of a public swimming pool shall, on or before May 1, 1999, comply with both of the following:

(1) Obtain an inspection of its public swimming pool by the local health officer or a qualified contractor as set forth in subdivision (f).

(2) Certify to the local health officer as set forth in Section 116053 that the public swimming pool facility is in compliance with this section.

(f) All electrical work required for compliance with this section shall be performed by a person licensed to perform electrical work within his or her general, specialty, or limited specialty contractor's licensed scope of practice pursuant to Section 7059 of the Business and Professions Code.

(g) This section shall be known and may be cited as the Yasmin Paleso'o Memorial Swimming Pool Safety Law. [1998]

§116064.2. Pool Antientrapment Device Standards

■ (a) As used in this section, the following words have the following meanings:

(1) "ANSI/APSP performance standard" means a standard that is accredited by the American National Standards Institute (ANSI) and published by the Association of Pool and Spa Professionals (APSP).

(2) "ASME/ANSI performance standard" means a standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(3) "ASTM performance standard" means a standard that is developed and published by ASTM International.

(4) "Public swimming pool" means an outdoor or indoor structure, whether in-ground or above-ground, intended for swimming or recreational bathing, including a swimming pool, hot tub, spa, or nonportable wading pool, that is any of the following:

(A) Open to the public generally, whether for a fee or free of charge.

(B) Open exclusively to members of an organization and their guests, residents of a multiunit apartment building, apartment complex, residential real estate development, or other multifamily residential area, or patrons of a hotel or other public accommodations facility.

(C) Located on the premises of an athletic club, or public or private school.

(5) "Qualified individual" means a contractor who holds a current valid license issued by the State of California or a professional engineer licensed in the State of California who has experience working on public swimming pools.

(6) "Safety vacuum release system" means a vacuum release system that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected.

(7) "Skimmer equalizer line" means a suction outlet located below the waterline, typically on the side of the pool, and connected to the body

of a skimmer that prevents air from being drawn into the pump if the water level drops below the skimmer weir. However, a skimmer equalizer line is not a suction outlet for purposes of subdivisions (c) and (d).

(8) "Suction outlet" means a fitting or fixture of a swimming pool that conducts water to a recirculating pump.

(9) "Unblockable suction outlet" means a suction outlet, including the sump, that has a perforated (open) area that cannot be shadowed by the area of the 18 inch by 23 inch Body Blocking Element of the ANSI/APSP-16 performance standard, and that the rated flow through any portion of the remaining open area cannot create a suction force in excess of the removal force values in Table 1 of that standard.

(b) (1) Subject to subdivision (e), every public swimming pool shall be equipped with antientrapment devices or systems that comply with the ANSI/APSP-16 performance standard, or successor standard designated by the federal Consumer Product Safety Commission.

(2) A public swimming pool that has a suction outlet in any location other than on the bottom of the pool shall be designed so that the recirculation system shall have the capacity to provide a complete turnover of pool water within the following time:

(A) One-half hour or less for a spa pool.

(B) One-half hour or less for a spray ground.

(C) One hour or less for a wading pool.

(D) Two hours or less for a medical pool.

(E) Six hours or less for all other types of public pools.

(c) Subject to subdivisions (e) and (f), every public swimming pool with a single suction outlet that is not an unblockable suction outlet shall be equipped with at least one or more of the following devices or systems that are designed to prevent physical entrapment by pool drains:

(1) A safety vacuum release system that has been tested by a nationally recognized testing laboratory and found to conform to ASME/ANSI performance standard A112.19.17, as in effect on December 31, 2009, or ASTM performance standard F2387, as in effect on December 31, 2009.

(2) A suction-limiting vent system with a tamper-resistant atmospheric opening, provided that it conforms to any applicable ASME/ANSI or ASTM performance standard.

(3) A gravity drainage system that utilizes a collector tank, provided that it conforms to any applicable ASME/ANSI or ASTM performance standard.

(4) An automatic pump shutoff system tested by a department-approved independent third party and found to conform to any applicable ASME/ANSI or ASTM performance standard.

(5) Any other system that is deemed, in accordance with federal law, to be equally effective as, or more effective than, the systems described in paragraph (1) at preventing or eliminating the risk of injury or death associated with the circulation system of the pool and suction outlets.

(d) Every public swimming pool constructed on or after January 1, 2010, shall have at least two suction outlets that are hydraulically balanced

and symmetrically plumbed through one or more “T” fittings, and that are separated by a distance of at least three feet in any dimension between the suction outlets. A public swimming pool constructed on or after January 1, 2010, that meets the requirements of this subdivision, shall be exempt from the requirements of subdivision (d).

(e) A public swimming pool constructed prior to January 1, 2010, shall be retrofitted to comply with subdivisions (b) and (c) by no later than July 1, 2010, except that no further retrofitting is required for a public swimming pool that completed a retrofit between December 19, 2007, and January 1, 2010, that complied with the Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. Sec. 8001 et seq.) as in effect on the date of issue of the construction permit, or for a nonportable wading pool that completed a retrofit prior to January 1, 2010, that complied with state law on the date of issue of the construction permit. A public swimming pool owner who meets the exception described in this subdivision shall do one of the following prior to September 30, 2010:

(1) File the form issued by the department pursuant to subdivision (f), as otherwise provided in subdivision h).

(2) (A) File a signed statement attesting that the required work has been completed.

(B) Provide a document containing the name and license number of the qualified individual who completed the required work.

(C) Provide either a copy of the final building permit, if required by the local agency, or a copy of one of the following documents if no permit was required:

(i) A document that describes the modification in a manner that provides sufficient information to document the work that was done to comply with federal law.

(ii) A copy of the final paid invoice. The amount paid for the services may be omitted or redacted from the final invoice prior to submission.

(f) Prior to March 31, 2010, the department shall issue a form for use by an owner of a public swimming pool to indicate compliance with this section. The department shall consult with county health officers and directors of departments of environmental health in developing the form and shall post the form on the department’s Internet Web site. The form shall be completed by the owner of a public swimming pool prior to filing the form with the appropriate city, county, or city and county department of environmental health. The form shall include, but not be limited to, the following information:

(1) A statement of whether the pool operates with a single suction outlet or multiple suction outlets that comply with subdivision (d).

(2) Identification of the type of antientrapment devices or systems that have been installed pursuant to subdivision (b) and the date or dates of installation.

(3) Identification of the type of devices or systems designed to prevent physical entrapment that have been installed pursuant to subdivision (d) in a public swimming pool with a single suction outlet that is not an

unblockable suction outlet and the date or dates of installation or the reason why the requirement is not applicable.

(4) A signature and license number of a qualified individual who certifies that the factual information provided on the form in response to paragraphs (1) to (3), inclusive, is true to the best of his or her knowledge.

(g) A qualified individual who improperly certifies information pursuant to paragraph (4) of subdivision (g) shall be subject to potential disciplinary action at the discretion of the licensing authority.

(h) Except as provided in subdivision (f), each public swimming pool owner shall file a completed copy of the form issued by the department pursuant to this section with the city, county, or city and county department of environmental health in the city, county, or city and county in which the swimming pool is located. The form shall be filed within 30 days following the completion of the swimming pool construction or installation required pursuant to this section or, if the construction or installation is completed prior to the date that the department issues the form pursuant to this section, within 30 days of the date that the department issues the form. The public swimming pool owner or operator shall not make a false statement, representation, certification, record, report, or otherwise falsify information that he or she is required to file or maintain pursuant to this section.

(i) In enforcing this section, health officers and directors of city, county, or city and county departments of environmental health shall consider documentation filed on or with the form issued pursuant to this section by the owner of a public swimming pool as evidence of compliance with this section. A city, county, or city and county department of environmental health may verify the accuracy of the information filed on or with the form.

(j) To the extent that the requirements for public wading pools imposed by Section 116064 conflict with this section, the requirements of this section shall prevail.

(k) The department shall have no authority to take any enforcement action against any person for violation of this section and has no responsibility to administer or enforce the provisions of this section. [2012]

§122331. Dog Breed Specific Ordinances

■ (a) Cities and counties may enact dog breed-specific ordinances pertaining only to mandatory spay or neuter programs and breeding requirements, provided that no specific dog breed, or mixed dog breed, shall be declared potentially dangerous or vicious under those ordinances.

(b) Jurisdictions that implement programs described in subdivision (a) shall measure the effect of those programs by compiling statistical information on dog bites. The information shall, at a minimum, identify dog bites by severity, the breed of the dog involved, whether the dog was altered, and whether the breed of dog was subject to a program established pursuant to subdivision (a). These statistics shall be submitted quarterly to the State Public Health Veterinarian. [2005]

§122335. Dog Chaining and Tethering

■ (a) For purposes of this chapter, the following terms shall have the following definitions:

(1) “Animal control” means the municipal or county animal control agency or any other entity responsible for enforcing animal-related laws.

(2) “Agricultural operation” means an activity that is necessary for the commercial growing and harvesting of crops or the raising of livestock or poultry.

(3) “Person” means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative thereof.

(4) “Reasonable period” means a period of time not to exceed three hours in a 24-hour period, or a time that is otherwise approved by animal control.

(b) No person shall tether, fasten, chain, tie, or restrain a dog, or cause a dog to be tethered, fastened, chained, tied, or restrained, to a dog house, tree, fence, or any other stationary object.

(c) Notwithstanding subdivision (b), a person may do any of the following in accordance with Section 597t of the Penal Code:

(1) Attach a dog to a running line, pulley, or trolley system. A dog shall not be tethered to the running line, pulley, or trolley system by means of a choke collar or pinch collar.

(2) Tether, fasten, chain, tie, or otherwise restrain a dog pursuant to the requirements of a camping or recreational area.

(3) Tether, fasten, chain, or tie a dog no longer than is necessary for the person to complete a temporary task that requires the dog to be restrained for a reasonable period.

(4) Tether, fasten, chain, or tie a dog while engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by the State of California if the activity for which the license is issued is associated with the use or presence of a dog. Nothing in this paragraph shall be construed to prohibit a person from restraining a dog while participating in activities or using accommodations that are reasonably associated with the licensed activity.

(5) Tether, fasten, chain, or tie a dog while actively engaged in any of the following:

(A) Conduct that is directly related to the business of shepherding or herding cattle or livestock.

(B) Conduct that is directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

(d) A person who violates this chapter is guilty of an infraction or a misdemeanor.

(1) An infraction under this chapter is punishable upon conviction by a fine of up to two hundred fifty dollars (\$250) as to each dog with respect to which a violation occurs.

(2) A misdemeanor under this chapter is punishable upon conviction by a fine of up to one thousand dollars (\$1,000) as to each dog with respect to which a violation occurs, or imprisonment in a county jail for not more than six months, or both.

(3) Notwithstanding subdivision (d), animal control may issue a correction warning to a person who violates this chapter, requiring the owner to correct the violation, in lieu of an infraction or misdemeanor, unless the violation endangers the health or safety of the animal, the animal has been wounded as a result of the violation, or a correction warning has previously been issued to the individual.

(e) Nothing in this chapter shall be construed to prohibit a person from walking a dog with a hand-held leash. [2006]

§678. Insurer's Duties on Renewal or Nonrenewal (operative until January 1, 2019)

■ (a) At least 45 days prior to policy expiration, an insurer shall deliver to the named insured or mail to the named insured at the address shown in the policy, either of the following:

(1) An offer of renewal of the policy contingent upon payment of premium as stated in the offer, stating each of the following:

(A) Any reduction of limits or elimination of coverage.

(B) The telephone number of the insurer's representatives who handle consumer inquiries or complaints. The telephone number shall be displayed prominently in a font size consistent with the other text of the renewal offer.

(2) A notice of nonrenewal of the policy. That notice shall contain each of the following:

(A) The reason or reasons for the nonrenewal.

(B) The telephone number of the insurer's representatives who handle consumer inquiries or complaints. The telephone number shall be displayed prominently in a font size consistent with the other text of the notice of nonrenewal.

(C) A brief statement indicating that if the consumer has contacted the insurer to discuss the nonrenewal and remains unsatisfied, he or she may have the matter reviewed by the department. The statement shall include the telephone number of the unit within the department that responds to consumer inquiries and complaints.

(b) In the event an insurer fails to give the named insured either an offer of renewal or notice of nonrenewal as required by this section, the existing policy, with no change in its terms and conditions, shall remain in effect for 45 days from the date that either the offer to renew or the notice of nonrenewal is delivered or mailed to the named insured. A notice to this effect shall be provided by the insurer to the named insured with the policy or the notice of renewal or nonrenewal.

(c) Any policy written for a term of less than one year shall be considered as if written for a term of one year. Any policy written for a term longer than one year, or any policy with no fixed expiration date, shall be considered as if written for successive policy periods or terms of one year.

(d) This section applies only to policies of insurance specified in Section 675.

(e) The offer of renewal pursuant to this section may be provided electronically to the email address shown on the policy if the insurer complies with subdivision (b) of Section 38.5.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date. [2013]

§678. Insurer’s Duties on Renewal or Nonrenewal (operative on January 1, 2019)

■ (a) At least 45 days prior to policy expiration, an insurer shall deliver to the named insured or mail to the named insured at the address shown in the policy, either of the following:

(1) An offer of renewal of the policy contingent upon payment of premium as stated in the offer, stating each of the following:

(A) Any reduction of limits or elimination of coverage.

(B) The telephone number of the insurer’s representatives who handle consumer inquiries or complaints. The telephone number shall be displayed prominently in a font size consistent with the other text of the renewal offer.

(2) A notice of nonrenewal of the policy. That notice shall contain each of the following:

(A) The reason or reasons for the nonrenewal.

(B) The telephone number of the insurer’s representatives who handle consumer inquiries or complaints. The telephone number shall be displayed prominently in a font size consistent with the other text of the notice of nonrenewal.

(C) A brief statement indicating that if the consumer has contacted the insurer to discuss the nonrenewal and remains unsatisfied, he or she may have the matter reviewed by the department. The statement shall include the telephone number of the unit within the department that responds to consumer inquiries and complaints.

(b) In the event an insurer fails to give the named insured either an offer of renewal or notice of nonrenewal as required by this section, the existing policy, with no change in its terms and conditions, shall remain in effect for 45 days from the date that either the offer to renew or the notice of nonrenewal is delivered or mailed to the named insured. A notice to this effect shall be provided by the insurer to the named insured with the policy or the notice of renewal or nonrenewal.

(c) Any policy written for a term of less than one year shall be considered as if written for a term of one year. Any policy written for a term longer than one year, or any policy with no fixed expiration date, shall be considered as if written for successive policy periods or terms of one year.

(d) This section applies only to policies of insurance specified in Section 675.

(e) This section shall become operative on January 1, 2019.
[2013]

§679.9. Insurer Disclosure Requirements

■ If an insurer changes the annual premium under a policy specified in Section 675, it shall, within 15 business days of a request by the insured, inform the insured in writing of each of the following:

(a) The amount of the premium increase or decrease in comparison to the premium charged in the previous year.

(b) The reason or reasons for the change, including, but not limited to, the deletion of a loss-free credit, the application of a claim-related surcharge, or any other reason related to a claim or policyholder inquiry.

(c) A brief statement indicating each of the following:

(1) That the consumer may contact their agent or the insurer with any additional questions regarding the premium and providing the telephone number for the insurer's representatives who are capable of responding, and authorized to respond, to consumer inquiries and complaints.

(2) That if the insured has contacted the insurer to discuss a premium increase and the insured remains unsatisfied, he or she may contact the department with any inquiries or complaints. The statement shall include the telephone number of the unit within the department that responds to consumer inquiries and complaints. [2004]

§226.8. Misclassifying Personnel as Independent Contractors

■ (a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

(d) (1) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer that is a licensed contractor pursuant to the Contractors' State License Law has violated subdivision (a), the agency, in addition to any other remedy that has been ordered, shall transmit a certified copy of the order to the Contractors' State License Board.

(2) The registrar of the Contractors' State License Board shall initiate disciplinary action against a licensee within 30 days of receiving a certified copy of an agency or court order that resulted in disbarment pursuant to paragraph (1).

(e) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has violated subdivision (a), the agency or court, in addition to any other remedy that has been ordered, shall order the person or employer to display prominently on its Internet Web site, in an area which is accessible to all employees and the general public, or, if the person or employer does not have an Internet Web site, to display prominently in an area that is accessible to all employees and the general public at each location where a violation of subdivision (a) occurred, a notice that sets forth all of the following:

(1) That the Labor and Workforce Development Agency or a court, as applicable, has found that the person or employer has committed a serious violation of the law by engaging in the willful misclassification of employees.

(2) That the person or employer has changed its business practices in order to avoid committing further violations of this section.

(3) That any employee who believes that he or she is being misclassified as an independent contractor may contact the Labor and Workforce Development Agency. The notice shall include the mailing address, email address, and telephone number of the agency.

(4) That the notice is being posted pursuant to a state order.

(f) In addition to including the information specified in subdivision (e), a person or employer also shall satisfy the following requirements in preparing the notice:

(1) An officer shall sign the notice.

(2) It shall post the notice for one year commencing with the date of the final decision and order.

(g) (1) In accordance with the procedures specified in Sections 98 to 98.2, inclusive, the Labor Commissioner may issue a determination that a person or employer has violated subdivision (a).

(2) If, upon inspection or investigation, the Labor Commissioner determines that a person or employer has violated subdivision (a), the Labor Commissioner may issue a citation to assess penalties set forth in subdivisions (b) and (c) in addition to any other penalties or damages that are otherwise available at law. The procedures for issuing, contesting, and enforcing judgments shall be the same as those set forth in Section 1197.1.

(3) The Labor Commissioner may enforce this section pursuant to Section 98 or in a civil suit.

(h) Any administrative or civil penalty pursuant to subdivision (b) or (c) or disciplinary action pursuant to subdivision (d) or (e) shall remain in effect against any successor corporation, owner, or business entity that satisfies both of the following:

(1) Has one or more of the same principals or officers as the person or employer subject to the penalty or action.

(2) Is engaged in the same or a similar business as the person or employer subject to the penalty or action.

(i) For purposes of this section, the following definitions apply:

(1) "Determination" means an order, decision, award, or citation issued by an agency or a court of competent jurisdiction for which the time to appeal has expired and for which no appeal is pending.

(2) "Labor and Workforce Development Agency" means the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, or agencies.

(3) "Officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, or any other officer of the corporation who performs a policymaking function. If

the employer is a partnership, “officer” means a partner. If the employer is a sole proprietor, “officer” means the owner.

(4) “Willful misclassification” means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.

(j) Nothing in this section is intended to limit any rights or remedies otherwise available at law. [2012]

§2753. Advice to Treat Employee as Independent Contractor to Avoid Employee Status

■ (a) A person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor.

(b) This section does not apply to the following persons:

(1) A person who provides advice to his or her employer.

(2) An attorney authorized to practice law in California or another United States jurisdiction who provides legal advice in the course of the practice of law. [2011]

§2810. Liability of Contracting Party to Labor or Services Contracts if Contractor Fails to Comply with Applicable Laws

■ (a) A person or entity shall not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her home residences, provided that a family member resides in the residence or residences for which the labor or services are to be performed for at least a part of the year.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor for labor or services shall be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions that may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, security guard, or warehouse contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, security guard, or warehouse contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, security guard, or warehouse contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, security guard, or warehouse contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, security guard, or warehouse contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(10) The signatures of all parties, and the date the contract or agreement was signed.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, security guard, or warehouse contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that

information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement. Upon the request of the Labor Commissioner, any person or entity who enters into the contract or agreement shall provide to the Labor Commissioner a copy of the provisions of the contract or agreement, and any other documentation, related to paragraphs (1) to (10), inclusive, of subdivision (d). Documents obtained pursuant to this section are exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable ■ attorney's fees. An action under this section shall not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable ■ attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, security guard, or warehouse contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment, janitorial, security guard, or warehouse contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

(j) For the purposes of this section, "warehouse" means a facility the primary operation of which is the storage or distribution of general merchandise, refrigerated goods, or other products. [2012]

§403. Unlawful to Disturb or Break Up a Meeting

■ Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character, other than an assembly or meeting referred to in Section 302⁶¹ of the Penal Code or Section 18340⁶² of the Elections Code, is guilty of a misdemeanor. [1994]

⁶¹ Penal Code §302 specifically pertains to disruptions of religious services or meetings.

⁶² Elections Code §18340 specifically pertains to disruptions of public meetings pertaining to political issues or the consideration of public questions.

§25980. Solar Shade Control Act and Public Policy

■ This chapter shall be known and may be cited as the Solar Shade Control Act. It is the policy of the state to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources. In particular, the state encourages the planting and maintenance of trees and shrubs to create shading, moderate outdoor temperatures, and provide various economic and aesthetic benefits. However, there are certain situations in which the need for widespread use of alternative energy devices, such as solar collectors, requires specific and limited controls on trees and shrubs. [1978]

§25981. Definitions

■ (a) As used in this chapter, “solar collector” means a fixed device, structure, or part of a device or structure, on the roof of a building, that is used primarily to transform solar energy into thermal, chemical, or electrical energy. The solar collector shall be used as part of a system that makes use of solar energy for any or all of the following purposes:

- (1) Water heating.
- (2) Space heating or cooling.
- (3) Power generation.

(b) Notwithstanding subdivision (a), for the purpose of this chapter, “solar collector” includes a fixed device, structure, or part of a device or structure that is used primarily to transform solar energy into thermal, chemical, or electrical energy and that is installed on the ground because a solar collector cannot be installed on the roof of the building receiving the energy due to inappropriate roofing material, slope of the roof, structural shading, or orientation of the building.

(c) For the purposes of this chapter, “solar collector” does not include a solar collector that is designed and intended to offset more than the building’s electricity demand.

(d) For purposes of this chapter, the location of a solar collector is required to comply with the local building and setback regulations, and to be set back not less than five feet from the property line, and not less than 10 feet above the ground. A solar collector may be less than 10 feet in height only if, in addition to the five-foot setback, the solar collector is set back three times the amount lowered. [2008]

§25982. Limitation on Shadows Cast on Solar Panels

■ After the installation of a solar collector, a person owning or in control of another property shall not allow a tree or shrub to be placed or, if placed, to grow on that property so as to cast a shadow greater than 10 percent of the collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m., local standard time. [2008]

§25982.1. Notice to Person Affected by Requirements of Act

■ (a) An owner of a building where a solar collector is proposed to be installed may provide written notice by certified mail to a person owning property that may be affected by the requirements of this chapter prior to the installation of the solar collector. If a notice is mailed, the notice shall be mailed no more than 60 days prior to installation of the solar collector and shall read as follows:

SOLAR SHADE CONTROL NOTICE

Under the Solar Shade Control Act (California Public Resources Code Sec. 25980 et seq.) a tree or shrub cannot cast a shadow greater than 10 percent of a solar collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m. local standard time if the tree or shrub is placed after installation of a solar collector. The owner of the building where a solar collector is proposed to be installed is providing this written notice to persons owning property that may be affected by the requirements of the act no more than 60 days prior to the installation of a solar collector. The building owner is providing the following information: Name and address of building owner: Telephone number of building owner: Address of building and specific location where a solar collector will be installed (including street number and name, city/county, ZIP Code, and assessor’s book, page, and parcel number): Installation date of solar collector:

Building Owner, Date

(b) If the owner of the building where a solar collector is proposed to be installed provided the notice pursuant to subdivision (a), and the installation date is later than the date specified in that notice, the later date shall be specified in a subsequent notice to persons receiving the initial notice.

(c) (1) A transferor of the building where the solar collector is installed may provide a record of persons receiving the notice pursuant to subdivision (a) to a transferee of the building.

(2) A transferor receiving a notice pursuant to subdivision (a) may provide the notice to a transferee of the property. [2008]

§25983. Certain Trees or Shrubs are a Private Nuisance

■ A tree or shrub that is maintained in violation of Section 25982 is a private nuisance, as defined in Section 3481 of the Civil Code, if the person who maintains or permits the tree or shrub to be maintained fails to remove or alter the tree or shrub after receiving a written notice from the owner or agent of the affected solar collector requesting compliance with the requirements of Section 25982. [2008]

§25984. Limitations on Applicability of Act

■ This chapter does not apply to any of the following:
(a) A tree or shrub planted prior to the installation of a solar collector.

(b) A tree planted, grown, or harvested on timberland as defined in Section 4526 or on land devoted to the production of commercial agricultural crops.

(c) The replacement of a tree or shrub that had been growing prior to the installation of a solar collector and that, subsequent to the installation of the solar collector, dies, or is removed for the protection of public health, safety, or the environment.

(d) A tree or shrub that is subject to a city or county ordinance. [2008]

§25985. Ordinance May Exempt Local Governments from Solar Shade Act

■ (a) A city, or for unincorporated areas, a county, may adopt, by majority vote of the governing body, an ordinance exempting their jurisdiction from the provisions of this chapter. The adoption of the ordinance shall not be subject to the California Environmental Quality Act (commencing with Section 21000).

(b) Notwithstanding the requirements of this chapter, a city or a county ordinance specifying requirements for tree preservation or solar shade control shall govern within the jurisdiction of the city or county that adopted the ordinance. [2008]

§25986. Equitable Relief for Passive Solar System

■ Any person who plans a passive or natural solar heating system or cooling system or heating and cooling system which would impact on an adjacent active solar system may seek equitable relief in a court of competent jurisdiction to exempt such system from the provisions of this chapter. The court may grant such an exemption based on a finding that the passive or natural system would provide a demonstrably greater net energy savings than the active system which would be impacted. [1978]

§2188.3. Assessment of Condominiums Owned in Fee and Not Owned in Fee

■ Whenever real property has been divided into condominiums, as defined in Section 783 of the Civil Code, (a) each condominium owned in fee shall be separately assessed to the owner thereof, and the tax on each such condominium shall constitute a lien solely thereon; (b) each condominium not owned in fee shall be separately assessed, as if it were owned in fee, to the owner of the condominium or the owner of the fee or both (and the tax on each such condominium shall be a lien solely on the interest of the owner of the fee in the real property included in such condominium and on such condominium), if so agreed by the assessor in a writing of record; such an agreement shall be binding upon such assessor and his successors in office with respect to such project so long as it continues to be divided into condominiums in the same manner as that in effect when the agreement was made. [1963]

§2188.4. Taxation of Leased Land

■ Whenever a portion of a parcel of land, other than that used for grazing or other agricultural purposes and property assessed by the State Board of Equalization, is subject to a lease which is recorded or for which a memorandum of lease is recorded and which provides for a term (including options to renew) of 15 years or more from the commencement date of the lease and which requires the lessee to pay, or to reimburse the lessor for, the property taxes (or any portion thereof) on the leased premises, the assessor shall separately assess the land and improvements subject to the lease and the land and improvements not subject to the lease upon application for such separate assessments by the lessor or lessee prior to the lien date; provided the boundaries of the leased area do not pass through any improvement except along a bearing partition; and provided that each parcel as described must have access frontage on a dedicated street. The assessor shall thereafter continue to make such separate assessments until the expiration date of the lease or at an earlier date should the lessor or lessee file a written request that the separate assessments be discontinued.

The assessor may, in his discretion, assess the leased premises to the lessor or the lessee; provided, that if the lessor is assessed, all notices of assessment and tax bills relating to the leased premises shall be mailed to the lessor in care of the lessee at the lessee's latest address known to the assessor, or a copy of such notices and bills shall be mailed to the lessee at such address. [1968]

§2188.5. Taxation of Planned Developments

■ (a) (1) Subject to the limitations set forth in subdivision (b), whenever real property has been divided into planned developments as defined in Section 11003 of the Business and Professions Code, the interests therein

shall be presumed to be the value of each separately owned lot, parcel, or area, and the assessment shall reflect this value, which includes all of the following:

(A) The assessment attributable to the value of the separately owned lot, parcel, or area and the improvements thereon.

(B) The assessment attributable to the share in the common area reserved as an appurtenance of the separately owned lot, parcel, or area.

(C) The new base year value of the common area resulting from any change in ownership pursuant to Chapter 2 (commencing with Section 60) or new construction pursuant to Chapter 3 (commencing with Section 70) attributable to the share in the common area reserved as an appurtenance of the separately owned lot, parcel, or area.

(2) For the purposes of this section, “common area” shall mean the land and improvements within a lot, parcel, or area, the beneficial use and enjoyment of which is reserved in whole or in part as an appurtenance to the separately owned lots, parcels, or areas, whether this common area is held in common or through ownership of shares of stock or membership in an owners’ association. The tax on each separately owned lot, parcel, or area shall constitute a lien solely thereon and upon the proportionate interest in the common area appurtenant thereto.

(b) Assessment in accordance with subdivision (a) shall only be required with respect to those planned developments that satisfy both of the following conditions:

(1) The development is located entirely within a single tax code area.

(2) The entire beneficial ownership of the common area is reserved as an appurtenance to the separately owned lots, parcels, or areas.

(c) The amendment to subdivision (b) made by Chapter 407 of the Statutes of 1984 shall apply to real property that has been divided into planned developments, as defined in Section 11003 of the Business and Professions Code, on and after the effective date of Chapter 407 of the Statutes of 1984. [2006]

§2188.6. Taxation of Individual Condominium Units

■ (a) Unless a request for exemption has been recorded pursuant to subdivision (d), prior to the creation of a condominium as defined in Section 783 of the Civil Code, the county assessor may separately assess each individual unit which is shown on the condominium plan of a proposed condominium project when all of the following documents have been recorded as required by law:

(1) A subdivision final map or parcel map, as described in Sections 66434 and 66445, respectively, of the Government Code.

(2) A condominium plan, as defined in Section 4120 or 6540 of the Civil Code.

(3) A declaration, as defined in Section 4135 or 6546 of the Civil Code.

(b) The tax due on each individual unit shall constitute a lien solely on that unit.

(c) The lien created pursuant to this section shall be a lien on an undivided interest in a portion of real property coupled with a separate interest in space called a unit as described in Section 4125 or 6542 of the Civil Code.

(d) The record owner of the real property may record with the condominium plan a request that the real property be exempt from separate assessment pursuant to this section. If a request for exemption is recorded, separate assessment of a condominium unit shall be made only in accordance with Section 2188.3.

(e) This section shall become operative on January 1, 1990, and shall apply to condominium projects for which a condominium plan is recorded after that date. [2013]

§2188.7. Taxation of Community Apartment Projects, Stock Cooperatives and Limited Equity Housing Cooperatives

■ (a) Whenever the assessor receives a written request for separate assessment of a community apartment project, a stock cooperative, or a limited equity housing cooperative as defined in Section 11003.2, 11003.4, or 11004 of the Business and Professions Code, or any other similarly organized housing cooperative, the assessor shall, on the first lien date which occurs more than 60 days following the request, and on each lien date thereafter, separately assess the individual interests described in subdivision (b) held by the owners of the project or shareholders of the corporation if the conditions specified in subdivision (c) have been met. Whenever a community apartment project or cooperative housing corporation is separately assessed, it shall continue to be separately assessed in subsequent fiscal years and once a request for separate assessment is made, it is binding on all future owners and occupants of the project or corporation.

(b) For community apartment projects, and similarly organized projects, the interest that is to be separately assessed pursuant to subdivision (a) is the value of the right of exclusive occupancy in a portion of the real property coupled with an undivided interest in the land. For cooperative housing corporations, limited equity housing cooperatives and similarly organized cooperatives, the interest that is to be separately assessed is the value of the right of exclusive occupancy which is transferable only concurrently with the transfer of the share or shares of stock in the corporation held by the person having such right of occupancy, together with an interest in appurtenant common areas.

(c) Except as provided in subdivision (a), a separate assessment of any interest described in subdivision (b) may not be made by the assessor unless:

(1) The person making the request certifies that the owners or shareholders have been notified and the request for separate assessment has been approved in the manner provided in the organizational documents of the organization involved for approval of matters affecting the affairs of the organization generally; and

(2) A diagrammatic floor plan of the improvements and a survey plot map of the land showing the location of the improvements on the land, prepared in the form required by Chapter 2 (commencing with Section

66425) of Division 2 of Title 7 of the Government Code, has been recorded with the county recorder and filed with the assessor.

(3) Notwithstanding any other provision of law, a separate valuation to divide any existing residential structure into a subdivision, as defined in Section 66424 of the Government Code, shall not be made until a subdivision final map or parcel map, as described in Sections 66434 and 66445, respectively, of the Government Code has been recorded as required by law. If the requirement for a parcel map is waived pursuant to subdivision (b) of Section 66428 of the Government Code, then the assessor shall not assign any parcel numbers or prepare a separate assessment or separate valuation, unless the applicant provides a copy of the finding made by the legislative body or advisory agency, as required by that subdivision.

(d) Notwithstanding the provisions of Section 2605 and regardless of whether the board of supervisors has adopted a resolution in accordance with Section 2700, the tax on interests in a cooperative housing corporation or a limited-equity housing corporation separately assessed pursuant to subdivision (a) shall be entered on the secured roll and may be paid in two installments as provided in Chapter 2.1 (commencing with Section 2700) of Part 5. However, if:

(1) The tax on the separately assessed interest is unpaid when any installment of taxes on the secured roll becomes delinquent, the tax collector may use the procedures applicable to the collection of delinquent taxes on the unsecured roll; and

(2) The tax on the separately assessed interest remains unpaid at the time set for the declaration of default for delinquent taxes, the tax on the separately assessed interest, together with any penalties and costs which may have accrued thereon while on the secured roll, shall be transferred to the unsecured roll.

(e) The tax on an individual interest in a community apartment project, separately assessed pursuant to subdivision (a), shall be a lien solely on that interest and shall be entered on and be subject to all provisions of law applicable to taxes on the secured roll.

(f) The assessor shall provide to the principal office of each community apartment project and cooperative housing corporation within the taxing jurisdiction, at the time and in the manner as he or she deems appropriate, adequate notice of the provisions of this section and other pertinent information relative to the implementation thereof.

(g) The assessor may charge a fee for the initial cost of separately assessing a project or corporation which may be collected on the tax bill. [2005]

§2188.8. Taxation of Time-Share Estates in a Time-Share Project

■ (a) Whenever the assessor receives a written request for separate assessment of time-share estates in a time-share project, as defined in Section 11212 of the Business and Professions Code and as specified in subdivision (h) of this section, the assessor shall, on the first lien date that occurs more than 60 days following the request, and on each lien date thereafter, separately assess each time-share estate in the project if the assessor determines that the conditions specified in subdivision (c) have been met. Whenever estates in a

time-share project are separately assessed, they shall continue to be separately assessed in subsequent fiscal years and, once a request for separate assessment is made with respect to a project, it is binding on all future time-share estate owners.

(b) The interest that is to be separately assessed is the value of the right of recurrent, exclusive use or occupancy of real property, annually or on some other periodic basis, for a specific period of time that has been, or will be, allotted from the use or occupancy periods into which the project has been divided.

(c) The separate assessment of a time-share estate may not be made by the assessor unless both of the following occur:

(1) The person making the request certifies that the request for separate assessment has been approved in the manner provided in the organizational documents of the organization involved for approval of matters affecting the affairs of the organization generally.

(2) A diagrammatic floor plan of the improvements, a copy of the documents setting forth the procedures for scheduling time and units to each time-share estate owner, and a list of every time-share estate owner, with a date notation thereon showing when, according to the organization's records, each time-share estate was acquired, have been filed with the assessor. A plot map of the land showing the location of the improvements on the land need not be filed unless requested by the assessor. The organization shall file an annual statement for each succeeding assessment year, on or before April 1, with the assessor setting forth any changes to the required information known to the organization. The list or other information provided pursuant to this section is not a public document and shall not be open to public inspection, except as provided in Section 408.

(d) Notwithstanding subdivision (c), this section shall not be construed to require any person making a request for separate assessment to meet the requirements of the Subdivision Map Act, nor shall the approval of any governmental agency be required for separate assessment.

(e) The tax on a time-share estate that is separately assessed pursuant to this section shall be a lien solely on the time-share estate and shall be entered on and be subject to all provisions of law applicable to taxes on the secured roll, provided:

(1) If the taxes on any time-share estate that is separately assessed remain unpaid at the time set for declaration of default for delinquent taxes, the taxes on the time-share estate, together with any penalties and costs that may have accrued thereon while on the secured roll, may be transferred to the unsecured roll.

(2) Defaulted time-share estate taxes remaining unpaid on any prior year secured tax roll may be transferred to the unsecured roll and collected like any other tax on the unsecured roll.

(f) The assessor shall provide to the principal office of each time-share project within the taxing jurisdiction, at the time and in the manner as he or she deems appropriate, adequate notice of the provisions of this section and other pertinent information relative to the implementation thereof.

(g) The county may charge a fee for processing an application for separate assessment and for the initial and the ongoing costs, not to exceed the actual cost, of the separate assessment and billing, and mailings, with respect to a time-share project. This fee is subject to Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code, and shall be proportionately allocated to each of the time-share estate owners. This fee may be collected commencing with the initial separate tax bills, and on subsequent tax bills, and deposited in the county's general fund.

(h) For purposes of this section, "time-share estate" applies to time-share estates, as defined in Section 11212 of the Business and Professions Code, that include a fee simple interest in the underlying property involved. However, "time-share estate" does not include time-share estates that are coupled with a leasehold interest or an estate for years.

(i) Notwithstanding subdivision (a), when the assessor receives a written request to terminate the separate assessment of time-share estates in a time-share project under subdivision (a), the assessor shall, on the first lien date that occurs more than 60 days following the request, and on each lien date thereafter, prepare a single assessment for all time-share estates in the project. In order to obtain a single assessment, the person making the request shall provide certification that the request for a single consolidated assessment has been approved in the manner provided in the organization's documents. The person making the request shall also state the name and address of that organization as the organization to receive the single consolidated assessment. On the first lien date, and continuing thereafter, the county shall assess the time-share project. Any lien for taxes shall attach as if the election previously made under subdivision (a) had not been made, and the county shall no longer charge the fees described in subdivision (g). [2004]

§2188.9. Taxation of a Time-Share Project

■ (a) Whenever the assessor receives a written request for separate assessment of a time-share project, as defined in Section 11212 of the Business and Professions Code, the assessor shall, on the first lien date which occurs more than 60 days following the request, and on each lien date thereafter, separately assess the individual interests in the project described in subdivision (b) if the conditions specified in subdivision (c) have been met. Whenever a time-share project becomes subject to separate assessment, it shall continue to be so subject in subsequent fiscal years and once a request for separate assessment is made, it is binding on all future owners and occupants of the project.

(b) The interest in a time-share project that is to be separately assessed is the value of the right of recurrent, exclusive use or occupancy of real property, annually or on some other periodic basis, for a period of time that has been, or will be, allotted from the use or occupancy periods into which the project has been divided.

(c) A separate assessment may not be made by the assessor under this section unless:

(1) The person making the request certifies that the request for separate assessment has been approved in the manner provided in the organizational documents of the organization involved for approval of matters affecting the affairs of the organization generally; and

(2) A diagrammatic floor plan of the improvements, a copy of the documents setting forth the procedures for scheduling time and units to each time-share interest owner, and a list of every time-share interest owner, with a date notation thereon showing when, according to the organization's records, each interest was acquired, have been filed with the assessor. A plot map of the land showing the location of the improvements on the land need not be filed unless requested by the assessor. The organization shall file an annual statement for each succeeding assessment year, on or before April 1, with the assessor, setting forth any changes to the required information known to the organization. The list or other information provided pursuant to this section is not a public document and shall not be open to public inspection, except as provided in Section 408 of the Revenue and Taxation Code.

(d) Notwithstanding the provisions of subdivision (c), this section shall not be construed to require applicants for separate assessments to meet the requirements of the Subdivision Map Act, nor shall the approval of any governmental agency be required for separate assessment except for the assessor's approval.

(e) The assessor shall cumulate all the separate assessments in a time-share project and enter the total assessment on the secured roll in the name of the organization or time-share owners' association. The assessor shall notify each owner of a time-share interest subject to separate assessment under this section of the amount of an increased assessment pursuant to Section 619.

(f) The tax on the total assessment with respect to a time-share project shall be a lien on the entire time-share project and shall be subject to all provisions of law applicable to taxes on the secured roll.

(g) The tax collector shall send a single tax bill, with an itemized breakdown detailing the taxes applicable to each separate assessment, to the time-share project organization or owners' association.

(h) The assessor shall provide to the principal office of each time-share project within the taxing jurisdiction, at that time and in that manner as he or she deems appropriate, adequate notice of the provisions of this section and other pertinent information relative to the implementation thereof.

(i) The county may charge a fee for processing the application for separate assessment and for the initial and ongoing costs of separate assessment and implementing subdivision (g), not to exceed the actual costs. Fees shall be subject to Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code, and may be collected commencing with the initial separate tax bills, and on subsequent tax bills, and shall be deposited in the county's general fund.

(j) This section shall not apply to time-share estates or to time-share projects that are subject to the provisions of Section 2188.8.

(k) Notwithstanding subdivision (a), when the assessor receives a written request to terminate the separate assessment of a time-share project

under subdivision (a), the assessor shall, on the first lien date that occurs more than 60 days following the request, and on each lien date thereafter, prepare a single assessment for the time-share project without an itemized breakdown detailing the taxes applicable to each separate assessment in the time-share project. In order to obtain a single assessment, the person making the request shall provide certification that the request for a single consolidated assessment has been approved in the manner provided in the organization's documents. The person making the request shall also state the name and address of that organization as the organization to receive the single consolidated assessment. On the first lien date, and continuing thereafter, the county shall assess the time-share project. Any lien for taxes shall attach as if the election previously made under subdivision (a) had not been made, and the county shall no longer charge the fees described in subdivision (i). [2004]

§2188.10. Taxation of Mobilehome Park Subdivision or Resident-Owned Mobilehome Park

■ (a) Whenever the assessor receives a written request for separate assessment of a pro rata portion of the real property of a mobilehome park which changed ownership pursuant to subdivision (c) of Section 62.1 as the result of the transfer of a share or shares of voting stock or other ownership or membership interest or interests, the assessor shall, on the first lien date which occurs more than 60 days following the request, and on each lien date thereafter, separately assess the portion or portions of real property described in subdivision (b) if the conditions specified in subdivision (c) have been met. Whenever a portion of the real property of a mobilehome park becomes subject to separate assessment, it shall continue to be subject to separate assessment in subsequent fiscal years and once a request for separate assessment is made, it is binding on all future owners of the voting stock or other ownership or membership interests in the entity which owns the park.

(b) The interest that is to be separately assessed is the value of the pro rata portion of the real property of the mobilehome park which changed ownership pursuant to subdivision (c) of Section 62.1.

(c) A separate assessment may not be made by the assessor under this section unless the following conditions are met:

(1) The governing board of the mobilehome park makes the request for separate assessment and certifies that the request has been approved in the manner provided in the organizational documents of the entity owning the mobilehome park.

(2) Information is filed with the assessor listing all of the following:

(A) The total number of outstanding shares of voting stock of, or other ownership or membership interests in, the entity which owns the mobilehome park.

(B) The number of shares of voting stock, or other ownership or membership interests, which have been transferred and resulted in the change in ownership of portions of the real property of the park pursuant to subdivision (c) of Section 62.1, together with the names and addresses of the

owners of the transferred voting stock or other ownership or membership interests.

(C) Any other information as the assessor may require.

The entity owning the mobilehome park shall file an annual statement for each succeeding assessment year, on or before April 1, with the assessor, setting forth any changes to the required information known to the entity. The information provided pursuant to this section is not a public document and shall not be open to public inspection, except as provided in Section 408.

(d) Nothing in this section shall be construed to require applicants for separate assessments to meet the requirements of the Subdivision Map Act, nor shall the approval of any governmental agency be required for separate assessment except for the assessor's approval.

(e) The assessor shall cumulate all the separate assessments in a mobilehome park and enter the total assessment on the secured roll in the name of the entity which owns the park. The assessor shall notify each owner of a portion of the real property of the park subject to separate assessment under this section of the amount of an increased assessment pursuant to Section 619.

(f) The tax on the total assessment of the mobilehome park shall be a lien on the real property of the park and shall be subject to all provisions of law applicable to taxes on the secured roll.

(g) The tax collector shall send a single tax bill, with an itemized breakdown detailing the taxes and the allocated portion of any fee imposed pursuant to subdivision (i) applicable to each separate assessment, to the entity owning the mobilehome park.

(h) The assessor shall provide to owners of voting stock or other ownership or membership interest in a mobilehome park entity subject to subdivision (c) of Section 62.1, and to the governing board of the park, at that time and in that manner as the assessor deems appropriate, adequate notice of the provisions of this section and other pertinent information relative to the implementation thereof.

(i) The county may charge a fee for processing the application for separate assessment, and for the initial and ongoing costs of separate assessment and implementing subdivision (g), not to exceed actual costs. This fee shall be subject to Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code, and shall be allocated to each owner of a share of voting stock or other ownership or membership interest for which a separate assessment has been made. The fee may be collected commencing with the initial separate tax bills, and on subsequent tax bills, and shall be deposited in the county's general fund.

(j) The governing board of the entity which owns the mobilehome park shall collect the allocated portion of any fee charged pursuant to subdivision (i) and any itemized taxes applicable to a separate assessment from the owner of the voting stock or other ownership or membership interest whose acquisition of the interest resulted in the separate assessment. The fees and taxes resulting from separate assessment shall be deducted from the

proportional cost of the fees and taxes collected from the remaining owners or members. [1988]

CALIFORNIA VEHICLE CODE (CVC)

§407.5. Motorized Scooter Defined

■ (a) A “motorized scooter” is any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is powered by an electric motor. This device may also have a driver seat that does not interfere with the ability of the rider to stand and ride and may also be designed to be powered by human propulsion. For purposes of this section, a motorcycle, as defined in Section 400, a motor-driven cycle, as defined in Section 405, or a motorized bicycle or moped, as defined in Section 406, is not a motorized scooter.

(b) A device meeting the definition in subdivision (a) that is powered by a source other than electrical power is also a motorized scooter.

(c) (1) A manufacturer of motorized scooters shall provide a disclosure to buyers that advises buyers that the buyers’ existing insurance policies may not provide coverage for these scooters and that the buyers should contact their insurance company or insurance agent to determine if coverage is provided.

(2) The disclosure required under paragraph (1) shall meet both of the following requirements:

(A) The disclosure shall be printed in not less than 14-point boldface type⁶³ on a single sheet of paper that contains no information other than the disclosure.

(B) The disclosure shall include the following language in capital letters:

“YOUR INSURANCE POLICIES MAY NOT PROVIDE COVERAGE FOR ACCIDENTS INVOLVING THE USE OF THIS SCOOTER. TO DETERMINE IF COVERAGE IS PROVIDED, YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT.”

(d) (1) A manufacturer of motorized scooters shall provide a disclosure to a buyer that advises the buyer that the buyer may not modify or alter the exhaust system to cause that system to amplify or create an excessive noise, or to fail to meet applicable emission requirements.

(2) The disclosure required under paragraph (1) shall meet both of the following requirements:

(A) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(B) The disclosure shall include the following language in capital letters:

“YOU MAY NOT MODIFY OR ALTER THE EXHAUST SYSTEM OF THIS SCOOTER TO CAUSE IT TO AMPLIFY OR CREATE EXCESSIVE NOISE PER VEHICLE CODE SECTION 21226, OR TO

⁶³ See example in footnote 30, page 208 in Civil Code §5300.

FAIL TO MEET APPLICABLE EMISSION REQUIREMENTS PER VEHICLE CODE 27156.”

(e) This section shall become operative on January 1, 2008. [2004]

§21235. Motorized Scooter Restrictions

■ The operator of a motorized scooter shall not do any of the following:

(a) Operate a motorized scooter unless it is equipped with a brake that will enable the operator to make a braked wheel skid on dry, level, clean pavement.

(b) Operate a motorized scooter on a highway with a speed limit in excess of 25 miles per hour unless the motorized scooter is operated within a class II bicycle lane.

(c) Operate a motorized scooter without wearing a properly fitted and fastened bicycle helmet that meets the standards described in Section 21212.

(d) Operate a motorized scooter without a valid driver’s license or instruction permit.

(e) Operate a motorized scooter with any passengers in addition to the operator.

(f) Operate a motorized scooter carrying any package, bundle, or article that prevents the operator from keeping at least one hand upon the handlebars.

(g) Operate a motorized scooter upon a sidewalk, except as may be necessary to enter or leave adjacent property.

(h) Operate a motorized scooter on the highway with the handlebars raised so that the operator must elevate his or her hands above the level of his or her shoulders in order to grasp the normal steering grip area.

(i) Leave a motorized scooter lying on its side on any sidewalk, or park a motorized scooter on a sidewalk in any other position, so that there is not an adequate path for pedestrian traffic.

(j) Attach the motorized scooter or himself or herself while on the roadway, by any means, to any other vehicle on the roadway. [2004]

§22658. Removing Vehicles from Private Property

■ (a) The owner or person in lawful possession of private property, including an association of a common interest development as defined in Sections 4080 and 4100 or Sections 6528 and 6534 of the Civil Code, may cause the removal of a vehicle parked on the property to a storage facility that meets the requirements of subdivision (n) under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a ■ sign not less than 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner’s expense, and containing the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the owner or person in lawful possession of the

property. The sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

(b) The tow truck operator removing the vehicle, if the operator knows or is able to ascertain from the property owner, person in lawful possession of the property, or the registration records of the Department of Motor Vehicles the name and address of the registered and legal owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal, the grounds for the removal, and indicate the place to which the vehicle has been removed. If the vehicle is stored in a storage facility, a copy of the notice shall be given to the proprietor of the storage facility. The notice provided for in this section shall include the amount of mileage on the vehicle at the time of removal and the time of the removal from the property. If the tow truck operator does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as provided in this section, the tow truck operator shall comply with the requirements of subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer removing a vehicle from private property.

(c) This section does not limit or affect any right or remedy that the owner or person in lawful possession of private property may have by virtue of other provisions of law authorizing the removal of a vehicle parked upon private property.

(d) The owner of a vehicle removed from private property pursuant to subdivision (a) may recover for any damage to the vehicle resulting from any intentional or negligent act of a person causing the removal of, or removing, the vehicle.

(e) (1) An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f).

(2) A property owner or owner's agent or lessee who causes the removal of a vehicle parked on that property pursuant to the exemption set forth in subparagraph (A) of paragraph (1) of subdivision (l) and fails to comply with that subdivision is guilty of an infraction, punishable by a fine of one thousand dollars (\$1,000).

(f) An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property shall notify by telephone or, if impractical, by the most expeditious means available, the local traffic law enforcement agency within one hour after authorizing the tow. An owner or person in lawful possession of private property, an association of a common interest development, causing the removal of a vehicle parked on that property, or the tow truck operator who removes the vehicle, shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle. A towing company that removes a vehicle from private property in compliance with subdivision (l) is not responsible in a situation relating to the validity of the removal. A towing company that removes the vehicle under this section shall be responsible for the following:

(1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

(2) The removal of a vehicle other than the vehicle specified by the owner or other person in lawful possession of the private property.

(g) (1) (A) Possession of a vehicle under this section shall be deemed to arise when a vehicle is removed from private property and is in transit.

(B) Upon the request of the owner of the vehicle or that owner's agent, the towing company or its driver shall immediately and unconditionally release a vehicle that is not yet removed from the private property and in transit.

(C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.

(2) If a vehicle is released to a person in compliance with subparagraph (B) of paragraph (1), the vehicle owner or authorized agent shall immediately move that vehicle to a lawful location.

(h) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner, the owner's agent, or the person in lawful possession of the private property pursuant to this section if the owner of the vehicle or the vehicle owner's agent returns to the vehicle after the vehicle is coupled to the tow truck by means of a regular hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by means of a conventional trailer, and before it is removed from the private property. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

(i) (1) (A) A charge for towing or storage, or both, of a vehicle under this section is excessive if the charge exceeds the greater of the following:

(i) That which would have been charged for that towing or storage, or both, made at the request of a law enforcement agency under an agreement between a towing company and the law enforcement agency that exercises primary jurisdiction in the city in which is located the private property from which the vehicle was, or was attempted to be, removed, or if the private property is not located within a city, then the law enforcement agency

that exercises primary jurisdiction in the county in which the private property is located.

(ii) That which would have been charged for that towing or storage, or both, under the rate approved for that towing operator by the Department of the California Highway Patrol for the jurisdiction in which the private property is located and from which the vehicle was, or was attempted to be, removed.

(B) A towing operator shall make available for inspection and copying his or her rate approved by the Department of the California Highway Patrol, if any, within 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

(2) If a vehicle is released within 24 hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not more than one day's storage charge may be required for a vehicle released the same day that it is stored.

(3) If a request to release a vehicle is made and the appropriate fees are tendered and documentation establishing that the person requesting release is entitled to possession of the vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of storage, and the storage facility fails to comply with the request to release the vehicle or is not open for business during normal business hours, then only one day's storage charge may be required to be paid until after the first business day. A business day is any day in which the lienholder is open for business to the public for at least eight hours. If a request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar day basis for each day, or part thereof, that the vehicle is in storage.

(j) (1) A person who charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the vehicle owner for four times the amount charged.

(2) A person who knowingly charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision (h) or (i), or who fails to make available his or her rate as required in subparagraph (B) of paragraph (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment.

(k) (1) A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing and storage by a registered owner, the legal owner, or the owner's agent claiming the vehicle. A credit card shall be in the name of the person presenting the card. "Credit card" means "credit card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of this section, credit card does not include a credit card issued by a retail seller.

(2) A person described in paragraph (1) shall conspicuously display, in that portion of the storage facility office where business is conducted

with the public, a notice advising that all valid credit cards and cash are acceptable means of payment.

(3) A person operating or in charge of a storage facility who refuses to accept a valid credit card or who fails to post the required notice under paragraph (2) is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment.

(4) A person described in paragraph (1) who violates paragraph (1) or (2) is civilly liable to the registered owner of the vehicle or the person who tendered the fees for four times the amount of the towing and storage charges.

(5) A person operating or in charge of the storage facility shall have sufficient moneys on the premises of the primary storage facility during normal business hours to accommodate, and make change in, a reasonable monetary transaction.

(6) Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies as described in subdivision (i).

(1) (A) A towing company shall not remove or commence the removal of a vehicle from private property without first obtaining the written authorization from the property owner or lessee, including an association of a common interest development, or an employee or agent thereof, who shall be present at the time of removal and verify the alleged violation, except that presence and verification is not required if the person authorizing the tow is the property owner, or the owner's agent who is not a tow operator, of a residential rental property of 15 or fewer units that does not have an onsite owner, owner's agent or employee, and the tenant has verified the violation, requested the tow from that tenant's assigned parking space, and provided a signed request or electronic mail, or has called and provides a signed request or electronic mail within 24 hours, to the property owner or owner's agent, which the owner or agent shall provide to the towing company within 48 hours of authorizing the tow. The signed request or electronic mail shall contain the name and address of the tenant, and the date and time the tenant requested the tow. A towing company shall obtain within 48 hours of receiving the written authorization to tow a copy of a tenant request required pursuant to this subparagraph. For the purpose of this subparagraph, a person providing the written authorization who is required to be present on the private property at the time of the tow does not have to be physically present at the specified location of where the vehicle to be removed is located on the private property.

(B) The written authorization under subparagraph (A) shall include all of the following:

(i) The make, model, vehicle identification number, and license plate number of the removed vehicle.

(ii) The name, signature, job title, residential or business address, and working telephone number of the person, described in subparagraph (A), authorizing the removal of the vehicle.

- (iii) The grounds for the removal of the vehicle.
- (iv) The time when the vehicle was first observed parked at the private property.
- (v) The time that authorization to tow the vehicle was given.

(C) (i) When the vehicle owner or his or her agent claims the vehicle, the towing company prior to payment of a towing or storage charge shall provide a photocopy of the written authorization to the vehicle owner or the agent.

(ii) If the vehicle was towed from a residential property, the towing company shall redact the information specified in clause (ii) of subparagraph (B) in the photocopy of the written authorization provided to the vehicle owner or the agent pursuant to clause (i).

(iii) The towing company shall also provide to the vehicle owner or the agent a separate notice that provides the telephone number of the appropriate local law enforcement or prosecuting agency by stating “If you believe that you have been wrongfully towed, please contact the local law enforcement or prosecuting agency at (insert appropriate telephone number).” The notice shall be in English and in the most populous language, other than English, that is spoken in the jurisdiction.

(D) A towing company shall not remove or commence the removal of a vehicle from private property described in subdivision (a) of Section 22953 unless the towing company has made a good faith inquiry to determine that the owner or the property owner’s agent complied with Section 22953.

(E) (i) General authorization to remove or commence removal of a vehicle at the towing company’s discretion shall not be delegated to a towing company or its affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with an entrance to, or exit from, the private property.

(ii) In those cases in which general authorization is granted to a towing company or its affiliate to undertake the removal or commence the removal of a vehicle that is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that interferes with an entrance to, or exit from, private property, the towing company and the property owner, or owner’s agent, or person in lawful possession of the private property shall have a written agreement granting that general authorization.

(2) If a towing company removes a vehicle under a general authorization described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that interferes with an entrance to, or exit from, the private property, the towing company shall take, prior to the removal of that vehicle, a photograph of the vehicle that clearly indicates that parking violation. Prior to accepting payment, the towing company shall keep one copy of the photograph taken pursuant to this paragraph, and shall present that photograph and provide, without charge, a photocopy to the owner or an agent of the owner, when that person claims the vehicle.

(3) A towing company shall maintain the original written authorization, or the general authorization described in subparagraph (E) of paragraph (1) and the photograph of the violation, required pursuant to this section, and any written requests from a tenant to the property owner or owner's agent required by subparagraph (A) of paragraph (1), for a period of three years and shall make them available for inspection and copying within 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

(4) A person who violates this subdivision is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment.

(5) A person who violates this subdivision is civilly liable to the owner of the vehicle or his or her agent for four times the amount of the towing and storage charges.

(m) (1) A towing company that removes a vehicle from private property under this section shall notify the local law enforcement agency of that tow after the vehicle is removed from the private property and is in transit.

(2) A towing company is guilty of a misdemeanor if the towing company fails to provide the notification required under paragraph (1) within 60 minutes after the vehicle is removed from the private property and is in transit or 15 minutes after arriving at the storage facility, whichever time is less.

(3) A towing company that does not provide the notification under paragraph (1) within 30 minutes after the vehicle is removed from the private property and is in transit is civilly liable to the registered owner of the vehicle, or the person who tenders the fees, for three times the amount of the towing and storage charges.

(4) If notification is impracticable, the times for notification, as required pursuant to paragraphs (2) and (3), shall be tolled for the time period that notification is impracticable. This paragraph is an affirmative defense.

(n) A vehicle removed from private property pursuant to this section shall be stored in a facility that meets all of the following requirements:

(1) (A) Is located within a 10-mile radius of the property from where the vehicle was removed.

(B) The 10-mile radius requirement of subparagraph (A) does not apply if a towing company has prior general written approval from the law enforcement agency that exercises primary jurisdiction in the city in which is located the private property from which the vehicle was removed, or if the private property is not located within a city, then the law enforcement agency that exercises primary jurisdiction in the county in which is located the private property.

(2) (A) Remains open during normal business hours and releases vehicles after normal business hours.

(B) A gate fee may be charged for releasing a vehicle after normal business hours, weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after normal business hours shall

be one-half of the hourly tow rate charged for initially towing the vehicle, or less.

(C) Notwithstanding any other provision of law and for purposes of this paragraph, “normal business hours” are Monday to Friday, inclusive, from 8 a.m. to 5 p.m., inclusive, except state holidays.

(3) Has a public pay telephone in the office area that is open and accessible to the public.

(o) (1) It is the intent of the Legislature in the adoption of subdivision (k) to assist vehicle owners or their agents by, among other things, allowing payment by credit cards for towing and storage services, thereby expediting the recovery of towed vehicles and concurrently promoting the safety and welfare of the public.

(2) It is the intent of the Legislature in the adoption of subdivision (l) to further the safety of the general public by ensuring that a private property owner or lessee has provided his or her authorization for the removal of a vehicle from his or her property, thereby promoting the safety of those persons involved in ordering the removal of the vehicle as well as those persons removing, towing, and storing the vehicle.

(3) It is the intent of the Legislature in the adoption of subdivision (g) to promote the safety of the general public by requiring towing companies to unconditionally release a vehicle that is not lawfully in their possession, thereby avoiding the likelihood of dangerous and violent confrontation and physical injury to vehicle owners and towing operators, the stranding of vehicle owners and their passengers at a dangerous time and location, and impeding expedited vehicle recovery, without wasting law enforcement’s limited resources.

(p) The remedies, sanctions, restrictions, and procedures provided in this section are not exclusive and are in addition to other remedies, sanctions, restrictions, or procedures that may be provided in other provisions of law, including, but not limited to, those that are provided in Sections 12110 and 34660.

(q) A vehicle removed and stored pursuant to this section shall be released by the law enforcement agency, impounding agency, or person in possession of the vehicle, or any person acting on behalf of them, to the legal owner or the legal owner’s agent upon presentation of the assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions Code; a release from the one responsible governmental agency, only if required by the agency; a government-issued photographic identification card; and any one of the following as determined by the legal owner or the legal owner’s agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The storage facility shall not require any documents to be notarized. The storage facility may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions

Code, or to demonstrate, to the satisfaction of the storage facility, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code. [2013]

§22853. Disposition of Vehicle When Owner Is Unknown

■ (a) Whenever an officer or an employee removing a California registered vehicle from a highway or from public property for storage under this chapter does not know and is not able to ascertain the name of the owner or for any other reason is unable to give notice to the owner as required by Section 22852, the officer or employee shall immediately notify, or cause to be notified, the Department of Justice, Stolen Vehicle System, of its removal. The officer or employee shall file a notice with the proprietor of any public garage in which the vehicle may be stored. The notice shall include a complete description of the vehicle, the date, time, and place from which removed, the amount of mileage on the vehicle at the time of removal, and the name of the garage or place where the vehicle is stored.

(b) Whenever an officer or an employee removing a vehicle not registered in California from a highway or from public property for storage under this chapter does not know and is not able to ascertain the owner or for any other reason is unable to give the notice to the owner as required by Section 22852, the officer or employee shall immediately notify, or cause to be notified, the Department of Justice, Stolen Vehicle System. If the vehicle is not returned to the owner within 120 hours, the officer or employee shall immediately send, or cause to be sent, a written report of the removal by mail to the Department of Justice at Sacramento and shall file a copy of the notice with the proprietor of any public garage in which the vehicle may be stored. The report shall be made on a form furnished by that department and shall include a complete description of the vehicle, the date, time, and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal, and the name of the garage or place where the vehicle is stored.

(c) Whenever an officer or employee or private party removing a vehicle from private property for storage under this chapter does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as required by Section 22852 and if the vehicle is not returned to the owner within a period of 120 hours, the officer or employee or private party shall immediately send, or cause to be sent, a written report of the removal by mail to the Department of Justice at Sacramento and shall file a copy of the notice with the proprietor of any public garage in which the vehicle may be stored. The report shall be made on a form furnished by that department and shall include a complete description of the vehicle, the date, time, and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal, and the name of the garage or place where the vehicle is stored. [1983]

§22953. When Towing is Prohibited for at least One Hour

■ (a) An owner or person in lawful possession of private property that is held open to the public, or a discernible portion thereof, for parking of

vehicles at no fee, or an employee or agent thereof, shall not tow or remove, or cause the towing or removal, of a vehicle within one hour of the vehicle being parked.

(b) Notwithstanding subdivision (a), a vehicle may be removed immediately after being illegally parked within 15 feet of a fire hydrant, in a fire lane, in a manner that interferes with an entrance to, or an exit from, the private property, or in a parking space or stall legally designated for disabled persons.

(c) Subdivision (a) does not apply to property designated for parking at residential property, or to property designated for parking at a hotel or motel where the parking stalls or spaces are clearly marked for a specific room.

(d) It is the intent of the Legislature in the adoption of subdivision (a) to avoid causing the unnecessary stranding of motorists and placing them in dangerous situations, when traffic citations and other civil remedies are available, thereby promoting the safety of the general public.

(e) A person who violates subdivision (a) is civilly liable to the owner of the vehicle or his or her agent for two times the amount of the towing and storage charges. [2006]

§5115. Public Policy that Persons with Mental Health Disorders or Physical Disabilities Live in Normal Residential Surroundings

■ The Legislature hereby finds and declares:

(a) It is the policy of this state, as declared and established in this section and in the Lanterman Developmental Disabilities Services Act, Division 4.5 (commencing with Section 4500), that persons with mental health disorders or physical disabilities are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability.

(b) In order to achieve uniform statewide implementation of the policies of this section and those of the Lanterman Developmental Disabilities Services Act, it is necessary to establish the statewide policy that the use of property for the care of six or fewer persons with mental health disorders or other disabilities is a residential use of the property for the purposes of zoning. [2014]

§5116. Residential Home for Six or Fewer Persons with Mental Health Disorders or Other Disabilities or Dependent and Neglected Children is Residential Use of Property

■ (a) Pursuant to the policy stated in Section 5115, a state-authorized, certified, or licensed family care home, foster home, or group home serving six or fewer persons with mental health disorders or other disabilities or dependent and neglected children, shall be considered a residential use of property for the purposes of zoning if the homes provide care on a 24-hour-a-day basis.

(b) These homes shall be a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings. [2014]

§9105.1. Home Modification for Seniors and Persons with Disabilities

■ The department, in partnership with the area agencies on aging, the Department of Rehabilitation, any independent living centers, any contractor selected to implement the federal Assistive Technology Act of 1998 (Public Law 105-394), and any organization that serves seniors and persons with disabilities, may develop and provide consumer advice regarding home modification for seniors and persons with disabilities. [2002]

CALIFORNIA CODE OF REGULATIONS (CAL. CODE REG.)

■ (Public Swimming Pools)

Note: For more details on pool laws and regulations use this link:

<http://www.cdph.ca.gov/healthinfo/environhealth/water/pages/californiapublicswimmingpoolrequirements.aspx>

TITLE 24 - CALIFORNIA BUILDING STANDARDS CODE⁶⁴

SEC. 3102B. DEFINITIONS

■ **POOL OR PUBLIC POOL** is an artificial basin, chamber or tank constructed or prefabricated with impermeable surfaces that is used, or intended to be used, for public swimming, diving or recreational activities but does not include individual therapeutic tubs or baths where the main purpose is the cleaning of the body. Any manmade lake or swimming lagoon with a sand beach or sand bottom is not a public pool.

RECIRCULATION SYSTEM is the system of hydraulic components designed to remove, filter, disinfect and return water to the pool.

SPA POOL OR SPA is a pool that incorporates a water jet system, an aeration system or a combination of the two systems used in conjunction with heated water.

SPRAY GROUND is a pool with no standing water in the splash zone and consists of a surge basin with a recirculation system from which water is directed through water features for contact with pool users.

WADING POOL is a pool intended to be used for wading by small children and having a maximum water depth of 18 inches (457 mm) at the deepest point.

SEC. 3120B. REQUIRED SIGNS⁶⁵

§3120B.1 General.

■ All signs shall have clearly legible letters or numbers not less than 4 inches (102 mm) high, unless otherwise required in this section, affixed to a wall, pole, gate or similar permanent structure in a location visible to all pool users.

⁶⁴ The pool regulations in Title 24 shown below were adopted by the California Department of Public Health effective January 1, 2014. These are limited primarily to pool sign requirements. There are many other pool regulations than those shown below.

⁶⁵ Sections 3120B.12 (Wave pools) and 3120B.13 (Spray ground sign) have been omitted.

§3120B.2 Pool user capacity sign.

■ A sign shall indicate the maximum number of pool users permitted for each pool.

§3120B.2.1 Spa pool.

■ The pool user capacity of a spa pool shall be based on one pool user for every 10 square feet (0.929 m²) of pool water surface area.

§3120B.2.2 Other pools.

■ The pool user capacity of all other pools shall be based on one pool user for every 20 square feet (1.858 m²) of pool water surface area.

Exception: Pool user capacity requirements do not apply to wading pools or spray grounds.

§3120B.3 No diving sign

■ Signs shall be posted in conspicuous places and shall state, “NO DIVING” at pools with a maximum water depth of 6 feet or less.

§3120B.4 No lifeguard sign

■ Where no lifeguard service is provided, a sign shall be posted stating, “NO LIFEGUARD ON DUTY.” The sign also shall state in letters at least 1 inch (25 mm) high, “Children under the age of 14 shall not use pool without a parent or adult guardian in attendance.” Exception: “No lifeguard sign” requirement does not apply to spray grounds that have no standing water.

§3120B.5 Artificial respiration and cardiopulmonary resuscitation sign

■ An illustrated diagram with text at least 1/4 inch (6 mm) high of artificial respiration and cardiopulmonary resuscitation procedures shall be posted.

§3120B.6 Emergency sign

■ The emergency telephone number 911 with numbers not less than 4 inches (102 mm), the number of the nearest emergency services and the name and street address of the pool facility with numbers and text not less than 1 inch (25 mm) shall be posted.

§3120B.7 Warning Sign for a Spa Pool

■ A warning sign for spa pools shall be posted stating, “CAUTION” and shall include the following language in letters at least 1 inch (25 mm) high:

(1) Elderly persons, pregnant women, infants and those with health conditions requiring medical care should consult with a physician before entering the spa.

(2) Unsupervised use by children under the age of 14 is prohibited.

(3) Hot-water immersion while under the influence of alcohol, narcotics, drugs or medicines may lead to serious consequences and is not recommended.

- (4) Do not use alone.
- (5) Long exposure may result in hyperthermia, nausea, dizziness or fainting.

§3120B.8 Emergency shut off.

■ In letters at least one inch (25 mm) high a sign shall be posted at the spa emergency shut off switch stating, “EMERGENCY SHUT OFF SWITCH.”

§3120B.9 No use after dark.

■ Where pools were constructed for which lighting was not required, a sign shall be posted at each pool entrance on the outside of the gate(s) stating, “NO USE OF POOL ALLOWED AFTER DARK.”

§3120B.10 Keep closed

■ A sign shall be posted on the exterior side of gates and doors leading into the pool enclosure area stating, “KEEP GATE CLOSED” or “KEEP DOOR CLOSED.”

§3120B.11 Diarrhea

■ A sign in letters at least 1 inch (25 mm) high and in a language or diagram that is clearly stated shall be posted at the entrance area of a public pool which states that persons having currently active diarrhea or who have had active diarrhea within the previous 14 days shall not be allowed to enter the pool water.

§3120B.14 Exit

■ Where automatic gaseous chlorine chemical feeders are used, a sign shall be posted at the pool area entrance which shows in a diagrammatic form an emergency evacuation procedure. Designated emergency exits shall be marked “EXIT.”

§3120B.15 Gaseous oxidizer

■ Where automatic gaseous chlorine chemical feeders are used, a warning sign with the appropriate hazard identification symbol shall be posted on the exterior side of the door entering the chemical feeder room or area. The sign shall state, “DANGER: GASEOUS OXIDIZER - (specific chemical name),” or as otherwise required by the California Fire Code.

§3120B.16 Turn on before entering

■ Where automatic gaseous chemical feeders are used, a sign shall be posted at the switch to the light and ventilation system for the gaseous chemical feeder room stating, “TURN ON BEFORE ENTERING,” or as otherwise required by the California Fire Code or the California Electrical Code.

§3120B.17 Direction of flow

§3120B.17.1 (no title)

■ The direction of flow for the recirculation equipment shall be labeled clearly with directional symbols such as arrows on all piping in the equipment area.

§3120B.17.2 (no title)

■ Where the recirculation equipment for more than one pool is located on site, the equipment shall be marked as to which pool the system serves.

§3120B.17.3 (no title)

■ Valves and plumbing lines shall be labeled clearly with the source or destination descriptions.

4 U.S.C. (TITLE 4)

On July 24, 2006, H.R. 42, the “Freedom to Display the American Flag Act of 2005” was signed into law by the President and became Public Law 109-243. This law became part of the notes under the following section of the United States Code, abbreviated 4 U.S.C. 5. The full text of the bill is set forth below the statutory section heading.

§5 Display and Use of Flag by Civilians; Codification of Rules and Customs; Definition

Sec. 1. Short Title.

■ This Act may be cited as the “Freedom to Display the American Flag Act of 2005.” [2005]

Sec. 2. Definitions.

■ For purposes of this Act—

(1) the term “flag of the United States” has the meaning given the term “flag, standard, colors, or ensign” under section 3 of title 4, United States Code;

(2) the terms “condominium association” and “cooperative association” have the meanings given such terms under section 604 of Public Law 96-399 (15 U.S.C. 3603);

(3) the term “residential real estate management association” has the meaning given such term under section 528 of the Internal Revenue Code of 1986 (26 U.S.C. 528); and

(4) the term “member”—

(A) as used with respect to a condominium association, means an owner of a condominium unit (as defined under section 604 of Public Law 96-399 (15 U.S.C. 3603)) within such association;

(B) as used with respect to a cooperative association, means a cooperative unit owner (as defined under section 604 of Public Law 96-399 (15 U.S.C. 3603)) within such association; and

(C) as used with respect to a residential real estate management association, means an owner of a residential property within a subdivision, development, or similar area subject to any policy or restriction adopted by such association. [2005]

Sec. 3. Right to Display the Flag of the United States.

■ A condominium association, cooperative association, or residential real estate management association may not adopt or enforce any policy, or enter into any agreement, that would restrict or prevent a member of the association from displaying the flag of the United States on residential property

within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use. [2005]

Sec. 4. Limitations.

■ Nothing in this Act shall be considered to permit any display or use that is inconsistent with—

(1) any provision of chapter 1 of title 4, United States Code, or any rule or custom pertaining to the proper display or use of the flag of the United States (as established pursuant to such chapter or any otherwise applicable provision of law); or

(2) any reasonable restriction pertaining to the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the condominium association, cooperative association, or residential real estate management association. [2005]

15 U.S.C. (TITLE 15)

On December 19, 2007, H.R. 42, the “Virginia Graeme Baker Pool and Spa Safety Act” became law as Public Law 110-140. The portions most relevant to community associations are set forth below.

§8002. Definitions (Pool and Spa Safety Act).

In this chapter:

(1) ASME/ANSI—The term “ASME/ANSI” as applied to a safety standard means such a standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(2) Barrier—The term “barrier” includes a natural or constructed topographical feature that prevents unpermitted access by children to a swimming pool, and, with respect to a hot tub, a lockable cover.

(3) Commission—The term “Commission” means the Consumer Product Safety Commission.

(4) Main Drain—The term “main drain” means a submerged suction outlet typically located at the bottom of a pool or spa to conduct water to a recirculating pump.

(5) Safety Vacuum Release System—The term “safety vacuum release system” means a vacuum release system capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to a suction outlet flow blockage.

(6) Swimming Pool; Spa—The term “swimming pool” or “spa” means any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground and aboveground structures, and includes hot tubs, spas, portable spas, and non-portable wading pools.

(7) Unblockable Drain—The term “unblockable drain” means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(8) State—The term “State” has the meaning given such term in section 2052(10) 1 of this title, and includes the Northern Mariana Islands. For purposes of eligibility for the grants authorized under section 8004 of this title, such term shall also include any political subdivision of a State. [2011]

§8003. Federal Swimming Pool and Spa Drain Cover Standard

(a) Consumer Product Safety Rule.—The requirements described in subsection (b) shall be treated as a consumer product safety rule issued by the Consumer Product Safety Commission under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.). If a successor standard is proposed, the American Society of Mechanical Engineers shall notify the Commission of the proposed revision. If the Commission determines that the proposed revision is in the public interest, it shall incorporate the revision into the standard after providing 30 days notice to the public.

(b) Drain Cover Standard.—Effective 1 year after the date of enactment of this title, each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard regulating such swimming pool or drain cover.

(c) Public Pools.—

(1) Required Equipment—

(A) In General.—Beginning 1 year after December 19, 2007—

(i) each public pool and spa in the United States shall be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard; and

(ii) each public pool and spa in the United States with a single main drain other than an unblockable drain shall be equipped, at a minimum, with 1 or more of the following devices or systems designed to prevent entrapment by pool or spa drains that meets the requirements of subparagraph (B):

(I) Safety Vacuum Release System.—A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387.

(II) Suction-limiting Vent System—A suction-limiting vent system with a tamper-resistant atmospheric opening.

(III) Gravity Drainage System—A gravity drainage system that utilizes a collector tank.

(IV) Automatic Pump Shut-off System—An automatic pump shut-off system.

(V) Drain Disablement—A device or system that disables the drain.

(VI) Other Systems—Any other system determined by the Commission to be equally effective as, or better than, the systems described in subclauses (I) through (V) of this clause at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(B) Applicable Standards—Any device or system described in subparagraph (A)(ii) shall meet the requirements of any ASME/ANSI or ASTM performance standard if there is such a standard for such a device or system, or any applicable consumer product safety standard.

(2) Public Pool and Spa Defined—In this subsection, the term “public pool and spa” means a swimming pool or spa that is—

(A) open to the public generally, whether for a fee or free of charge;

(B) open exclusively to—

(i) members of an organization and their guests;

(ii) residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area (other than a municipality, township, or other local government jurisdiction); or

(iii) patrons of a hotel or other public accommodations facility; or

(C) operated by the Federal Government (or by a concessionaire on behalf of the Federal Government) for the benefit of members of the Armed Forces and their dependents or employees of any department or agency and their dependents.

(3) Enforcement—Violation of paragraph (1) shall be considered to be a violation of section 19(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(1)) and may also be enforced under section 17 of that Act (15 U.S.C. 2066). [2008]

CODE OF FEDERAL REGULATIONS (CFR) – FCC REGULATIONS
Part 1 Subpart S, Section 1.4000 of Title 47 of the
Code of Federal Regulations

§1.4000. Restrictions Impairing Reception of Television Broadcast Signals, Direct Broadcast Satellite Services or Multichannel Multipoint Distribution Services

■ (a) (1) Any restriction, including but not limited to any state or local law or regulation, including ■ zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of:

(i) An antenna that is:

(A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, and

(B) One meter or less in diameter or is located in Alaska;

(ii) An antenna that is:

(A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, and

(B) That is one meter or less in diameter or diagonal measurement;

(iii) An antenna that is used to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, "fixed wireless signals" means any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Fixed wireless signals do not include, among other things, AM radio, FM radio, amateur ("HAM") radio, Citizen's Band (CB) radio, and Digital Audio Radio Service (DARS) signals.

(3) For purposes of this section, a law, regulation, or restriction impairs installation, maintenance, or use of an antenna if it:

(i) Unreasonably delays or prevents installation, maintenance, or use;

(ii) Unreasonably increases the cost of installation, maintenance, or use; or

(iii) Precludes reception or transmission of an acceptable quality signal.

(4) Any fee or cost imposed on a user by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (d) or (e) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (d) or (e) of this section, the entity seeking to enforce the antenna restrictions in question must suspend all enforcement efforts pending completion of review. No ■ attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is issued adverse to a user, the user shall be granted at least a 21-day grace period in which to comply with the adverse ruling; and neither a fine nor a penalty may be collected from the user if the user complies with the adverse ruling during this grace period, unless the proponent of the restriction demonstrates, in the same proceeding which resulted in the adverse ruling, that the user's claim in the proceeding was frivolous.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if:

(1) It is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble, or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance, or use of other modern appurtenances, devices, or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraphs (b)(1) or (b)(2) of this section. [2002]

[Note: Subsections (c) through (g), concerning applications and petitions to the Federal Communication Commission, have been omitted.]⁶⁶

⁶⁶ The FCC has additional information and FAQs about the Over-the-Air Reception Devices (“OTARD”) Rule at <http://www.fcc.gov/guides/over-air-reception-devices-rule>

CHECKLISTS FOR ASSOCIATIONS AND ASSOCIATION MANAGERS

NOTE: The “Civil Code” is abbreviated “CC” in these Checklists.

■ We have attempted to put the most significant statutory duties imposed on community association boards and managers into these checklists. Each includes a citation to the statutes from which these duties are derived. We do not guarantee that these checklists encompass all statutory obligations imposed on associations or managers. They certainly cannot address all contractual obligations or governing document duties which can and do vary widely. These checklists are also significantly condensed, so the reader must consult the statutes for important details. There are some references to statutes below that do not appear in the printed Resource Book, but they do appear in the expanded Digital Version we produce.

While duties from the Corporations Code affect just incorporated associations, they might be used as guidance by a court in determining whether an unincorporated association has acted reasonably. (NOTE: The entire Nonprofit Mutual Benefit Corporations Law applies to associations incorporated before January 1, 1980, except it does not apply to the mandatory contents of the articles of incorporation, unless the corporation amends them later and elects to be governed under the new law. [Corp. Code §§9912 & 9913])

There are now separate statutes that apply to associations that are primarily residential [CC §§4000-6150] versus those that are purely commercial and industrial [CC §§6500-6876]. See each statute for details. Provisions in these checklists citing to sections between 4000 and 6150 will apply only to associations that are not purely commercial or industrial.

§1 **Checklist if the Association or Board is Sued**

1. **Note Service Date, Time and on Whom.** Make a written note immediately of the name of the person who was served with the papers, the time and the date. Your attorneys and insurance carrier will need to know this information, as you have only 30 days in which to make some response.
2. **Act Promptly.** Do not take a lawsuit lightly. Do not put the lawsuit in a drawer or someone’s mail slot and wait for the person to see it. If you fail to protect your rights, the courts may not help to save you from your own mistakes, or it may cost you a great deal more to undo the errors.
3. **Notify Attorneys and Insurance.** Immediately send a copy of the lawsuit to your attorneys and your insurance carriers. Depending on your insurance policies and the nature of the claim, there may or may not be insurance coverage, and you may need to have your attorneys take the initial steps to protect your rights in the lawsuit.

§2 **Checklist of Mandatory Annual Disclosures**

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1. **Annual Budget Report.** Between 30 and 90 days before the new fiscal year begins, an association must prepare an annual budget report

(“Report”) and distribute it to the owners.⁶⁷ [CC §5300(a)] Compliance with this requirement, except for the summary of the reserve funding plan required by CC §5300(b)(3) is necessary for associations to utilize the 20%/5% assessment increase provisions described in this §2, paragraph a, below. [CC §5300(b)(1)] This report must contain the information below. See the respective statutes for details.

a. Annual Budget. The Report must include an annual budget prepared on an accrual basis. [CC §5300(b)(1)]

b. Reserve Summary. The Report must include a summary of the association’s reserves in boldface type and include the many details described in the statute [CC §§5300(b)(3) & 5565] and must disclose reserve study information in a specified format. [CC §§5300(e) & 5570] Where a community service organization (CSO) maintains major components of the association, the CSO must provide the association with information to do the reserve study. [CC §5580] Reserves include any funds received and not yet expended from a settlement or damage award arising out of any claim for construction or design defects. [CC §4177] Each association must report, as separate line items, either in the reserve study or in the annual review or audit, the amount of any such defect funds that have not yet been expended, and the expenditure or disposition of such funds, including any amounts expended for the direct or indirect costs for repairing construction or design defects. [CC §5565(b)(3)]

c. Reserve Funding Plan Summary and Full Reserve Study. The Report must include a summary of the reserve funding plan adopted by the Board [CC §5550(b)(5)] and include notice to members that the full reserve study, including the reserve funding plan, is available to members and that the association must provide it upon request. [CC §5565(b)(3)]

d. Statement of Decision(s) to Defer Repairs. The Report must include a statement of 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 decision [CC §5300(b)(4)].

e. Statement of Possible Levy of Special Assessments. The Report must include a statement of whether the board has determined or anticipates the need to levy one or more special assessments to repair, replace, or restore any major component or to provide adequate reserves for doing so [CC §5300(b)(5)].

⁶⁷ As an alternative to distributing the full Annual Budget Report under CC §5300 or the Annual Policy Statement under CC §5310, the association may distribute only a summary of the items required by CC §5300 or CC §5310 [CC §5320. However, the members must be given a notice, in at least 10-point boldface type on the front page of each summary with instructions for how a member can request a complete copy of either report at no cost to the member. NOTE: See the example of 10-point bold type in footnote 30, page 208 in Civil Code §5300. If a member requests a copy of the full report required by CC §5320, the association must mail a copy to the member presumably as provided for “individual delivery” under CC §4040.

f. Statement of Method(s) for Funding Reserves. The Report must include a statement of the mechanism(s) by which the board will fund reserves [CC §5300(b)(6)].

g. Statement of Procedures Used to Calculate and Establish Reserves. The Report must include a statement addressing procedures used for calculation and establishment of reserves. The statement shall include reserve calculations made using the formula described in paragraph (4) of subdivision (b) of CC §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 [CC §5300(b)(7)].

h. Statement of any Outstanding Loans. The Report must include a statement of whether the association has any outstanding loans with an original term of more than one year. See statute for details. [CC §5300(b)(8)].

i. Summary of Insurance Policies. The Report must include a summary of the association's (1) property, (2) general liability, (3) earthquake, (4) flood insurance and (5) fidelity policies, listing the carrier's name, type of insurance, policy limits for each type and the deductibles. If the policy declaration page includes the required information, the association may use the declaration page. The Report must also include verbatim disclaimer language specified by the statute in at least 10-point⁶⁸ bold type. [CC §5300(b)(9)] It may be worth adding to the insurance disclosures that the association policy (usually) does not cover alternate housing, moving and storage expenses, nor loss of owner's personal property from fire and other losses, nor cover the owner's liability for injuries on or in the owner's separate interest.

j. Statement of FHA Certification Status by Condominiums. Effective July 1, 2016, if the HOA is a condominium, the Annual Budget Report must contain a verbatim statement about whether the development is a condominium project and whether it is certified. [CC §5300(b)(10)]

k. Statement of VA Certification Status by Condominiums. Effective July 1, 2016, if the HOA is a condominium. [CC §5300(b)(10)]

2. Issues Related to the Annual Budget Report

a. Assessment Limits. Associations must limit increases in regular assessments to a maximum of 20% above the regular assessment for the prior fiscal year and total special assessments to a maximum of 5% of the association's budgeted gross expenses during a given fiscal year. [CC §5605] Unless the association levied assessments based on taxable value in accordance with its governing documents before December 31, 2009, it may not do so thereafter, except where the association pays taxes on the separate interests and then only with respect to the taxes levied [CC §5625].

b. Increase in Assessments Disclosure. Associations must send notice of any increase in regular or special assessments, by individual notice, 30 to 60 days before the due date for the increase [CC §5615] and notify prospective purchasers of increases that have been approved but are not yet due. [CC §4525(a)]

⁶⁸ See example in footnote 30, page 208 in Civil Code §5300.

c. **Detailed Reserve Study.** At least every 3 years, conduct a reasonably detailed and competent visual inspection of the accessible components the association must maintain as part of a study of the association's reserve account requirements (if the replacement cost of the components the association must maintain is at least one-half of the association's fiscal budget for the last 3-year period, excluding reserves). Consult the statute for many detailed requirements. [CC §5550]

d. **Annual Reserve Study Adjustments.** At least annually, review the reserve study and make any necessary adjustments. [CC §5550]

e. **Reserve Procedures.** In reserve studies, associations may not assume a rate of return higher than the discount rate from the Federal Reserve Bank of San Francisco. [CC §5300(b)(7) & 5570]

f. **Reserves Used for Litigation Expenses.** At least quarterly, if the board uses any reserve funds to pay expenses for any litigation, make an accounting of all litigation expenses and make it available for inspection at the association's office. Give the members written notice of (1) any decision to use reserves to pay for such litigation expenses and (2) the location of the accounting that is available for their inspection. [CC §5520; Corp. Code 5016]

g. **Directors and Officers (D&O) Insurance.** To obtain exemption from personal liability for volunteer directors, purchase both general liability and directors and officers liability insurance. The amount must be at least \$500,000 for associations up to 100 units and \$1,000,000 for those larger than 100 units. [CC §5800]

h. **Commercial General Liability (CGL) Insurance.** To prevent suit and joint and several liability against individual owners, if the association contains any property owned in common by the owners, purchase general liability coverage of \$2,000,000 in associations with 100 units or fewer and \$3,000,000 in those with more than 100 units. [CC §5805]

i. **Notice to Members of Insurance Lapse, Non-renewal or Cancellation.** Associations must also give "individual notice" to all members under CC §4040 of any lapse, non-renewal, or cancellation of coverage, or if there is a significant change in coverage, such as a reduction in coverage or limits or an increase in deductibles. [CC §5810] Carriers must provide a reason for any non-renewal of a policy. [Insur. Code §678].

j. **Workers Compensation Insurance.** Be sure that you have workers compensation insurance for employees and pay taxes withheld from employees pay when due.

3. **Annual Policy Statement.** Between 30 and 90 days before the new fiscal year begins, an association must distribute an annual policy statement to provide information to members about association policies. [CC §5310(a)] This report must contain the information below. See the respective statutes for details.

a. **Official Communications to Association.** The name and address of the person designated to receive official communications to the association as provided in CC §4035. [CC §5310(a)(1)]

b. Second Member Address. A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses under CC 4040(b). [CC §5310(a)(2)]

c. Place for Posting a General Notice. The location, if any, designated for posting of a general notice under CC §4045(a)(3). [CC §5310(a)(3)]

d. Option to Receive Member Notices by Individual Delivery. Notice of a member’s right to receive general notices by individual delivery as provided in CC §4045(b). [CC §5310(a)(4)]

e. Right to Receive Meeting Minutes. Notice of a member’s right to receive copies of meeting minutes as provided in CC §4950(b). [CC §5310(a)(5)]

f. Assessment Collection Policies. The statement of assessment collection policies required by CC §5730. [CC §5310(a)(6)] This is a lengthy verbatim statement set forth in CC §5730 describing an association’s collection rights that must be printed in at least 12-point type⁶⁹ [CC §5730]

g. Policies for Enforcing Lien Rights. A statement describing the association’s policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments, in other words, its own “Collection Policy.” [CC §5310(a)(7)] The board must also notify the owners of the standards for payment plans, if any exist. [CC §5665(a)]

h. Association Discipline Policy. A statement describing the association’s discipline policy, if any, including any schedule of penalties for violations of the governing documents as provided in CC §5850. [CC §5310(a)(8)]

i. Summary of Dispute Resolution Procedures. A summary of dispute resolution procedures as required by CC §§5920 (IDR) and 5965 (ADR). [CC §5310(a)(9)]

j. Requirements for Architectural Approvals. A summary of any requirements for association approval of a physical change to property as provided in CC §4765, including the types of changes that require association approval and a copy of the procedure used to review and approve or disapprove a proposed change. [CC §4765] [CC §5310(a)(10)] If the governing documents require association approval of architectural changes, the association must provide a fair, reasonable and expeditious process for making architectural decisions. ■ Associations may not impose fines or assessments against members for reducing or eliminating the watering of vegetation or lawns during any period for which the Governor or a local government has declared a state of emergency due to drought conditions. Governing document architectural requirements *may be void and unenforceable if they conflict with the water-conserving requirements in CC §4735. They may no longer prohibit, or have the effect of prohibiting, artificial turf or other artificial surfaces resembling grass. [CC §4735]. Owner’s may use a “clothesline” or “drying rack,” as defined in the law, for drying clothes in the owner’s “backyard” (not defined). [CC §4710.10].*

⁶⁹ See example in footnote 30, page 208 in Civil Code §5300.

k. Mailing Address for Overnight Payment. The mailing address for overnight payment of assessments as provided in CC §5655. [CC §5310(a)(10)]

l. Other Required or Optional Information. Any other information that is required by law or the governing documents. See Paragraphs 5, below, for items that require disclosure and that you may wish to include at the end of the Annual Policy Statement. Some of these may require disclosure in a place other than the Annual Policy Statement. Also see Paragraph 6, below, for optional items you may consider important to disclose to members but that may not be mandatory. [CC §5310(a)(11)]

4. Issues Related to the Annual Policy Statement.

a. Document Delivery Methods. The Board may deliver documents in any manner provided in CC §§4040 & 4045. [CC §§4040 & 4045]

b. Right to Annual Financial Report. The board must notify members (of incorporated associations) annually of their right to obtain an annual financial report upon written request. This report is similar to the audit or review required by CC §5300(b)(3), but it applies to corporations that have as little as \$10,000 in gross annual receipts. [Corp. Code §8321]. Presumably the requirements of CC §5300(b)(3) are more extensive and control over Corp. Code §8321.

c. Monetary Penalty or Fine Disclosures. The board must distribute to all members any schedule of the monetary penalties adopted by the board to discipline members, whether committed by the owner, or the owner's guests or invitees. The board must distribute it by individual delivery as provided in CC §4040. The board needs to do this only once, although it must redistribute it, if there are any changes. [CC §5850]

d. IDR and ADR Disclosures. Associations must have some procedure for informal, internal attempts to resolve disputes between the association and an owner. [CC §5900-5920] The board must also disclose its IDR (Internal Dispute Resolution) procedures in the annual policy statement. [CC §5920] If the board does not adopt its own procedures, the statute contains default procedures in CC §5915 that will apply. Attorneys may assist either an association or a member at both ADR and IDR proceedings. [CC §§5910 & 5915] Associations must also include in the Annual Policy Statement at least a summary of the ADR (Alternative Dispute Resolution) procedures used under CC §5925-5965. It must contain the verbatim language found in CC §5965(a). This summary must also be disclosed in the annual policy statement. [CC §5965].

5. Other Mandatory Disclosures the Board May Wish to Disclose with the Annual Budget Report and Annual Policy Statement

a. Preparation of an Annual Audit or Review. This statement or disclosure is not required, but it should help to alert the board of the need to get this task done within 120 days after the end of the fiscal year. An association must prepare at least a "review," or possibly an "audit" if required by the governing documents, if its gross income for the year is \$75,000 or more. [CC §5305]. The review or audit must be distributed to members by individual delivery within 120 days after the close of the fiscal year. If an incorporated

association has at least \$10,000 in income for the year, it must provide at least the information required by Corporations Code §8321 within 120 days after the end of the fiscal year. Also, if there are any disclosures required by Corp. Code §8322 (such as information about material financial interests, loans, guarantees, indemnifications, etc.) involving officers and directors as required by Corporations Code §8322, that must be disclosed annually as well.

b. Asbestos Disclosures. Under Health & Safety (H&S) Code Section 25915.2, associations must give or post notice about any asbestos known to exist in the project. See footnote 20 in CC §4525. [H&S Code §25915.2] Annual written notice and/or signs on the premises may be required to be posted. You should consult with legal counsel for assistance in preparing this disclosure for compliance with the requirements of the H&S Code.

c. Disclosure and Accounting of Reserves Borrowed for Litigation. When the Board temporarily borrows reserve funds to pay for litigation under CC §5510(b), the association must make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting must be made available for inspection by members of the association at the association's office. [CC §5520] A statement to this effect is not required, but if an association discloses this, it is more likely to do the accounting each quarter.

d. Rental/Lease Restriction Disclosures. If an association's governing documents prohibit the rental or leasing of any separate interest to a renter, lessee or tenant [CC §4740], an owner is required to disclose this to prospective purchasers [CC §4525(a)(9)], but the association is required to provide that information to the owner on request to provide to the prospective purchaser. [CC §4528]. If the information is disclosed with the annual disclosures, the annual disclosures and budget documents are part of the documents that a prospective purchaser is required to be given.

e. Disclosure of Senior Community (55+) Status. This option is required by CC §4525(a)(2) only if there are differences between the CC&R requirements and the requirements of CC §51.3. While not specifically required for the annual policy statement, this disclosure is required if a prospective purchaser requests documents and disclosures for escrow as required by CC §4525(a)(2), AND if there is any difference between the CC&R provision on senior housing and the senior housing requirements in CC §51.3. There may also be some differences if an association is a mobilehome community (that is subject to the Federal Fair Housing Act) or an association in Riverside County (that is subject to CC §51.11). Obviously the association must be a senior (55+) community in the first place. By including the disclosure in escrow packages as part of the annual budget disclosures, it helps to ensure that this disclosure will be distributed to the prospective purchaser under CC §5300 as required by CC §4525(a)(3). It is probably helpful to have a disclosure that the association is a senior community as part of the budget package that would go to a prospective purchaser who requests the documents, including the annual disclosures, under CC §4525.

f. Community Service Association Disclosure. Include this section only if there is a community service organization whose funding comes from the association, and it exceeds 10% of the association's annual budget. [CC

§5580] It is likely to apply to few associations. The association can disclose that it is subject to the disclosure requirements, of the law, but it also needs to prepare and provide the accounting described in CC §5580 when it is required.

g. Emergency Preparedness and/or Evacuation Plans.

Mobilehome communities [H&S Code §§18603 & 18871.8] and high rise buildings [H&S §§13210-13234] are required to have emergency preparedness and/or evacuation plans. Such associations may also wish to insert them here. However, there are other requirements, such as posting these in conspicuous common areas or conspicuous areas of a high rise, as required by the applicable statutes.

h. Any Other Disclosures that May be Required by Law or the Governing Documents. An association may add any other disclosure in this section that is required by law or the governing documents.

6. Optional Disclosures the Board May Wish to Make with the Annual Budget Report and Annual Policy Statement.

a. Architectural Modifications or Other Accommodations Made for Persons with Disabilities. This is an optional disclosure, but it is helpful in some associations. It would inform owners that they may observe some architectural changes or some other apparent violation of an association's governing documents, but the changes or other apparent "violations" are actually "accommodations" that were permitted to enable the association to comply with state and/or federal ■ fair housing laws requiring accommodations to be made for persons with disabilities. It can point out that these may be needed to give disabled residents an equal opportunity to use and enjoy the premises. It also can point out the many different types of disabilities may require many different types of accommodations. However, owners should recognize that this does not mean the association is lax about enforcing community standards and rules, rather that it is mindful of its legal duty to comply with disability protection laws.

b. Distribution of Mailing List to Owners. An association is required by CC 5200(a), under the circumstances covered by the statute, to provide members with the name, property address, and mailing address of all members. However, association members may opt out of sharing their contact information by notifying the association that the member prefers to be contacted via the alternative process described in Corporations Code §8330(c). CC §5200(a) does not require this disclosure, but it may be useful for owners who wish to opt out of providing their name and other contact information to an owner who requests and is entitled to the information on the membership list. This disclosure would inform owners of their right to opt out, but if some do opt out, it will not exempt them from receiving the materials. It probably requires the association to disclose to the requesting party that X owners opted out, and if the requesting party wants to distribute information to them, the requesting owner will need to provide sealed and stamped envelopes with the return address of the sender, and the association will have to add mailing labels to mail out that information to those specific owners.

c. Security Disclaimer by Gated Communities and Associations with Locked Entry Doors or Patrols. Associations may wish to

consider a disclaimer to state explicitly that owners are ultimately responsible for their own security, and the fact that there may be gated entries, staffed entry gates, periodic patrols, the use of security cameras, etc., do not provide a guarantee of security on which any residents may rely.

d. Requirements for Owners to have Smoke and Carbon Monoxide Detectors in their Units. These are not mandatory disclosures, but they are important to remind owners about smoke detectors and carbon monoxide detector requirements, and some HOA insurance companies are also requiring the associations they insure to provide written notice to owners about these obligations. Owners are required by law to have operational smoke detectors and carbon monoxide detectors. Carbon monoxide detectors were required by July 1, 2011, in most single-family dwelling units with a fossil fuel-burning heater or fireplace. The deadline was January 1, 2013, for all other dwelling units intended for human occupancy. [H&S Code §§17926-17926.2] Also, smoke alarms have been required as far back as January 1, 1986. [H&S Code §13113.8.] Associations may wish to remind owners that it is common for many detectors to last no longer than 10 years, to test their detectors regularly, to follow the manufacturer’s instructions about replacement and to replace them when their useful life ends.

e. Water Shutoffs. It may be helpful to identify the location of all water main shutoffs in association buildings to be sure everyone knows where they are. This information is critical to find a shutoff to stop a major pipe leak or a fire sprinkler that is accidentally damaged or fails. This is important even if all residents are one floor and even more so if the association has a building that is two or more stories high.

f. Any Other Disclosures that an Association May Wish to Add. An association may add any other information in this section that it believes is appropriate.

§3 Checklist of other Annual or Periodic Board Duties

Governmental Requirements

1. Mandatory Biennial Filings. ■ Unincorporated associations must file biennially a “Statement by Common Interest Development” on Form SI-CID should have filed it the first time by July, 2003 and biennially by July of each odd-numbered year. [CC §5404(b)(2)]. Incorporated associations must also file Form SI-CID biennially at the same that Form SI-100 is due. Incorporated associations must file biennially a “Statement by Domestic Nonstock Corporation” on a Form SI-100 available from the Secretary of State before the end of the month in which it was originally incorporated [Corp. Code §8210]. Using a credit card, corporations can now file online at <https://businessfilings.sos.ca.gov/> if the corporation is in good standing. Form SI-100 The form must list the names and addresses of the ■ principal officers and its ■ agent for service of process and the street address of the corporation’s office, and it must include an email address if the corporation elects to receive notice from the Secretary of State via electronic mail [Corp. Code §8210]. Form

SI-CID must state (1) that the corporation is an association formed to manage a common interest development, (2) whether it is incorporated or not, (3) the street address of the its business office, if any, (4) the street address of an on-site office, if any, or the address of the association’s responsible officer or managing agent, (5) the name, address and either the phone number or email address of the association’s president, (6) the name, address and daytime phone number of the managing agent, if any, (7) information on the physical location of the development, (8) the type of common interest development it is, and, (9) the number of separate interests in it. Failure to file may first result in a penalty of \$50.00 [R&T §19141] and later in suspension of corporate status if the penalty is not paid. [Corp. Code §§5008.6 & 8810]. If there is no management company and the board hasn’t seen or filed such a form recently, the corporation may already have been suspended! It is wise to check the business portal of the Secretary of State’s website periodically (www.ss.ca.gov) to be sure that your corporation is still in good standing. We continue to find HOAs that are suspended.

2. Post Office Boxes. To avoid problems like the one described in paragraph 21, or failing to get key mail or losing key documents as the association changes board members, managers, accountants and attorneys over time, it is helpful to have a permanent post office box that someone on the board checks regularly. Keep an up to date list of all items that are sent to that address, such as tax bills, corporate documents from the Secretary of State, etc., so you can send notifications, if you must change the P.O. Box. It is also a good idea to have your own storage locker, and to keep all your archived documents there. Each box should be labeled, preferably by year and number for easy location, and the materials in each should be indexed so you can find them more easily.

3. Discriminatory Language. As of January 1, 2001, CC §4225 and Govt. Code §12955(l) require an association to remove any discriminatory language from an association’s governing documents. It is not enough just to say that the restriction is repealed or void. If you haven’t reviewed your documents for this, you should do so. [CC §4225; Govt. Code §12955(l)]. There is a detailed procedure for adopting such amendments. [Govt. Code §12956.2]

Contracting Requirements

4. Labor Code §2810 on Contracts. Associations that enter contracts for labor or services may be liable to each of the contractor’s employees, if the contract does not provide sufficient funds for the contractor to comply with all applicable laws, such as workers compensation laws. [Lab. Code §2810]

5. Pool/Spa Drain Safety. On December 19, 2007, the President signed into law the Virginia Graeme Baker Pool and Spa Safety Act, named after the daughter of Nancy Baker and the granddaughter of former Secretary of State James Baker. Graeme Baker died in a tragic incident in June 2002 after the suction from a spa drain entrapped her under the water. The federal law requires that by December 20, 2008, all swimming pool and spa suction outlet fittings and drain covers must be certified to comply with ASME/ANSI A112.19.8

standards. That standard has now been changed to ANSI/APSP-16. See <http://www.cpsc.gov/BUSINFO/frnotices/fr11/vgb-pssa-successor-standard.pdf>. The term “ASME/ANSI” refers to a safety standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers. APSP is the Association of Pool and Spa Professionals. California has also adopted its own anti-entrapment laws. [H&S §116064.2]. Like legislation, all standards tend to be moving targets. You need to consult with a professional about the current standard before assuming that a given standard is still applicable.

6. Water Heater Bracing. Associations that maintain water heaters must brace them properly, no later than January 1, 1996, to deter movement during an earthquake. If owners are responsible for their individual water heaters, it would be advisable for the association to notify them of this duty as part of the other annual notices to owners. Selling owners must certify to prospective purchasers, in writing, that they have complied with this law. Compliance is important to avoid fires following an earthquake. [H&S Code §19211]

7. Termite Treatment Notices. The association must send notices to vacate, if relocation is required so the association can perform termite treatment (or other common area work requiring relocation). [CC §4785]

8. Smoke Detectors. See Membership/Owner Duties with respect to smoke detectors in any units owned by or leased by the association, and any hallway or stairwell smoke detectors in multi-family dwellings.

9. Lead Paint Safety. EPA Rules enacted April 22, 2008 become applicable as of April 22, 2010. They require certain “lead-safe” practices aimed at preventing lead poisoning. Contractors are required to comply and must be certified after taking an 8-hour training course from an EPA-approved provider. This rule can apply to exterior painting in developments and interior common area painting. It would apply to painting inside units if an association acquires title to a unit or rents or uses any units it happens to own. For details refer to the EPA website. [40 CFR Part 745]

Miscellaneous Board Duties

10. CC&R Expiration. Know if and when your Declaration (CC&Rs) expires. Older CC&Rs may terminate on a specified date if not extended. Some are doing so now. Calendar the expiration and any deadline to act. Some deadlines occur months before the expiration date. ONLY IF the CC&Rs contain no method to extend the term, CC §4265 provides for an extension approved by more than 50% of the owner votes. Otherwise, follow the amendment requirements in the CC&Rs. Allow at least a year lead time, preferably more, before any expiration deadline.

11. Rule Change Notices. The Board must give at least 30 days prior written notice of most proposed rule changes, consider comments from the members and adopt the rules at an open meeting. Consult the statute for many detailed definitions and requirements. [CC §§4340-4370]

12. **Board Member Education.** An on-line education course for boards may become available, although there is no funding for the program as yet. [CC §5400]

13. **Association Websites and Board Member Email Addresses.** *For an association that has its own website or may be contemplating one, the board may wish to reserve and obtain its own unique website domain name (a “URL” or Uniform Resource Locator). The association may also want its own URL to set up email addresses for the board members. Then all association business can be and should be sent and received using the same email addresses. Since emails can be subject to electronic discovery in litigation, board members, and especially their employers, will not be happy if their business computers and servers have to be harvested to obtain emails relating to association business that were sent to or from work email addresses. If emails are not set up using the association’s unique domain name, it is advisable for each director to set up a separate email address on gmail, yahoo, msn, etc. just for board business that is separate from their personal and family emails at home.*

14. **Granting Exclusive Use of Common Area.** Associations must obtain approval from at least 67% of the owners before the board may grant exclusive use of any portion of the common area to any member with limited exceptions. [CC §4600] The vote must comply with the strict, technical voting requirements in the Civil Code.

15. **Phone/Contact Information.** ■ For floods, other emergencies and even contacting owners to vote on document amendments, it is extremely helpful to keep a list of home and work phone numbers and email addresses for owners. This can be requested and updated in a database for any owners who contact the association. Consult with your attorneys for the extent to which this information may be required to be included when a member requests a membership list and contact information as mentioned in paragraph 1 on page 608.

16. **Recorded Assessment Information Statement.** To assist in collecting assessments, the association may record an information statement containing the name of the association; the recording information on the declaration; the name and phone number of the treasurer, managing agent or other person authorized to collect assessments; and a list of the assessor’s parcel numbers of the separate interests subject to assessments. [CC §4210]

17. **Towing Signs.** The Board must have the appropriate signs and follow the appropriate procedures if it wishes to tow vehicles that are improperly parked. [CVC §22658]

18. **Gambling or Raffles for Fundraising.** Any nonprofit organization that uses gambling, lotteries or games of chance, including bingo, for fundraising must register annually with the state’s Division of Gambling Control, obtain prior approval for the event and comply with all the requirements of the law, including limits on the number of fundraisers allowed, their duration, value and types of prizes, percentage of proceeds going to the organization, etc. [B&P §§19985-19987 on the Digital Version only; also see Penal Code §§319-329 & 300-337z (not in Resource Book)]

19. **Fair Housing Accommodations and Unit Modifications.** ■ HUD and the Department of Justice have published joint statements concerning “Reasonable Accommodations under the Fair Housing Act” dated May 17, 2004 and “Reasonable Modifications under the Fair Housing Act” dated March 5, 2008. These have valuable information for any association that may be asked to make a reasonable accommodation or allow reasonable modifications for persons who have disabilities. The internet link is too large to include here. The easiest way to find them is to use a search engine and search for the quoted language. [CC §4760 and W&I Code §9105.1]

20. **Request for Governing Documents for Owner to Provide to Prospective Purchaser.** See the relevant statutes for additional requirements and details than those merely summarized below. Upon written request, within 10 days, an association must provide to an owner: (1) a copy of the governing documents and, if the association is not incorporated, a statement to that effect; (2) a statement that any age restriction in the governing documents is enforceable only to the extent permitted by the Unruh Civil Rights Act in the Civil Code and including the applicable provisions of CC §51.3 (or CC §51.11 in Riverside County); (3) a copy of the most documents provided to the owners as required by CC §§5300-5320; (4) a statement of the current regular and special assessments and fees, including a statement of any unpaid assessments and fees plus any unpaid monetary fines or penalties, late charges, interest and costs of collection on the unit in question including any which are or may be a lien on the unit; (5) a copy or summary of any notice of violation sent to the owner alleging any violation of the governing documents that remains unresolved at the time of the request; (6) information about defects and/or repairs as required by CC §6000; (7) the latest information provided for in CC §6100; (8) information on approved changes in regular and special assessments that have been approved but are not yet payable, (9) provisions in the governing documents that prohibit leasing, and (10) copies of board minutes from the prior 12 months, if requested by the purchaser. [CC §4525] The information must be provided to the owner or someone the owner designates to receive it. If an association maintains this data in electronic form, it must give the owner the option of receiving the information in electronic form or machine readable storage media and may also put the information on a website, but it may not charge an additional fee for electronic delivery in lieu of a hard copy. [CC §4530] The billing costs and documents requested are to be listed on a form as specified in CC §4528. The seller must provide any documents listed in the CC §4528 form that the seller has in its possession and at no cost to the buyer. Any forms provided by seller may not be listed in the form or charged for by the association. Any association that provides a copy of a declaration or any governing document or a deed to any other person shall place a cover page over the document or a stamp on the first page of the document stating, in at least 14-point boldface type⁷⁰ the following:

“If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation,

⁷⁰ See example in footnote 30, page 208 in Civil Code §5300.

familial status, marital status, disability, ■ genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal ■ fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.” [Govt. Code §12956.1]

21. High Rises and Mobilehome and RV Parks - Evacuation Plans.

With very limited exceptions, various requirements apply to residential buildings taller than 75 ft. above the ground floor. These include annual Fire Marshal certifications; providing emergency evacuation plans and procedures posted in appropriate locations, including procedures for handicapped and non-ambulatory persons; and other requirements established by the State Fire Marshal or more stringent requirements set by local governmental agencies. [H&S §§13210-13234 (high rises); §§18603 & 18871.8 (mobilehome and RV parks)]

22. Playgrounds. All playgrounds built between 1/1/94 and 12/31/99 must comply with applicable safety regulations by the time they are 15 years old. See statute for other requirements. [H&S §115725]

23. Periodic Maintenance Inspections. In addition to requiring owners and/or an association to perform reasonable and necessary maintenance, some governing documents also require performance of specified maintenance inspections and tasks. Such specified inspections and tasks are often found in maintenance manuals prepared and provided by an association’s developer.

§4 Board Meeting Checklist

1. Board Meetings Defined. ■ Board “meetings” are defined [CC §4090] and must be open to members with limited exceptions for executive sessions [CC §4925]. [CC §§4090 & 4900-4935]

2. Board Action Not Permitted Outside of Board Meetings. Meetings may not be conducted by email or other electronic communications except when very limited special criteria are met. [CC §4910] Teleconferences are permissible, but everyone, including owners present, must be able to hear one another. [CC §4090]

3. Executive Session Matters Noted in Minutes. Any matter discussed in executive session must be generally noted in the minutes of the immediately following meeting that is open to the entire membership. [CC §4935]

4. Notice of and Agendas for Board Meetings. Except for an emergency meeting and unless the bylaws provide for a longer time period, the association must give notice to members of board meetings at least four days before an open meeting and two days before an executive session. The Board must post the ■ agenda for the meeting with the notice. Notices of Board meetings may be given by “general delivery” as described in CC §4045. [CC §4920] The board may not consider items not listed on the agenda except for specified “emergencies.” See the statute [CC §4930] for details. However, the

association must send notice by “individual delivery” as described in CC §4040 to any member who requests notice of board meetings by “individual delivery.” This may include delivery by email or other forms of electronic delivery if the member consents. [CC §4045(b)]

5. Notice to Directors of Special Board Meetings. Special board meetings require four days’ notice to directors by first-class mail or 48 hours’ notice delivered personally or by ■ electronic communication as defined in the Corporations Code. [Corp. Code §§20 & 7211]

6. Emergency Board Meetings. Emergency board meetings, without required prior notice, are available only as specified in the law. [CC §4923] In an emergency, try to give the best notice possible under the circumstances. Even for an emergency that meets the statutory criteria, an open meeting must still be open for owners.

7. Board and Member Meeting Minutes. Minutes of member meetings and open board meetings must be made available to members as provided in §8 Checklist of Membership Rights below.]

§5 Board Fiscal Duty Checklist

1. ■ Tax Returns. Associations must file a federal and state tax return or exemption statement by the 15th day of the third month after the fiscal year ends. Since requirements can vary, it is best to consult the association’s C.P.A. or tax advisor regarding applicable filing or reporting requirements.

2. Annual W-2 and 1099 Forms. Associations that have their own employees (regardless of compensation paid) or that have non-incorporated independent contractors (paid \$600 or more during the year) must file appropriate forms with the state and federal government at various intervals during the year. Consult the association’s C.P.A., tax advisor, manager or payroll contractor to be sure all forms are being processed. Calling employees independent contractors does not make them independent contractors any more than calling a cow a horse makes it a horse.

3. Use Tax Payments and Returns. California law requires any individual or business to pay “use tax” on merchandise bought from an out-of-state vendor for use in California, if that vendor does not charge sales tax. This is frequently the case with mail order and internet purchases. The State Board of Equalization is now sending notices to businesses, including CIDs, to register to pay use tax on such purchases. See www.boe.ca.gov, Publications 123-TG and 126 and Form BOE-404-A. [R&T Code §6225].

4. Annual Review or Audit. Within 120 days after the fiscal year ends, a C.P.A. must prepare at least a “review” (or an audit, if the governing documents call for it), and the association must distribute it to the members, if the association’s gross income exceeds \$75,000. [CC §5305] However, any incorporated association which had at least \$10,000 in gross revenue, must make available a balance sheet, income statement and statement of changes in financial position which is (1) accompanied by report from a C.P.A. or (2) an officer’s certificate that its balance sheet was prepared without audit. [Corp. Code §8321] The annual report must also contain a statement of where the names and addresses of the current members are located [§8321(b)]. It must also

contain a statement of any corporate “indemnifications or material financial transactions” between the corporation and any officer, director or holder of 10% or more of the voting power. The statute contains many details. [Corp. Code §8322]

5. Director Financial Interest in Contracts. The 2014 Davis-Stirling Act added a section identifying specific actions on which directors have a conflict and may not vote. [CC §5350] Under the Corporations Code, directors must disclose any contract or other transaction between the corporation and (1) the director or (2) any entity in which the director has a material financial interest. Detailed rules apply for proper ratification of any such transactions. [CC §5350 & Corp. Code §7233]

6. Distributions to Members. Corporations may not make any distributions of funds to members except upon dissolution. [Corp. Code §7411]

7. Reconciling Bank Accounts. At least quarterly, review a current reconciliation of the association’s operating and reserve accounts. [CC §5500(a)&(b)]

8. Quarterly Review of Budget. At least quarterly, review the current year’s actual reserve revenues and expenses compared to the current year’s budget. [CC §5500(c)]

9. Quarterly Review of Income Statement. At least quarterly, review an income and expense statement for the association’s operating and reserve accounts. [CC §5500(e)]

10. Review of All Bank Statements. In most cases monthly, review the latest account statements from each financial institution where the association has its operating and reserve accounts. [CC §5500(d)]

11. Bank Signature Cards. Be sure that the signature cards on all reserve accounts require at least two signatures. All signatures must be either board members, or one may be an officer who is not on the board. [CC §5510(a)]

12. Proper Reserve Expenditures. Do not spend reserve funds except for reserve items, or for litigation involving the repair, restoration, replacement or maintenance of major components which the association is obligated to maintain. The board may borrow money from a reserve fund for operating expenditures following the procedures in the law. However, any borrowed funds must be restored within 1 year from the date of the first transfer, with limited exceptions. [CC §§5515 & 5520]

13. Good Samaritan Law and Liability Exemption. California amended its “Good Samaritan” statute to provide additional protection for persons who, in good faith without compensation give emergency medical or nonmedical care at the scene of an emergency. [H&S §1799.102]

14. Common Area Taxes. We have found that some associations are paying real estate taxes on their common areas. Most, if not all, associations should be exempt. Check with legal counsel or your CPA. [R&T Code §2188.5]

15. Common Area Tax Bill Addresses. If the association owns common area lots, be sure the county assessor has your correct mailing address, even if you do not normally get tax bills. If a tax bill appears for any reason, or if you become subject to a mechanic’s lien, the only address may be the address

in the public records. You want to be sure you know about any tax liens or other liens against the property. Many of these mailing addresses are still old addresses for the developer.

16. Water Meter Errors. Associations regularly pay water bills on meters that serve other properties, or they encounter claims to pay water bills that someone else has been paying. It is critical for boards and managers to know that the water bills match up to a meter serving the association and that meters serving the association have a water bill coming to the association.

§6 Checklist of Employment Law Duties

1. Employment Law Requirements. Associations that have their own employees have numerous obligations for compliance with state and federal labor laws and regulations. The checklist items in this section mention only a few specifics. Seek legal advice to be sure your association complies with all employment laws.

2. Workers Compensation Insurance. Be sure that you have workers compensation insurance for employees and pay taxes withheld from employees pay when due. Most insurance professionals advise associations that have no employees to have at least a basic workers compensation policy for defense and indemnification from unfounded claims that someone who was injured was an association employee.

3. Independent Contractor or Employee? Be sure you know whether your independent contractors are truly independent contractors and not employees. The penalties under workers compensation laws, unemployment compensation laws for failure to pay overtime and the Labor Code for misclassifying an employee as an independent contractor can be severe. [Labor Code §§226.8 & 2753]

4. Security Service Personnel. Associations that have security service personnel directly employed by the association must register those private security officers with the Department of Consumer Affairs. [B&P Code §7574 et seq.]

5. Discriminatory Employment Practices. Associations must avoid numerous unlawful or discriminatory employment practices. [Govt. Code §12940]

§7 Membership Meeting Checklist ■

1. Nomination and Election Procedures. Associations must adopt election rules [CC §5105(a)], but the requirements of §§5100-5145 do not apply if the governing documents provide that one member from each separate interest is a director. [CC §5100(f)] Every corporation must have reasonable nomination and election procedures given the nature, size and operations of the corporation. Certain specific requirements apply in corporations with 500 or more members and in corporations with 5000 or more members. [Corp. Code §7520-7525] Consult the statutes for details.

2. ■ Parliamentary Procedure Adoption. Adopt a recognized system of parliamentary procedure, and/or other parliamentary rules for conducting membership meetings. It's a good idea, but not mandatory for board

meetings. [CC §5000] Some governing documents require use of a specific system of parliamentary procedure (like Robert's Rules of Order) for member meetings, but most do not specify the system of procedure. Even if Robert's Rules is specified, there are numerous books entitled Robert's Rules of Order, so if Robert's Rules is specified, it is best to identify which title, publisher and date you are using.

3. **Election Inspectors.** Appoint 1 or 3 election inspectors, preferably in advance of the annual meeting to perform the duties specified in the statute. Civil Code controls over Corporations Code.⁷¹ [CC §5110; Corp. Code §7614]

4. **IRS Revenue Ruling Needed?** Consult with the association's accountant regarding the appropriate resolution, if needed, to adopt at the annual meeting for the treatment of any surplus income over expenses from the current fiscal year. [IRS Revenue Rulings]

5. **Secret Ballots-Double Envelopes.** Use a secret ballot and a double envelope system mailed to all owners at least 30 days in advance for all elections and removal of the board, membership votes regarding assessments, votes on amending the governing documents or the grant of exclusive of common area under CC §4600. There are a multitude of additional requirements on election rules, requirements for independent inspectors of election and other detailed requirements that are stricter or different from the requirements in the Corporations Code. Association funds may not be used for campaign purposes in board elections or in other membership votes. Consult the relevant statutes for requirements. [CC §§5100-5145] There is a maximum of one year to file an action for a violation of the article on elections. [CC §5145; Compare with Corp. Code §7527.]

6. **Written Ballots in Lieu of Meeting (not Secret Ballots).** Written ballots to members (used in place of a meeting) must meet many specific requirements to be valid. [Corp. Code §7513] Written Ballots are signed and dated by the voter and cannot be used when the Davis-Stirling Act requires a secret ballot.

7. **Timing of Member Meeting Notices.** Give written notice of membership meetings at least 10 and not more than 90 days before the meeting date. If notice is given by mail, and the notice is not mailed by first-class, registered, or certified mail, notice must be given at least 20 days before the meeting. Notice of meetings at which directors are to be elected must include the names of all those who are nominees at the time notice is given to members. [Corp. Code §7511] Corporations with more than 5000 members must have articles or bylaws that set a date for the close of nominations for the board. The date must be no less than 50 and no greater than 120 days before the election, and no nominations are permitted after that date. [Corp. Code §7522]

⁷¹ We suggest adopting a parliamentary rule prohibiting anything from being considered at the meeting that was not contained in the notice of the meeting, whether presented by the board or the members. This is a statutory requirement applicable to Board meetings in Civil Code §4930, but not for member meetings.

8. **Topics Specified in Notice.** Specify matters intended to be presented at the meeting in the notice of the meeting. [Corp. Code §7511(a)]

9. **Special Meeting Petition.** When a special meeting is called by a petition signed by the specified percentage of the members [Corp. Code §7510(e)], the Board must set the date, time and place of the meeting between 35 and 90 days after receipt of the petition and send notice within 20 days after receipt of the petition, or the persons signing the petition may give the notice. [Corp. Code §7511(c)]

10. **Maximum Adjournment.** No membership meeting may be adjourned for more than 45 days. [Corp. Code §7511]

11. **Proxies.** Any proxy distributed to 10 or more members in a corporation with 100 or more members must include the chance to specify a choice between approval or disapproval of each matter or group of related matters intended to be presented at the meeting. [Corp. Code §7514]

12. **Proxy Validity.** Consult the statute for details on proxy validity. [Corp. Code §§7517 and 7613]. IMPORTANT: Under Corp. Code §7613(g) a proxy cannot be used for certain types of votes, including recalls, unless it generally mentions the nature of the transaction for which it will be used. Many associations do not use proxies any longer after the secret ballot, double envelope system took effect. Under Corp. Code §7613(f), proxies can be prohibited only if the members amend the Bylaws or Articles to do so.

13. **Cumulative Voting.** Cumulative voting is authorized in all new associations and many older associations. The Corporations Code and many bylaws state that no one may vote cumulatively unless the candidate's name was placed in nomination before the voting, and someone gives notice prior to the voting of the intention to cumulate votes. As such, we recommend that the board give such notice before sending or with the any proxies used for the election that provide for cumulative voting. [Corp. Code §7615]

14. **Election Results.** The results of any election (not just for the board), must be reported to the board, recorded in the minutes and publish within 15 days to all members. [CC §5120(b)] Election materials must be kept for a minimum of one year. [CC §§5125 & 5145(a)] For 60 days after a membership meeting, a corporation must maintain the result of all member votes at the meeting, including the number of memberships voting for, against and abstaining or withheld from voting. If the matter concerned director elections, it must keep a record of the number of memberships, or votes if voted cumulatively, cast for each nominee for director. The information must be provided to a member on written request. [Corp. Code §8325]

§8 **Checklist of Membership Rights**

1. **Right to Specified Documents.** On request, the association must provide members the right to inspect and/or copy the documents listed in CC §5200 following the procedures in CC §5205-5240 (Chapter 6, Article 5 of the Act. Other portions of the Act contain requirements to provide other documents to members, or at least upon request.

2. **Right to Inspect Documents and Membership List.** Members are entitled to inspect and copy the names and addresses on the ■ membership

list for a proper purpose; minutes of the association, board and any committees having any board powers; and access to certain books and records and rules of the association. The reasonable alternative contemplated by Corp. Code §8330(c) may not be available in an association subject to the Davis-Stirling Act unless a member has opted not to have his or her name and address information shared with a member who requests a membership list as provided in CC §5220. [CC §§4365(c), 5200(a) & 5240(b); Corp. Code §§8330 *et seq.*] ■

3. Right to Opt Out of Sharing Member’s Name, Address, etc. with Other Members. As provided in CC §5220, members have a right to opt out of having their contact information disclosed to another member who requests it. For advice on what the association must do for a member who opts out, and what the association may be required to do in response to a member’s request for the membership list when some members have opted out, consult with your attorneys. The scope of books and records has been significantly expanded, and the times for which they must be available vary. See the statute for details. [CC §5200 *et seq.*]

4. Suit to Enforce Rights. Members may sue to enforce their rights concerning elections, voting, open meetings and granting exclusive use of common area as found in CC §§5100-5135 [CC §5145]

5. Right to Disciplinary Hearing. Members are entitled to have hearings regarding discipline and the member’s payment of assessments held in executive session.⁷² [CC §4935(b)]

6. Right to Notice before and after Disciplinary Hearing. Members are entitled to at least 10 days’ prior notice of any hearing held to impose any proposed discipline. The hearing must be held at least 5 days before the effective date of the discipline [CC §5855; Corp. Code §7341]. CC §5855 is consistent with Corp. Code §7341 on the timing of the hearing, but it requires the notice to contain the date, time, and place of the hearing, the nature of the alleged violation and a statement that the member has a right to attend and address the board at the meeting. It also requires that the association must give a member written notice of any disciplinary action, either by personal delivery or “individual delivery” as provided in CC §4040 within 15 days after the “action,” i.e., presumably the decision to impose any discipline. Also, since Corp. Code §7341 states that the discipline cannot be effective until at least 5 days after the hearing, that timing presumably applies even if the notice is sent immediately after the hearing. The discipline is ineffective if the Board fails to comply with the CC §5855 requirements. [CC §5855(d)]

7. Right to Speak at *Both Board and Membership Meetings.* Members have a limited right to speak at Board and membership meetings. [CC §4925(b)]

⁷² To avoid a circus-like atmosphere in a disciplinary hearing, we believe it is best to adopt a rule requiring all disciplinary hearings to be held in executive session and to exclude all witnesses, other than the parties, except for the time they testify.

8. Right to Minutes. Members are entitled to copies of minutes within 30 days after the meeting upon request and payment of a reasonable cost. [CC §4950; Corp. Code §§8330 *et seq.*]

9. Right to Call Member Meetings. Special membership meetings may be called by 5% or more of the members, but the date must be set and notice sent by the board, within 20 days after receipt of a meeting request, and the board must set the meeting date for 35 to 90 days after receipt. [Corp. Code §§7510 & 7511]

10. Right to Delinquency Details. All owners are entitled to detailed information regarding the delinquency by certified mail before a lien is filed, and to a copy of the lien mailed as required by CC §2924b within 10 days after a lien is filed. The association may not foreclose on a lien until the principal amount is at least \$1,800 or a year old. The procedures prior to foreclosing are very detailed and complex. They require reference to the full statute. [CC §5650 *et seq.* & §5700 *et seq.*, especially. §5705] The association may use nonjudicial foreclosure to enforce a lien representing a penalty assessed to repair common areas damaged by a member or the member's tenants or guests, but not for other types of monetary penalties. All costs and attorney's fees for preparing, filing and mailing the lien may not exceed \$425. Specific provisions apply to owner requests for payment plans, time limits for releasing liens after payment, and other aspects of the assessment collection process. (NOTE: A lien is not a prerequisite for filing a lawsuit, nor does a lawsuit for money "enforce" a lien.) [CC §5650 *et seq.*, §5700 *et seq.* & §2924b] If an association forecloses on a lien, there is a right of redemption for 90 days after the sale. [CCP §729.035.] If a lien is recorded in error, there can be significant economic costs and delays to an association to correct the error. [CC §5685(c)]

11. Small Claims Actions. Owners may sue an association for amounts up to \$10,000, but associations may sue only for amounts up to \$5,000. [CCP §§116.220 & 116.221]. Any small claims case to collect a debt must contain a detailed accounting of the original debt, all additional fees and charges, all credits and debits and an explanation such fees, charges, debits, and credits. [CCP §116.222] The association may now appear in a small claims case through an agent, management company representative, or bookkeeper. [CCP §116.540]

12. Right to Keep a Pet. After January 1, 2001, any association that amends any governing document, including rules, must allow an owner to keep at least one "pet" which means any domesticated bird, cat, dog, aquatic animal kept within an aquarium. [CC §4715]

13. Right to Display Political, Real Estate and Non-Commercial Signs and U.S. Flag. The governing documents may not limit or prohibit the display of the United States flag on or in the owner's separate interest or exclusive use common area, except as needed to protect public health or safety. [Govt. Code §434.5; 4 U.S.C. §5] Real estate signs must be allowed. [CC §§712 & 713] Certain non-commercial signs are permissible in CIDs [CC §4710]. Political signs are permitted in mobilehome subdivisions. [CC §799.10] See each statute for specific requirements and limitations.

14. **Right to Market Property.** Any rule that arbitrarily or unreasonably restricts an owner's ability to market his or her property in an association is void, including a fee that exceeds the association's actual costs or that establishes an exclusive relationship with a broker. [CC §4730]
15. **Right to Notice of Rule Changes.** The Board must notify members of many types of rules changes. [CC §§4350-4360] Members also may call for a special meeting to reverse a rule change. Detailed procedures are contained in the statute. [CC §4365]
16. **Right to Install Fire-Retardant Roof.** Associations may not require owners to install roofs that would violate H&S Code §13132.7. [CC §4720]
17. **Assessments Exempt from Judgment Creditors.** Assessments collected by an association are exempt from attachment by judgment creditors, but only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. [CC §5620]
18. **Right to Install Electric Vehicle Charging Stations.** Charging stations must be allowed, subject to reasonable restrictions. [CC §4745]
19. **Right to Lease Property.** After January 1, 2012, an owner may not be subject to a governing document restriction that prohibits leasing to a tenant unless that provision was effective before the date the owner took title to the property in question unless the owner agrees to be bound by the prohibition. [CC §4740].
20. **■ Right to Display Real Estate Signs.** CC&Rs or other governing documents that effectively prohibit or restrict the use of signs to advertise a property for sale, lease or exchange are void. However, reasonable restrictions may be imposed that comply with statutory requirements. See the statutes for details. [CC §§712 & 713]
21. **■ Right to Install Solar Energy Systems.** CC&Rs or other governing documents that effectively prohibit or restrict the installation or use of a solar energy system are void and unenforceable. However, reasonable restrictions may be imposed that comply with statutory requirements. The restrictions may not significantly increase the cost of the system which has been changed to a maximum of 10% increase in cost or loss in efficiency as of 2015 versus the former 20% allowable. See the statutes for details. [CC §§714 & 714.1]
22. **Right to Protect Solar Panels from Shade.** Under the Solar Shade Control Act, once solar panels have been installed, an owner of a nearby property may not allow vegetation to grow in a way that casts a shadow greater than 10 percent of the collector's absorption surface area between 10 a.m. and 2 p.m. standard time. [Pub. Resources Code §§25980-95986 on the Digital Version only]. Also see solar easement protections [CC §801.5 on the Digital Version only].
23. **Right for Some *Day Care and Residential Care Facilities to be Exempt from Recorded Covenants Prohibiting Business Uses.*** ■ As a matter of state and federal public policy, there are various types of *day care and residential care facilities* that will or must be treated as residential uses of property. While an association may contend that the use violates a CC&R

prohibition against any **business or commercial** use, statutes and court decisions have stated otherwise. Attempts to enforce covenants that would prohibit group homes for persons with disabilities is considered a violation of the federal Fair Housing Amendments Act (42 U.S.C. §3604(f)(1)). Residential facilities are also considered residential use of property even if a recorded covenant may provide otherwise (e.g., H&S Code §§1566.3 & 1566.5). Several California statutes expressly hold that certain types of group homes are considered residential uses of property despite CC&R prohibitions against business uses. Covenants that would prohibit family day care homes for children permitted by the law are declared to be void (H&S Code §1597.40). “Residential facilities” for six or fewer persons under the Community Care Facilities Act that provide 24-hour nonmedical care to adults or children “in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual in an assisted living environment” are encouraged (H&S Code §1502) **Specifically, health facilities for the developmentally disabled and skilled nursing care (H&S Code §1267.8, community care facilities for other types of care (H&S Code §1566.3 & 1566.5), residential care facilities for persons with chronic-life threatening illnesses (H&S Code §1568.0831), residential care facilities for the elderly (H&S Code §§1569.85), alcoholism recovery and drug abuse treatment facilities (H&S Code §§11834.23 & 11834.25), and homes or facilities for mentally disordered, handicapped, or dependent and neglected children (W&I Code §§5115 & 5116) must be treated as residential uses of property rather than business or commercial uses. In some cases, but not all cases, these statutes expressly state that these law prevails over contacts, deeds and covenants. In all cases, they provide that they prevail over various state, county and local zoning and other laws.**

§9 Checklist of Membership or Owner Duties

- 1. Resale Disclosure Statement.** Owners must provide a completed statutory disclosure form to purchasers before reselling residential property. This also must be completed by a real estate agent, if any. The form is extensive and detailed and found in the statute. [CC §1102 *et seq.*; *see e.g.*, §1102.6]
- 2. Smoke Detectors in Owner Units.** Each owner must supply and install smoke detectors in accordance with the manufacturer’s instructions in any unit intended for human occupancy. Each smoke detector must be operable at the time that any tenant occupies a unit and must be repaired if the tenant reports a problem. The association is responsible for installing, maintaining and testing smoke detectors in hallways, common stairwells, etc. [H&S Code §§13113.7 & 13113.8]
- 3. Carbon Monoxide Detectors in Owner Units.** Owners must install an approved carbon monoxide detector by July 1, 2011 in any single-family dwelling unit intended for human occupancy that has a fossil fuel burning heater or fireplace. For all other existing dwelling units intended for human occupancy, the deadline is January 1, 2013. [H&S Code §§17926-17926.2 on the Digital Version only] Selling owners must disclose in the required form whether the unit being sold has a carbon monoxide detector. [CC §1102.6]

4. Low-Flow Plumbing Fixtures. Caution for Associations and Owners: All single-family dwellings must replace noncompliant plumbing fixtures no later than January 1, 2014 or January 1, 2017, depending on factors specified in the statute. The date is January 1, 2019 for multi-family residential properties and commercial properties. Failure to provide proof of compliance could prevent the issuance of building permits. It is not clear if multi-family residential includes condominiums and attached planned development housing. See statute for details and disclosure duties. [CC §§1101.1 - 1101.9 and 1102.155] Flow rates of noncompliant fixtures are in CC §1101.3. It may take additional legislation for clarification and for how an HOA that does not maintain, repair or replace plumbing fixtures could compel owner compliance.

§10 Checklist of Management Company Duties

1. Disclosure Statement to Board before Contracting. The management company must give a written statement to the board, no earlier than 90 days before entering a contract, containing the following: (a) Names and business address of the owners or partners of the management company. If the management company is a corporation, it must include the names and business addresses of the directors and officers plus shareholders who hold more than 10% of the shares; (b) A statement containing the names of any of the above persons who hold relevant California licenses in areas such as architecture, construction, engineering, real estate or ■ accounting, that licenses they hold and the dates the licenses are valid; and (c) A statement containing the names of any of the above persons who hold relevant professional certifications or designations in areas such as architecture, construction, engineering, real estate or ■ accounting, which certifications or designations are held, what that certification or designation is and who issued it and the dates the certifications or designations are valid. [CC §5375]

2. Professional Certification Disclosures. On an annual basis, an association manager must disclose to each association board, (a) whether or not the manager is “certified,” as defined in the statute, (b) the name, address, and telephone number of the professional association that certified the manager, the date the manager was certified, and the status of the certification, (c) the location of the manager’s primary office, (d) whether the fidelity insurance of the manager or the manager’s employer covers the current year’s operating and reserve funds of the association, and (e) whether the manager possesses and active real estate license. This does not preclude a manager from disclosing the information required by CC §5375. See statute for more details. [B&P Code §11504]

3. Unfair Business Practices. It is an unfair business practice for a manager or management company to hold oneself as “certified” without meeting the requirements of B&P Code §11504, to state or advertise that the person is certified, registered, or licensed by a governmental agency to perform the functions of a certified common interest development manager, to state or advertise a registration or license number, unless the license or registration is specified by a statute, regulation, or ordinance, or to fail to disclose or

misrepresent any item to be disclosed under B&P Code §11504. [B&P Code §11505]

4. **Separate Bank Accounts.** The management company must deposit all funds belonging to the association either into: (1) an escrow account with a bank, savings association or credit union, or (2) an account under the control of the association, or (3) a trust account with a bank, savings association or credit union located in California, insured by the federal government and held there until disbursed according to the association's instructions. [CC §5380(a)]

5. **Interest-Bearing Accounts.** Upon the association's written request, the management company must deposit all funds it accepts or receives on behalf of the association into an interest-bearing account in a bank, savings association or credit union located in California. The account must show the management company as trustee for the association, the fund must be insured by the federal government and must be kept separate from the management company's own funds and from other funds the management company holds in trust. [CC §5380(b)]

6. **Maintaining Accounting Records.** The management company must keep a separate record of all funds received and disbursed from any account described in CC §5380, including any interest earned on the funds. [CC §5380(c)]

7. **Commingling Funds.** The management company may not commingle association funds, unless they were commingled on or before February 26, 1990 and subject to other limited exceptions, including mandatory bonding and disclosure to the association. [CC §5380(d)]

8. **Lien and Foreclosure Actions.** If a management company undertakes lien and foreclosure work on behalf of an association, there are significant, technical requirements to follow. [CC §5650 et seq. & §5700 et seq.] If a lien is recorded in error, there can be significant economic costs and delays to an association to correct the error. [CC §5685]

§11 Checklist of Duties Concerning Construction Defects

1. **Notice and Meeting with Members.** If the association contemplates the need for construction defect litigation against its developer, the association must give notice and hold a meeting of the members at which it must address specified items. There are numerous requirements for notices to the developer and members and meetings during the process. [CC §§5985 & 6000-6150]

2. **Post-Settlement Notices.** After settlement or other resolution of a construction defect lawsuit, the association must provide written notice to its members containing specified information about the defects, including which defects will be repaired and when. [CC §6100]

§12 Checklist of Senior Housing Duties and Rights

1. **Protecting Senior Status.** The legal issues pertaining to senior housing developments are extremely complex and have been changing constantly as the laws change. Any association interested in preserving its senior status needs to consult regularly with legal counsel.

2. **Age Verification.** Senior associations should have adopted procedures for age verification no later than October 30, 1999 and, at a minimum, must perform age verification surveys or update age verification survey information at least once every two years and get forms completed by any new occupants as soon as possible. [24 Code of Fed. Reg. 100.307(b)]

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APPENDIX A - COMMON PARLIAMENTARY PROCEDURE MOTIONS

- SP=Special Parliamentary or “Privileged” Highest Priority (Generally Deals with Procedural Matters and Should be Disposed of At Once)
- OP=Ordinary Parliamentary or “Incidental” Next to Highest Priority (Generally Disposes of or Changes a Main Motion)
- SM=Subsidiary to Main Next to Lowest Priority (Generally Makes Changes in the Main Motion or Amendments to It)
- M=Main Lowest Priority (Waits until Subsidiary Motions Have Been Addressed)

Description - In General from Highest to Lowest Priority	Type	In order when someone has the floor?	Second Needed?	Debate Allowed?	Vote Needed	Can Be Reconsidered?
Motions Likely at Either Board or Membership Meetings						
Point of Order ^A	SP	Yes	No	No	None ^B	No
Appeal Chair’s Ruling	SP	Yes ^C	Yes	No	Majority	Yes

A. This motion challenges the propriety of whatever motion or debate is pending. It is used to remind the chair to enforce the rules. For example, it can claim that debate time has been exceeded, that the debate is immaterial to the motion under debate, etc.

B. The chair must make a ruling. If it is in favor of the point of order, action must return to the proper agenda and enforcement of the rule asserted. If the chair rules against the point of order, matters continue as they were before it was raised. A 2/3 vote can overrule the chair, essentially suspending the rules.

C. If done immediately after the ruling.

Description - In General from Highest to Lowest Priority	Type	In order when someone has the floor?	Second Needed?	Debate Allowed?	Vote Needed	Can Be Reconsidered?
Suspend the Rules / Change the Agenda	SP	No	Yes	No	2/3	No
Request for Information D	SP	Yes	No	No	None E	No
Request for Privilege	SP	Yes F	No	No	None G	No
Adjourn / Recess Temporarily & Set Time to Resume H	OP	No	Yes	No	Majority	No
Postpone Temporarily (to later in same meeting)	OP	No	Yes	No	2/3	No

D. This is used in place of the now archaic Parliamentary Inquiry or Point of Information.

E. The motion asks for the chair to for information on an issue that is currently relevant to the pending matter, whether of what parliamentary rule applies, and the chair must provide the information. For example, immediately before a vote, a member may raise a parliamentary inquiry to find out what vote is needed to pass the motion presented.

F. Can interrupt a speaker if the urgency warrants it.

G. This is used to correct a situation involving safety or comfort, including excessive noise, temperature, etc. and the chair must determine whether it is urgent enough to address immediately.

H. Only the motion to recess may be amended, and only with respect to the duration of the recess.

Description - In General from Highest to Lowest Priority	Type	In order when someone has the floor?	Second Needed?	Debate Allowed?	Vote Needed	Can Be Reconsidered?
Close Debate	OP	No	Yes	No	2/3	Yes ^I
Postpone to a Later Date at Definite Time	OP	No	Yes	Yes ^J	Majority	No
Reconsider a Prior Motion	OP	No	Yes ^K	Yes	Majority	No
Amend a Pending Motion to Amend a Main Motion	SM	No	Yes	Yes/No ^L	Majority	Yes
Amend a Main Motion	SM	No	Yes	Yes/No ^M	Majority	Yes
Main Motion	M	No	Yes	Yes	Majority	Yes
Adopt Standing Rules	M	No	Yes	Yes	Majority	Yes

I. However, it must be reconsidered immediately. It cannot be reconsidered once a vote is taken on the motion on which debate was closed.

J. May debate only as to reasons for postponement and date for appearing on agenda again, but not as to merits of the main motion. May be amended as to date for considering the motion again.

K. Motion must be made by someone who voted on the prevailing side, but can be seconded by anyone.

L. If the Main Motion itself is debatable.

M. If the Main Motion itself is debatable.

Description - In General from Highest to Lowest Priority	Type	In order when someone has the floor?	Second Needed?	Debate Allowed?	Vote Needed	Can Be Reconsidered?
Approve or Correct Minutes	M	No	Yes	Yes	Majority	Yes
Motions Most Likely at Membership Meetings						
Order Roll Call if Vote in Doubt	SP	Yes	Yes	No	Majority	No
Order Roll Call before Vote is Taken	SP	No	Yes	No	Majority	No
Nominations, Close	OP	No	Yes	No	2/3	No
Nomination, Make a	M	No	No ^N	Yes	Majority	No ^O

NOTE: Unless defined in your governing documents, majority typically means any vote over half of those **PRESENT AND VOTING**, either **IN PERSON OR BY PROXY**, provided a quorum is present. Majority has a different meaning from one more than half, or 51%. Both are technically greater than a simple majority. In some cases, the difference may be critical. Abstentions are usually considered to be neither a vote for or against.

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- N. Many people are unaware that a second is not needed.
 - O. Once a person is elected, learns of it, and does not decline, the election cannot be reconsidered, but the person can always resign.

APPENDIX B - STATUTES - NEW, AMENDED OR NEWLY ADDED TO RESOURCE BOOK

The statutes identified with (§) below are not in the printed copy of the Resource Book though they are on our more extensive Digital Version. The amendments in some of the sections identified below contain primarily technical or editorial changes.

You can view these bills and find or new legislation, at the California Legislative Information website: <http://leginfo.legislature.ca.gov/>. From there, you can click on Bill Information (further narrowing your search by Session Year, House (i.e., Assembly or Senate), by Bill number, etc.) or California Law (which allows you to browse or search through the official California Codes). Except for urgency legislation, the newly enacted bills will not appear in the online Codes until January 1, 2016.

California Civil Code (CC)

- §51. Unruh Civil Rights Act (**Amended by SB 600 / Ch. 282**) (**Superseded by changes made by AB 731 / Ch. 303 below**)
- §51. Unruh Civil Rights Act (**Amended by AB 731 / Ch. 303**) (*technical/stylistic amendments*)
- §4735. Architectural Guidelines and Low Water-Using Plants (**Amended by AB 786 / Ch. 780**)
- §4750.10. Clotheslines and Drying Racks Permitted in Backyards (**Added by AB 1448 / Ch. 602**)
- §5300. Annual Budget, Reserves and Other Required Disclosures (Inoperative on July 1, 2016; Repealed as of January 1, 2017) (**Amended and repealed by AB 596 / Ch. 184**)
- §5300. Annual Budget, Reserves and Other Required Disclosures (Operative on July 1, 2016) (**Added by AB 596 / Ch. 184**)
- §5570. Required Assessment and Reserve Funding Disclosure Summary (**Amended by AB 1516 / Ch. 349**)
- §5910. IDR Procedure to Satisfy Specific, Minimum Criteria (**Amended by AB 731 / Ch. 303**) (*technical/stylistic amendments*)
- §5915. Default IDR Procedure (**Amended by AB 731 / Ch. 303**) (*technical/stylistic amendments*)

California Corporations Code (Corp. Code)

- §5047. Directors (**Amended by AB 731 / Ch. 303**) (*technical/stylistic amendments*)
- §7213. Required Corporate Officers; Appointment of Officers (**Amended by SB 351 / Ch. 98**)
- §18640. Nonprofit Associations – Effect of Uniform Voidable Transactions Act (**Amended by SB 161 / Ch. 44**)

California Business and Professions Code (B&P Code)

- (‡)§10170.5. Education Requirements to Renew Broker License (**Amended by AB 345 / Ch. 68**)
- (‡)§11216. Exchange Program (**Amended by AB 905 / Ch. 88**)
- (‡)§11234. Required Disclosures in Developer’s Public Report (**Amended by AB 905 / Ch. 88**)

California Code of Civil Procedure (CCP)

- §116.222. Complaint to State Original Debt, Payments and Charges (repealed as of January 1, 2016) (**Repealed by AB 731 / Ch. 303**) (*technical/stylistic amendments*)
- (‡)§116.870 Suspending Judgment Debtor’s Driving Privileges for Failing to Satisfy Judgment (**Amended by SB 491 / Ch. 451**)
- (‡)§116.880 Requesting Suspension of Judgment Debtor’s Driving Privileges (**Amended by SB 491 / Ch. 451**)
- (‡)§338. Three Years Suit based on Statute, Trespass, Fraud and Mistake (**Amended by SB 798 / Ch. 683**)
- (‡)§527.6. Civil Harassment and Civil Restraining Order Sought by an Individual (**Amended by AB 1081 / Ch. 411**)
- (‡)§527.8. Civil Harassment and Civil Restraining Order Sought by an Employer or Other Entities (**Amended by AB 1081 / Ch. 411**)

California Government Code (Govt. Code)

- §12940. Unlawful Employment Practices; Discrimination (**Amended by AB 987 / Ch. 122**)

California Health & Safety Code (H&S Code)

- (‡)§1267.8. Intermediate Care Facility for Six or Fewer Developmentally Disabled Persons is Residential Use of Property (**Newly added to Resource Book**)
- (‡)§1566.3. Residential Care Facility for Six or Fewer Persons is Residential Use of Property (**Newly added to Resource Book**)
- (‡)§1566.5. Residential Facility for Six or Fewer Persons is Residential Use of Property under Contracts, Deeds or Covenants (**Newly added to Resource Book**)
- (‡)§1568.0831 Residential Care Facility for Six or Fewer Persons with Chronic-Life Threatening Illness is Residential Use of Property (**Newly added to Resource Book**)
- (‡)§1569.85. Residential Care Facility for the Elderly with Six or Fewer Persons is Residential Use of Property (**Newly added to Resource Book**)
- (‡)§1597.54. Applications for Initial Licensure; Preexisting Licenses (**Amended by SB 792 / Ch. 807**)

- (‡)§1597.55a. Site Visits, Unannounced Visits, and Spot Checks (effective June 24, 2015, operative January 1, 2016, inoperative and repealed as of January 1, 2017) (**Amended and repealed by SB 79 / Ch. 20**)
- (‡)§1597.55a. Site Visits, Unannounced Visits, and Spot Checks (effective June 24, 2015, added January 1, 2017) (**Added by SB 79 / Ch. 20**)
- (‡)§1597.622. Employees and Volunteers Must Be Immunized Against Influenza, Measles and Pertussis (**Added by SB 792 / Ch. 807**)
- (‡)§11834.23. Alcoholism or Drug Abuse Recovery or Treatment Facility for Six or Fewer Persons is Residential Use of Property (**Newly added to Resource Book**)
- (‡)§11834.25. Alcoholism or Drug Abuse Recovery or Treatment Facility for Six or Fewer Persons is Residential Use of Property under Covenants (**Newly added to Resource Book**)
- §17920.3. Substandard Buildings (**Amended by SB 655 / Ch. 720**)

California Welfare and Institutions Code (W&I Code)

- (‡)§5115. Public Policy that Persons with Mental Health Disorders or Physical Disabilities Live in Normal Residential Surroundings (**Newly added to Resource Book**)
- (‡)§5116. Residential Home for Six or Fewer Persons with Mental Health Disorders or Other Disabilities or Dependent and Neglected Children is Residential Use of Property (**Newly added to Resource Book**)

APPENDIX C
DAVIS-STIRLING ACT CONVERSION TABLES (2013 TO 2014)

2013 Version	2014 Version
1350	4000
1350.5	4005
1350.7	4040
1350.7	4045
1350.7(b)(2) & (3)	4050
1350.7(b)(3)	4055
1351 (intro.)	4075
1351(a)	4080
1351(b)	4095
1351(c)	4100
1351(d)	4105
1351(e)	4120
1351(e)(1)-(3)	4285
1351(e)(3) (except last ¶)	4290
1351(e)(3) (last ¶)	4295
1351(f)	4125
1351(g)	4130
1351(h)	4135
1351(i)	4145
1351(j)	4150
1351(k)	4175
1351(l)	4185
1351(m)	4190
1352	4200
1352.5	4225(a)- (b),(d)
1353(a)(1) (1st & 2d sent.)	4250(a)
1353(a)(1)-(4) (except 1st & 2d sent.)	4255
1353(b)	4250(b)
1353.5	4705
1353.6	4710
1353.7	4720
1353.8	4735
1353.9	4745
1354	5975
1355(a)	4270(a)
1355(b) (1st sent.)	4260
1355(b)(1)	5115(e)
1355(b)(2)	4270(b)

2013 Version	2014 Version
1355(b)(3)	4270(a)(3)
1355.5	4230
1356	4275
1357(a)	4265(a)
1357(b) (except part of 1st sent.)	omitted
1357(b) (part of 1st sent.)	4265(b)
1357(c)	omitted
1357(d)	4265(c)
1357.100(a)	4340(a)
1357.100(b)	4340(b)
1357.110	4350
1357.120	4355
1357.130	4360
1357.140	4365
1357.150	4370
1358(a)	4625
1358(b)	4630
1358(c)	4635
1358(d)	4640
1358 (next to last ¶)	4645
1358 (last ¶)	4650
1359	4610
1360	4760
1360.2	4740
1360.5	4715
1361	4505
1361.5	4510
1362	4500
1363(a)	4800
1363(b)	omitted
1363(c)	4805
1363(d)	5000(a)
1363(e) (1st sent.)	5240(b)
1363(e) (2d sent.)	omitted
1363(f) (1st sent.)	5850(a)
1363(f) (2d sent.)	omitted
1363(g)	5855
1363(h)	4820
1363(i)	5865
1363.001	5400
1363.005	omitted

2013 Version	2014 Version
1363.03(a)	5105(a)
1363.03(b) (1st sent.)	5100(a)
1363.03(b) (2d & 3d sent.)	5115(b)
1363.03(b) (4th sent.)	5115(c)
1363.03(c)	5110
1363.03(d)	5130
1363.03(e)	5115(a)
1363.03(f)	5120(a)
1363.03(g)	5120(b)
1363.03(h)	5125
1363.03(i)	5125
1363.03(j)	5105(b)
1363.03(k)	5115(d)
1363.03(l)	5100(c)
1363.03(m)	5100(d)
1363.03(n)	5100(e)
1363.03(o)	omitted
1363.04	5135
1363.05(a)	4900
1363.05(b) (1st part of 1st sent.)	4925(a)
1363.05(b) (2d part of 1st sent.)	4935(a)
1363.05(b) (2d sent.)	4935(b)
1363.05(b) (3d sent.)	4925(a)
1363.05(c)	4935(e)
1363.05(d)	4950(a)
1363.05(e)	4950(b)
1363.05(f)	4920
1363.05(g)	4923
1363.05(h)	4925(b)
1363.05(h)	5000(b)
1363.05(i)	4930
1363.05(j)	4910
1363.05(k)(1)	4155
1363.05(k)(2)	4090
1363.07 (except (a)(3)(F))	4600
1363.07(a)(3)(F)	4202(a)(4)
1363.09 (re: elections)	5145
1363.09(a)-(b) (re: exclusive use grant)	4605
1363.09(a)-(b) (re: open meetings)	4955
1363.1(a)	5375

2013 Version	2014 Version
1363.1(b) (except ¶(1))	4158
1363.1(b)(1)	5385
1363.2(a)-(e)	5380(a)-(e)
1363.2(f) (except 1st cl. of 2d sent.)	4158
1363.2(f) (1st cl. of 2d sent.)	5385
1363.2(g)	5380(f)
1363.5	4280
1363.6	5405
1363.810	5900
1363.820	5905
1363.830	5910
1363.840	5915
1363.850	5920
1364(a)	4775(a)
1364(b)	4780
1364(c)	4775(b)
1364(d)-(e)	4785
1364(f)	4790
1365 (intro cl.)	5300(b) (intro cl.)
1365(a)(1)	5300(b)(1)
1365(a)(2) (intro. cl.)	5300(b)(2)
1365(a)(2)(A)-(D)	5565
1365(a)(3)(A)	5300(b)(4)
1365(a)(3)(B)	5300(b)(5)
1365(a)(3)(C)	5300(b)(6)
1365(a)(3)(D)	5300(b)(8)
1365(a)(4) (1st ¶)	5300(b)(7)
1365(a)(4) (2d ¶)	5300(d)
1365(a)(4) (3d ¶)	5300(a)
1365(b)	5300(b)(3)
1365(c)	5305
1365(d)	5320
1365(e)	5310(a)(7)
1365(f)(1) (except 2d cl. of 1st sent.)	5300(b)(9) (1st & 2d sent.)
1365(f)(2)	5810
1365(f)(3)	5300(b)(9) (3d sent.)
1365(f)(4)	5300(b)(9) (4th sent. & 2d ¶)

2013 Version	2014 Version
1365.1	5730
1365.1(c)	4040(b)
1365.2(a)(1) (except(I)(ii)-(iii))	5200(a)
1365.2(a)(1)(I)(ii)	5225
1365.2(a)(1)(I)(iii)	5220
1365.2(a)(2) (except last cl.)	5200(b)
1365.2(a)(2) (last cl.)	5205(g) (2d sent.)
1365.2(b)	5205(a)-(b)
1365.2(c)(1)-(4)	5205(c)-(f)
1365.2(c)(5)	5205(g) (1st & 3d sents.)
1365.2(d)	5215
1365.2(e)	5230
1365(f)	5235
1365.2(g)	5240(c)
1365.2(h)	5205(h)
1365.2(i)-(j)	5210(a)-(b)
1365.2(k)	5210(c)
1365.2(l)	5240(a)
1365.2(m)	5240(d)
1365.2(n)	omitted
1365.2.5	5570
1365.2.5(b)(3)	5300(e)
1365.3	5580
1365.5(a)	5500
1365.5(b)	5510(a)
1365.5(c)(1)	5510(b)
1365.5(c)(2)	5515
1365.5(d)	5520
1365.5(e)(1)-(4)(5) (1st sent.)	5550
1365.5(e)(5) (except 1st sent.)	5560
1365.5(f)	4177
1365.5(g)	4178
1365.5(h)	Omitted
1365.6	5350(a)
1365.7	5800
1365.9	5805
1366(a) (1st sent.)	5600(a)
1366(a) (2d sent.)	5605(a)
1366(a) (3d sent.)	5605(c)

2013 Version	2014 Version
1366(b) (1st sent.)	5605(b)
1366(b) (2d sent.)	5605(c)
1366(b) (3d & 4th sent.)	5610
1366(b)(1)-(3)	5610(a)-(c)
1366(c)	5620
1366(d)	5615
1366(e)	5650(b)
1366(f)	5650(c)
1366.1	5600(b)
1366.2(a)	4210
1366.2(b)	omitted
1366.4	5625
1367	omitted
1367	5740
1367.1(a) (1st sent.)	5650(a)
1367.1(a) (2d sent.)	5660 (intro)
1367.1(a)(1)-(6)	5660 (a)- (f)
1367.1(b)	5655
1367.1(c)(1)(A)	5670
1367.1(c)(1)(B)	5705(b)
1367.1(c)(2)	5673
1367.1(c)(3)	5665
1367.1(d) (1st - 5th sent.)	5675
1367.1(d) (6th sent.)	5685(a)
1367.1(d) (7th & 8th sent.)	5725(a)
1367.1(e)	5725(b)
1367.1(f)	5680
1367.1(g) (1st sent.)	5735
1367.1(g) (2d sent.)	5700(a)
1367.1(g) (3d sent.)	5710(a)
1367.1(g) (4th sent.)	5710(c) (intro.)
1367.1(g)(1)-(2)	5710(c)(1)- (2)
1367.1(h)	5700(b)
1367.1(i)	5685(b)
1367.1(j)	5710(b)
1367.1(k)	4040(b)
1367.1(l)	5690
1367.1(m)	5740
1367.1(n)	Omitted
1367.4(a)	5705(a)

2013 Version	2014 Version
1367.4(a)	5715(a)
1367.4(a)	5720(a)
1367.4(b)	5720(b)
1367.4(c) (intro.)	5705
1367.4(c) (intro.)	5715
1367.4(c)(1)	5705(b)
1367.4(c)(2)	5705(c)
1367.4(c)(3)	5705(d)
1367.4(c)(4)	5715(b)
1367.4(d)	5720(c)(2)-(3)
1367.5	5685(c)
1367.6	5658
1368(a)	4525
1368(b)	4530
1368(c)(1)	4575
1368(c)(2)	4580
1368(c)(3)	4110
1368(d)	4540
1368(e)	4545
1368(f)	4535
1368(g)	omitted
1368.1	4730
1368.2	4528
1368.3	5980
1368.4	5985
1368.5	6150
1369	4615
1369.510	5925
1369.520	5930
1369.530	5935
1369.540	5940
1369.550	5945

2013 Version	2014 Version
1369.560	5950
1369.570	5955
1369.580	5960
1369.590	5965
1370	4215
1371	4220
1372	4020
1373	4202
1374	4201
1375	6000
1375.1	6100
1376	4725
1378	4765
New Language	4010
New Language	4035
New Language	4076
New Language	4078
New Language	4085
New Language	4140
New Language	4148
New Language	4153
New Language	4160
New Language	4170
New Language	4205
New Language	4235
New Language	4700
New Language	5260
New Language; cf. Corp. Code 5033	4065
New Language; cf. Corp. Code 5034	4070

DAVIS-STIRLING ACT CONVERSION TABLES (2014 TO 2013)

2014 Version	2013 Version
4000	1350
4005	1350.5
4010	New Language
4020	1372
4035	New Language
4040	1350.7
4040(b)	1365.1(c)
4040(b)	1367.1(k)
4045	1350.7
4050	1350.7(b)(2) & (3)
4055	1350.7(b)(3)
4065	New Language; cf. Corp. Code 5033
4070	New Language; cf. Corp. Code 5034
4075	1351 (intro.)
4076	New Language
4078	New Language
4080	1351(a)
4085	New Language
4090	1363.05(k)(2)
4095	1351(b)
4100	1351(c)
4105	1351(d)
4110	1368(c)(3)
4120	1351(e)
4125	1351(f)
4130	1351(g)
4135	1351(h)
4140	New Language
4145	1351(i)
4148	New Language
4150	1351(j)
4153	New Language
4155	1363.05(k)(1)
4158	1363.1(b) (except ¶(1)); 1363.2(f) (except 1st cl. of 2d sent.)
4160	New Language
4170	New Language
4175	1351(k)
4177	1365.5(f)
4178	1365.5(g)

2014 Version	2013 Version
4185	1351(l)
4190	1351(m)
4200	1352
4201	1374
4202	1373
4202(a)(4)	1363.07(a)(3)(F)
4205	New Language
4210	1366.2(a)
4215	1370
4220	1371
4225(a)-(b),(d)	1352.5
4230	1355.5
4235	New Language
4250(a)	1353(a)(1) (1st & 2d sent.)
4250(b)	1353(b)
4255	1353(a)(1)-(4) (except 1st & 2d sent.)
4260	1355(b) (1st sent.)
4265(a)	1357(a)
4265(b)	1357(b) (part of 1st sent.)
4265(c)	1357(d)
4270(a)	1355(a)
4270(a)(3)	1355(b)(3)
4270(b)	1355(b)(2)
4275	1356
4280	1363.5
4285	1351(e)(1)-(3)
4290	1351(e)(3) (except last ¶)
4295	1351(e)(3) (last ¶)
4340(a)	1357.100(a)
4340(b)	1357.100(b)
4350	1357.110
4355	1357.120
4360	1357.130
4365	1357.140
4370	1357.150
4500	1362
4505	1361
4510	1361.5
4525	1368(a)

2014 Version	2013 Version
4528	1368.2
4530	1368(b)
4535	1368(f)
4540	1368(d)
4545	1368(e)
4575	1368(c)(1)
4580	1368(c)(2)
4600	1363.07 (except(a)(3)(F))
4605	1363.09(a)-(b) (re: exclusive use grant)
4610	1359
4615	1369
4625	1358(a)
4630	1358(b)
4635	1358(c)
4640	1358(d)
4645	1358 (next to last ¶)
4650	1358 (last ¶)
4700	New Language
4705	1353.5
4710	1353.6
4715	1360.5
4720	1353.7
4725	1376
4730	1368.1
4735	1353.8
4740	New Language 1360.2
4745	New Language 1353.9
4760	1360
4765	1378
4775(a)	1364(a)
4775(b)	1364(c)
4780	1364(b)
4785	1364(d)-(e)
4790	1364(f)
4800	1363(a)
4805	1363(c)
4820	1363(h)
4900	1363.05(a)
4910	1363.05(j)
4920	1363.05(f)
4923	1363.05(g)
4925(a)	1363.05(b) (1st part of 1st sent.)
4925(a)	1363.05(b) (3d sent.)

2014 Version	2013 Version
4925(b)	1363.05(h)
4930	1363.05(i)
4935(a)	1363.05(b) (2d part of 1st sent.)
4935(b)	1363.05(b) (2d sent.)
4935(e)	1363.05(c)
4950(a)	1363.05(d)
4950(b)	1363.05(e)
4955	1363.09(a)-(b) (re: open meetings)
5000(a)	1363(d)
5000(b)	1363.05(h)
5100(a)	1363.03(b) (1st sent.)
5100(c)	1363.03(l)
5100(d)	1363.03(m)
5100(e)	1363.03(n)
5105(a)	1363.03(a)
5105(b)	1363.03(j)
5110	1363.03(c)
5115(a)	1363.03(e)
5115(b)	1363.03(b) (2d & 3d sent.)
5115(c)	1363.03(b) (4th sent.)
5115(d)	1363.03(k)
5115(e)	1355(b)(1)
5120(a)	1363.03(f)
5120(b)	1363.03(g)
5125	1363.03(h)
5125	1363.03(i)
5130	1363.03(d)
5135	1363.04
5145	1363.09 (re: elections)
5200(a)	1365.2(a)(1) (except(I)(ii)-(iii))
5200(b)	1365.2(a)(2) (except last cl.)
5205(a)-(b)	1365.2(b)
5205(c)-(f)	1365.2(c)(1)-(4)
5205(g) (1st & 3d sents.)	1365.2(c)(5)
5205(g) (2d sent.)	1365.2(a)(2) (last cl.)
5205(h)	1365.2(h)
5210(a)-(b)	1365.2(i)-(j)
5210(c)	1365.2(k)

2014 Version	2013 Version
5215	1365.2(d)
5220	1365.2(a)(1)(I)(iii)
5225	1365.2(a)(1)(I)(ii)
5230	1365.2(e)
5235	1365(f)
5240(a)	1365.2(l)
5240(b)	1363(e) (1st sent.)
5240(c)	1365.2(g)
5240(d)	1365.2(m)
5260	New Language
5300(a)	1365(a)(4) (3d ¶)
5300(b) (intro. cl.)	1365 (intro. cl.)
5300(b)(1)	1365(a)(1)
5300(b)(2)	1365(a)(2) (intro. cl.)
5300(b)(3)	1365(b)
5300(b)(4)	1365(a)(3)(A)
5300(b)(5)	1365(a)(3)(B)
5300(b)(6)	1365(a)(3)(C)
5300(b)(7)	1365(a)(4) (1st ¶)
5300(b)(8)	1365(a)(3)(D)
5300(b)(9) (1st & 2d sent.)	1365(f)(1) (except 2d cl. of 1st sent.)
5300(b)(9) (3d sent.)	1365(f)(3)
5300(b)(9) (4th sent. & 2d ¶)	1365(f)(4)
5300(d)	1365(a)(4)(2d ¶)
5300(e)	1365.2.5(b)(3)
5305	1365(c)
5310(a)(7)	1365(e)
5320	1365(d)
5350(a)	1365.6
5375	1363.1(a)
5380(a)-(e)	1363.2(a)-(e)
5380(f)	1363.2(g)
5385	1363.2(f) (1st cl. of 2d sent.)
5385	1363.1(b)(1)
5400	1363.001
5405	1363.6
5500	1365.5(a)
5510(a)	1365.5(b)

2014 Version	2013 Version
5510(b)	1365.5(c)(1)
5515	1365.5(c)(2)
5520	1365.5(d)
5550	1365.5(e)(1)-(4)(5) (1st sent.)
5560	1365.5(e)(5) (except 1st sent.)
5565	1365(a)(2)(A)-(D)
5570	1365.2.5
5580	1365.3
5600(a)	1366(a) (1st sent.)
5600(b)	1366.1
5605(a)	1366(a) (2d sent.)
5605(b)	1366(b) (1st sent.)
5605(c)	1366(a) (3d sent.)
5605(c)	1366(b) (2d sent.)
5610	1366(b) (3d & 4th sent.)
5610(a)-(c)	1366(b)(1)-(3)
5615	1366(d)
5620	1366(c)
5625	1366.4
5650(a)	1367.1(a) (1st sent.)
5650(b)	1366(e)
5650(c)	1366(f)
5655	1367.1(b)
5658	1367.6
5660 (intro)	1367.1(a) (2d sent.)
5660(a)-(f)	1367.1(a)(1)-(6)
5665	1367.1(c)(3)
5670	1367.1(c)(1)(A)
5673	1367.1(c)(2)
5675	1367.1(d) (1st - 5th sent.)
5680	1367.1(f)
5685(a)	1367.1(d) (6th sent.)
5685(b)	1367.1(i)
5685(c)	1367.5
5690	1367.1(l)
5700(a)	1367.1(g) (2d sent.)
5700(b)	1367.1(h)
5705	1367.4(c) (intro.)
5705(a)	1367.4(a)
5705(b)	1367.1(c)(1)(B)
5705(b)	1367.4(c)(1)
5705(c)	1367.4(c)(2)

2014 Version	2013 Version
5705(d)	1367.4(c)(3)
5710(a)	1367.1(g) (3d sent.)
5710(b)	1367.1(j)
5710(c) (intro.)	1367.1(g) (4th sent.)
5710(c)(1)- (2)	1367.1(g)(1)-(2)
5715	1367.4(c) (intro.)
5715(a)	1367.4(a)
5715(b)	1367.4(c)(4)
5720(a)	1367.4(a)
5720(b)	1367.4(b)
5720(c)(2)- (3)	1367.4(d)
5725(a)	1367.1(d) (7th & 8th sent.)
5725(b)	1367.1(e)
5730	1365.1
5735	1367.1(g) (1st sent.)
5740	1367 & 1367.1(m)
5800	1365.7
5805	1365.9
5810	1365(f)(2)
5850(a)	1363(f) (1st sent.)
5855	1363(g)
5865	1363(i)
5900	1363.810
5905	1363.820
5910	1363.830
5915	1363.840
5920	1363.850

2014 Version	2013 Version
5925	1369.510
5930	1369.520
5935	1369.530
5940	1369.540
5945	1369.550
5950	1369.560
5955	1369.570
5960	1369.580
5965	1369.590
5975	1354
5980	1368.3
5985	1368.4
6000	1375
6100	1375.1
6150	1368.5
omitted	1363(e) (2d sent.)
omitted	1363(f) (2d sent.)
omitted	1357(c)
omitted	1357(b) (except part of 1st sent.)
omitted	1363(b)
omitted	1363.005
omitted	1363.03(o)
omitted	1365.2(n)
omitted	1365.5(h)
omitted	1366.2(b)
omitted	1367
omitted	1367.1(n)
omitted	1368(g)

INDEX TO KEY WORDS AND PHRASES

The symbol ■ in the text of the statutes indicates the location of words or topics that appear in the index below. When ■ is located at the left margin, it indicates that the topic is in that paragraph. However, when ■ is located at the left margin of the first paragraph, it may also mean that the entire section or section caption relates to the index topic. Statutes found only in the expanded Digital Version are not indexed below but can be searched using the search features of Adobe Reader ®.

A

- Accounting.....201, 211, 218, 257,
324, 345, 359, 412, 418, 593, 610, 613
- Accrual Accounting.....201, 207, 209
- ADR *see Alternative Dispute Resolution*
- Age Restrictions
CC&R provisions44, 48
definitions42, 46, 490
design guidelines/exemptions.....41,
42, 45, 50
disclosure of171
legislative intent45
mobilehomes43, 47, 58
requirements.....41, 42, 45, 46, 50
Riverside County.....41, 45, 46, 50
- Agenda, board meeting
..... *see Board Meeting, agenda*
- Agent
“in writing”262, 265
authorization to inspect records.....318
comparative fault.....243
defined287
indemnification287
initial311, 314
liability283, 289, 341, 462
liability & limited immunity.....235
managing.....*see Manager / Managing Agent*
purchasing insurance for289
service of process244, 267,
314, 315, 316, 433, 598
- Agriculture, Personal187
- Airport, notice of in declaration162
- Alternative Dispute Resolution
assessments227
certificate required241
costs split.....241, 242
definitions240
disclosure of procedures annually ..242
effect on statutes of limitation241
generally.....79, 234, 240, 252
see Ch. 10, Art. 3240-42
- initiating.....241
referral by stipulation.....242
refusal to participate, effect.....242
time limits241
- Amend CC&Rs
by members.....161, 164
- Amendment
adding member class.....312
adoption of, articles.....311
adverse effect, articles.....312
approval by class, articles311, 312
articles of incorporation311
by court action164, 300
bylaws.....271
certificate, articles313
certification of CC&Rs164
cross-references to former statute ..162
deleting developer references.....161
delivery to members, deleting
developer references.....161
effect on member certificates291
extending corporation, articles313
member approval, CC&Rs.....161, 164
notice to members, court petition...165
of CC&Rs by court164
recording of, CC&Rs164, 165
- Animals *see Pets*
- Annual Budget Report
defined153
- Annual Policy Statement211
defined153
- Antennas.....*also see Satellite Dishes*
restrictions prohibiting182, 588
- Anti-SLAPP Motion.....463
- Arbitration
as ADR before litigation240
defect cases243
standing to participate243
- Architectural Control.....51, 182,
183, 186, 188, 189, 525, 579, 602
- Articles of Incorporation
admission of members289, 292
amending311
amending term of existence313

amendment adoption	311	emergency.....	224
amendment by class required	312	excessive	223
amendments by board approval only	311	exemption from creditors	224
.....	311	interest	<i>see Interest, on delinquent assessments</i>
amendments by incorporators	311	late charge for..	171, 225, 226, 227, 228, 229, 231, 233, 234
as governing document.....	156	maximum permitted	225
assessment provisions	294	levy authorized.....	294
certificate of amendment	313	liens	
class membership provisions.....	292	<i>see Liens, assessment, also see Lien and Assessment Enforcement.</i>	226
contents	166, 267	limits on collection costs.....	225
copy for members.....	274	limits on increasing	223, 224
corporate purposes	265, 267	not voided by resignation.....	293
cumulative voting.....	<i>see Cumulative Voting</i>	notice of	232
evidence of existence	268	in timeshares	234
filing.....	266	notice of increase in	224
formation of corporation	268	notice to prospective purchaser	171
inspection	274	paid on time	
limitation of powers	269	not liable for other charges.....	226
perpetual.....	266	payment plans	<i>see Payment Plans</i>
restated.....	313	payment receipt.....	225
who may sign	266	pledging right to collect	<i>see Assessments, assigning right to collect</i>
Artificial Turf	183, 594	protesting assessments or charges... ..	226, 227, 234
Asbestos		recorded notice for collecting	159
defined	532	regular and special	223
definition of "agent".....	533	Assignment of Rent	142
definition of "building".....	532	Association	
definition of "employee's representative".....	532	approval of unit modifications	188, 579, 602
definition of "employee".....	532	assessments.....	<i>see Assessments; also see Fees by Association</i>
definition of "owner"	533	called Community Association	192
definition of asbestos-containing... ..	532	checklists	590
employee access to survey and data	531	common area owned by	157
information system, statewide register	532	creation of	159
management plan	527	defined	154
multiple owners.....	531	delivery of amendments by	161, 166
notice timing and method	528	disclosures	<i>see Disclosures by Association</i>
notice to co-owners	170, 530	dissolution.....	<i>see Corporation, dissolution</i>
notice to employees.....	526	enforceability of servitudes	242
punishment for noncompliance	533	exempt from interest rate limitation.....	225
warning notice, construction	531	fiscal duties	<i>see Directors, fiscal duties of</i>
Assessments		fundraising by gambling	<i>see Gambling for Fundraising</i>
address for overnight payment	212, 226, 234	governing documents of.....	156
assigning right to collect	235	incorporated	166, 192, 196, 213, 215, 216
based on assessed value prohibited	224		
bylaw reference to.....	273		
collection.....	<i>see Lien and Assessment Enforcement</i>		
collection policies.....	212		
condition of ownership.....	294		
delinquent.....	233		
delinquent date & exceptions	225		
duty to levy	223		

incorporating unincorporated266
 insurance235, 236
 liability of, for officers' acts.....236
 litigation powers.....243
 loans to.....208, 210, 235
 membership in..... 159, 179, 180,
 289, 290
 membership meetings... *see Meetings,*
Member
 name of in declaration162
 named insured for day care507
 nonprofit.....*see Nonprofit Association*
 pest control duties191
 powers of.....192, 269
 records, access to..... *see Inspection of*
Records
 unincorporated 154, 171, 173,
 192, 196, 213, 215, 216
 Association Records202, 203,
 206, 226, 233
 defined201
 improper use of205
 redaction & withholding.....204
 Attorney General
 deadlocked association.....282
 member complaint to.....317
 Attorney's Fees52, 63, 84, 106,
 111, 122, 124, 125, 126, 127, 138, 141,
 161, 176, 178, 181, 183, 187, 195, 201,
 205, 225, 226, 229, 231, 233, 242, 243,
 435, 445, 447, 463, 469, 553, 589, 610
 Audit..... *see Review or Audit, annual*

B

Board..... *also see Directors*
 action without meeting 192, 274
 actions by majority.....275
 adoption of minutes.....278
 approval by.....275
 approving amendments .. 161, 162, 311
 approving asset transfer.....314
 authority of.....274, 278
 authority to change bylaws.....311
 business judgment rule... *see Directors,*
business judgment rule
 bylaws amended by271
 checklists590, 603, 604
 committee creation.....276
 consent to use member list325
 consideration for membership290
 contracting.....271
 declaring office vacant279
 defined154
 delegating duties274

deleting developer references in
 CC&Rs..... 161
 education online215
 liability & limited immunity235
 limiting power of274
 limits on corporate activity274
 meetings..... *see Board Meeting*
 quorum of275
 resignation281
 suit against volunteer 260, 283, 462
 teleconferences ... *see Teleconferences*
 Board Meeting
 agenda..... 193, 194, 201, 603
 defined154
 emergency..... 193, 194
 members' right to speak.....193
 nonemergency..... 193, 194
 notice of meetings.. 154, 193, 194, 274
 open meetings 161, 192, 193,
 195, 199
 special meetings.....274
 unlawful disturbances554
 Bond
 commingling funds by manager....215
 derivative action, conditions for....309,
 310
 derivative action, maximum amount
 of.....310
 family day care home.....507
 Boundaries
 condominium description..... 155, 158
 exclusive use common area.....156
 interpretation of160
 owners' improvements.....188
 separate interest 155, 158
 Budget
 contents207, 209
 preparation and distribution of.....207,
 209, 212
 summary of, in lieu of distribution 212
 timing of distribution207, 209
 Building
 boundaries within..... 160, 188
 Business Judgment Rule.....
see Directors, business judgment rule
 Bylaws
 amendment by board.....271
 amendment by members271
 amendment by specified person....272
 as governing document156
 contents272
 inspection.....274
 limits on board amending.....272
 power to adopt, amend, repeal269

C

Ceiling	155, 158
Checklist for Boards and Managers	590
Civil Actions	
ADR as a prerequisite	240
Clotheslines in Backyards	188
Collection Procedures	212, 233, 234
Commercial Developments	159
Commingled Funds	214, 215
Committees	
“of the board”	201, 213, 277, 283
appointment	273, 276
authority	273, 277
generally	272, 274, 276, 283
meeting notice	272
minutes of meetings	278, 318, 324
with decision-making power	
<i>see Committees, “of the board”</i>	
Common Area	
defined	154
maintenance duties	190, 191
owner access to	191
ownership	170
partition	178
Common Interest Development	
Act applies to	159
biennial statement required	215
common area mandatory	159
creation of	159
defined	154
insuring	235, 236
legal description	160, 162
liberal construction	160, 247
management by association	192
recording map of	155, 159, 166
Communications	
documents	151, 152, 193
generally	257, 275, 604
Community Apartment Project	
as common interest development ...	154
conversion to condominium	167
converted from other use	99
defined	155
identified on declaration	162
ingress, egress	170
maintenance duties	191
separate interest in	158
transfer of separate interest in	179
zoning effect	151
Community Service Organization	222
defined	155
Comparative Fault	243
Completed Payment	215
Condominium Plan	
amending or revoking	167
defined	155
signed by	167
Condominium Project	
as community interest development	154
condominium defined	54
conversion	99
defined	155
identified on declaration	162
ingress, egress	170
maintenance duties	191
modifying unit	188, 579, 602
partition	178
separate interest in	158
transfer of separate interest in	179
walls, floors, ceilings	155, 158
zoning	151
zoning effect	151
Conflict of Interest by Directors	
<i>see Directors, conflict of interest</i>	
Conflicts	
among governing documents	159
Consolidated Associations	192
Construction Defects	<i>see Defects</i>
Consumer Product Safety Comm.	538
Contact Information	601
Contracts	
binding nature	270
board approval of	314
liability of association in labor or services contract	549, 551
liability of members	294
member rights not limited by	318
membership resignation not effective	293
Corporation	
annual reports	319
asset sale	314
biennial statement	255, 315, 326, 478, 598
biennial statement required	215, 216
books and records	318
bylaws	271
derivative actions	309
dissolution	326
existence	267, 268
expending funds	304
formation	265
incorporators	266, 311, 312, 313
indemnification	287
liability of volunteer director in nonprofit	235, 260, 283, 341, 462
limitations	270
nonprofit mutual benefit defined ...	263
nonprofit statement	267
powers	269, <i>also see Association, powers of</i>

principal office.....	274, 295, 297, 315, 598
purpose.....	265
suit against volunteer director	462
Covenant, breach before acquiring property.....	100
Cumulative Voting generally.....	199, 308
recalls with.....	280
written ballot	299

D

Davis-Stirling Act.....	151
Day Care Homes.....	495, 496, 497, 498, 499, 500, 501, 514, 516, 517, 579, 611
generally.....
<i>see H&S Code §§1596.775-</i> <i>1597.621; also See Residential</i> <i>Care Homes</i>	
Declarant.....	161, 165, 236, 252, 253
defined	156
Declaration amending 160, 161, 162, 163, 164, 492 as equitable servitudes.....	162, 242
contents	162
defined	156
extending term.....	163
liberal construction.....	160, 247
Defects applicability to party	86
building standards	70
claims not covered.....	85
comparative fault.....	88
definitions	69, 252
design professional liability.....	86
effect of Civil Code §6000	85
evidence of party conduct	85
evidence of repair efforts.....	85
generally.....	69, 88, 244, 252
latent defects-limitations	456
list of defects .. 171, 244, 248, 251, 253	
litigation against developer ...	244, 253
maintenance duties	76
measure of damages	88
notice to developer	244
patent defects-limitations	456
preconditions.....	84
prelitigation procedures.....	76
sole method to assert claims.....	87
standards and procedures
<i>see Civil Code §§895-945.5</i>	
statute binding.....	88
statute of limitations	83, 86
unforeseen acts.....	88

warranties.....	74, 76
Defibrillators	535
Definitions generally	153-58
Delegates	196, 273, 274
Derivative Actions.....	309
Developer litigation against.....	244, 253
removing CC&R references to.....	161
Directors	<i>also see Board</i>
abstention as approval.....	286
actions binding	271, 278
as agent	287
automatic election.....	196
business judgment rule.....	235, 283
compensation of.....	236, 282, 283, 284, 320, 462
conflict of interest	213, 284
court appointment of.....	279
defined	156, 260
duties.....	235, 283
fiscal duties of.....	207, 209, 211, 212, 217, 232, 604
funds for campaign purposes	200
funds used for nominees	277, 304
grounds for vacating office	279
indemnification of.....	287
initial.....	266, 268
interested, defined.....	276, 284
lawsuits against.....	240, 462
liability & limited immunity
235, 283, 289, 341, 462	
limitations of power	274
loans and guarantees	285, 286, 287, 320
majority as quorum	275
nomination procedure ...	197, 300, 302
number of.....	272
provisional	282
proxy not allowed	276
qualifications	197
quorum.....	275
reduction in number of.....	280
reliance on experts	283
resignation of	281, 282
terms	278
volunteer liability ...	260, 283, 341, 462
write-in candidates.....	197
Disabled Persons generally	42
housing design guidelines	188, 525, 579
modifying unit .. 42, 59, 188, 525, 579, 602	
senior housing developments	42, 46, 602

Discipline of Member	
during drought emergency.....	
<i>see Water Conservation: fines</i>	
<i>during drought</i>	
fines.....	168, 171, 175, 226,
232, 233, 234, 237, 238	
power not created by statute.....	238
procedures.....	237, 293
when void.....	238
Disclosure	
by association.....	93, 207, 209,
211, 212, 237, 238	
by insurer	546, 547
by manager..... <i>see Manager / Manager</i>	
<i>Agent, disclosures</i>	
condominium conversions.....	99
of asbestos.....	529
of defect settlement	253
of defects.....	172
of financial information.....	171, 207,
209, 211, 212	
of mold.....	535
to prospective purchasers	170
by seller	175
enforcement.....	
<i>see Enforcement of, disclosure</i>	
<i>requirements</i>	
fees charged.....	172, 174
timing	174
to prospective purchasers	
<i>see Fees by Association; also see</i>	
<i>Transfer Fee</i>	
Disclosures for Owners & Purchasers.....	93, 99
Discrimination	
age, in housing	41
removal of restriction	53
unlawful practices	39, 160,
478, 483, 488, 491, 492	
Dispute Resolution.....	
<i>see Alternative Dispute Resolution</i>	
<i>(ADR) or Internal Dispute Resolution</i>	
<i>(IDR)</i>	
Distributing Assets to Members.....	265,
291, 295	
Document Delivery Methods.....	152,
153, 193, <i>also see Electronic</i>	
<i>Transmission; also see Newsletters</i>	
by association.....	152, 153
to association.....	151
Dogs	
bites.....	148, 149
<i>breed specific ordinances</i>	543
chaining or tethering	544

Drought	
state of emergency	<i>see Water</i>
<i>Conservation</i>	
Drying Racks in Backyards	188
Due Process	<i>see Hearings</i>

E

Earthquake Insurance Disclosure	208, 210
Easements	
as common area	154
denying access to unit	170
generally	170
holder signing condominium plan..	167
ingress, egress support	170
negative easement	54
Elections	
ballot not required.....	308
ballot retention	199, 200
by written ballot.....	300
challenging.....	304, 308
conflict with Corp. Code.....	196
directors	196, 278,
281, 299, 302, 303	
entirely by mail.....	199
funds for campaign purposes	200
inspectors	197, 199, 307
meeting	295
procedures.....	196, 302, 304
recounts.....	199
rules	196
secret ballot-double envelope.....	198
solicitation in publication.....	303
when not required	196
Electric Vehicles	
Charging Stations.....	177, 185
Electronic Transmission	
by or to corporation.....	151, 152, 153,
192, 203, 255, 265, 274	
generally	274, 275, 318
Employment	
policy prohibiting emergency first aid	
.....	515
unlawful practices	483
Encumbrances	269
Enforcement by	
law enforcement-pilot project in	
Orange County	493
Enforcement of	
construction defect procedures.....	252
Davis-Stirling Act.....	240
disclosure requirements	175
election rights.....	200
exclusive use violations	178
financial disclosures.....	320, 324
governing documents.....	240, 242, 243

Inspection of Records.....	205, 324
meeting rights.....	195
Nonprofit Corporation Law.....	240
Enhanced Association Record	202
defined	202
Equitable Servitudes	54, 162, 242
Exclusive Use Common Area	
agriculture see Agriculture, Personal	
building components	156
defined	156
granting	177
maintenance duties	190
telephone wires part of	156
transfer of.....	180
Executive Session	154, 192,
193, 195, 201, 204, 227, 230, 238	
minutes.....	195

F

Fair Housing Laws.....	41, 42, 45,
46, 47, 50, 57, 491, 597, 603	
Fees by Association	
disclosures to prospective purchaser..	
.....see Disclosure, to prospective	
purchasers	
Transfer Fee	159, 176, 183, 223
exemption from limit on	176
Financial Duties of Board	
.....see <i>Directors, fiscal duties of</i>	
Financial Statement	
audit by court order	325
court enforcement of	320
directors' reliance on.....	283
distribution of.....	211
review by CPA.....	319
Fines	see <i>Discipline of Member</i>
Flag.....	180, 477, 584, 585
Funds, deposit of.....	214, 217

G

Gambling for Fundraising.....	423, 425
General Notice	
defined	156
General Release, Effect of	102
Genetic Information.....	39, 40, 479,
480, 481, 483, 484, 485, 486, 488, 489,	
490, 491, 603	
Good Samaritan Law	514, 515
Governing Documents	
defined	156
hierarchy of	159
inconsistencies among.....	159
to prospective purchasers	171

H

Harrasment, Restraining Order for.....	464, 470
Hearings	238, 293
Housing Cooperative Trusts	60,
61, 62, 63, 347	

I

IDR.....	
see <i>Internal Dispute Resolution (IDR)</i>	
In Writing.....	see <i>Written or In Writing</i>
Incorporation	265, 266
generally..	
see <i>Corp. Code §§7111-7133</i>	
Individual Notice	
defined	156
Industrial Developments.....	159
Inspection of Records	
applicability	206
articles and bylaws.....	274
association records.....	219
specified.....	201, 202, 206
community service organization	206
corporate records ...	201, 318, 325, 609
definitions	201
enforcement	205
generally	
see <i>Ch.6, Art. 5.....</i>	201-6
generally..	see <i>Corp. Code §§8310-</i>
8333	
time periods available	203
Inspector of Elections	
..... see <i>Elections, inspectors</i>	
Inspectors, qualified building	38
Insurance	
board to obtain	261, 269
disclosure.....	208, 210
lapse	237
family day care	507
federal, funds held by manager	214
indemnifying agents.....	235, 289
Interest	
on delinquent assessments	171, 225,
226, 228, 229, 231, 233, 234	
maximum 12% APR	225
Interest-Bearing Account, Managers ..	214
Internal Dispute Resolution (IDR)	
attorney at	239
default procedure	239
fair, reasonable and expeditious	
requirement	238
generally	238
minimum criteria	239
notice to members.....	240

Item of Business	
defined	157

L

Late Charge.....	
<i>see Assessments, late charge</i>	
Lawsuits.....	240, 462
Leases	
maximum duration of.....	160
Leasing Restrictions.....	
<i>see Rental Restrictions</i>	
Liability, limited immunity for directors, officers, agents, etc.....	235
Liability, limited immunity for owners	236
Liability, Limiting	
Good Samaritan Law.....	514
recreational use of property	66
Liberal Construction	160, 247
Lien and Assessment Enforcement	
debts after January 1, 2006.....	229, 231
debts less than \$1800	231
foreclosure	
fees and costs.....	230
nonjudicial requirements	230
personal service required.....	230
right of redemption	231
liens recorded after January 1, 2006	227, 233
other remedies	212, 218, 229, 232
procedural errors	229
timing	229
Liens	
assessment.....	226
common area damage	232
contents	228
decision to foreclose in executive session	230
decision to record in open session	228
monetary penalties and fines	232
pre-lien notice.....	226
pre-lien offer of IDR or ADR	229
priority.....	228
recorded in error	229
release requirements	228
required mailing	228
required signature(s).....	228
subordination.....	228
foreclosure.....	229, 231, 476
generally	
<i>see §5660 et seq.</i>	226–29
policies for enforcing	212
recorded after January 1, 2006	227
recorded before January 1, 2003	235

recorded on or after January 1, 2003..	235
Limited-Equity Housing Cooperative.....	44, 45, 49, 60, 62, 158, 347
Litigation	
association power to sue	243
funding using reserves.. ..	
<i>see Reserves, use for litigation</i>	
notice to members.....	253
Loans.....	<i>see Association, loans to</i>

M

Mail, meeting notices .	256, 274, 294, 296
Maintenance Duties.....	65, 190
Manager / Managing Agent.....	160,
166, 215, 216	
defined	157
disclosures	213, 214, 215, 422
handling HOA funds.....	214
not a Contractor or Consultant	342
Manager Certification	
“common interest development manager” defined	419
annual disclosure	422
definitions	418
education/examination	421
not applicable to management firm	422
qualifications	420
unfair business practices	422
Mechanics’ Liens	179
Meetings	
Board	<i>see Board Meeting</i>
Meetings, Delegates	274
Meetings, Member	
action without meeting.....	299
adjourned	297
by written consent.....	301
checklist.....	606
court ordered.....	295, 300
court postponement.....	324
elections.....	196, 296
failure to hold.....	295
litigation discussion	245, 250, 253
members’ right to speak	196
minutes	278
notice of	253, 296
proposed actions	296
record date	305
special.....	296, 297
timing of	295, 296
unlawful disturbances	554
waiver of notice	298
Member(s)	
action against corporation	309
action without meeting.....	299

approval by all.....	258, 338
approval by majority of a quorum of	153
approval by majority of all.....	153, 163, 164, 191, 258, 274, 277, 280, 282, 290
approval of corporate action...	274, 277
assessments levied against	223, 294
authorized number.....	259, 281, 309, 321, 322
defined	157, 262, 293
lawsuits against corporation	240
liability & limited immunity.....	236
liability for corporate debts	294
limiting rights	318
right to vote	262
Membership	
admission	289, 292
Articles of Incorporation affecting	311
by two or more persons	306
bylaws affecting	271
certificates	192, 269, 291, 307
classes	265, 268, 292
consent to HOA.....	294
consideration for	267, 290
multiple or fractional.....	290, 306
reclassification	310, 312, 313
redemption of	292
resignation.....	293, 294
rights, equality of	292
Membership List.....	169, 201, 203, 205, 206, 321, 322, 323, 325, 608
opt out	205, 207
Minutes	
as prima facie evidence	278
availability.....	172, 195, 201, 324
directors' waiver of notice.....	274
duty to keep.....	318
executive session.....	<i>see Executive Session</i>
requirements.....	298, 301
Mobilehome Associations.....	55
“mobilehome subdivision” defined	55
“mobilehome” defined	54
purchase approval.....	57
removal of mobilehome	56
rights of residents	55
senior housing requirements.....	57
caregivers	58
utility interruption	57
Mold, Toxic	533, 534
Monetary Penalty	
.....	<i>see Discipline of Member</i>
Mortgages	
authority of officers.....	278
statute of limitations	455

Motorized Scooters.....	568, 569
-------------------------	----------

N

Newsletter	152, 196, 257
Nonprofit Association	
defined	328
Nonprofit Corporation.....	260, 261, 283
Notice	
secondary owner address	152
Nuisances	150, 476, 521

O

Occupant, defined.....	191
Officers	
generally	277
indemnification of.....	287
liability.....	283, 341
liability & limited immunity	235
resignation	278
Open Meetings	<i>see Board, open meetings</i>
Operating Rules	<i>see Rules</i>
Owner	
agriculture....	<i>see Agriculture, Personal</i>
Owners' Association	<i>see Association</i>
Ownership	
tort liability	236

P

Parcel Map	155, 159
Parks	538
Parliamentary Procedure.....	196, 606, 616
Partition	178, 180
Payment Plans	
effect of default.....	227
effect on lien filings	227
late fees during.....	227
meeting and timing to discuss.....	227
request for	227
standards for	227
Person	
defined	157, 263
Petitioning Court	
to amend declaration	164
to enforce inspection rights	320, 322, 323, 324
Pets.....	181
Planned Development	
as common interest development ...	154
defined	157
identified on declaration	162
ingress, egress	170

maintenance duties	191
separate interest in	158
transfer of separate interest in	179
zoning	151
zoning effect	151
Plants, Low Water-using	
..... <i>see Water Conservation</i>	
Playgrounds	538
Pledge of Assets	314
Plumbing, Water Conserving	89,
90, 91, 92, 93	
Pools	<i>see Swimming Pools</i>
Prefabricated Housing	53
Pressure Washing	184
Prospective Purchasers	
<i>see Disclosure, to prospective</i>	
<i>purchasers</i>	
Proxy	
defined	264
delegate	274
form	300
general terms	306
use in HOAs	199
Proxyholder, defined	264
Public Report	348

Q

Quorum	
“interested directors”	285
assessment increase	223
board meeting	275
board vacancies	281
court lowering	300
for owner assessment vote	223
member meeting	298
written ballot	299

R

Relocation	88, 190
temporary summary removal	191
Removal of Directors	196, 279, 281
Rent Skimming	66, 67, 68, 69
Rental Restrictions	172, 184
Reserve Account Requirements	
defined	158
Reserve Accounts	
defined	157
Reserves / Reserve Study	173,
207, 209, 223, 245	
account balances	201
account requirements	158, 207,
209, 218, 220, 221, 222	
account review	217

borrowing from	218
contents	220
disclosure summary	220
disclosures	218
evidence admissibility	208, 211
expending	218
for defect repairs	250
funding plan	173, 207, 208,
209, 211, 219, 222	
inspection frequency	219
signatures on account	218
use for litigation	218
Residential Care Homes	495, 496,
497, 498, 499, 501, 516, 517, 579, 611	
Restrictions	
defined	54
reasonable	165, 191, 242
Review or Audit, annual	211, 319
Roofs, Fire Retardant	182
Rules	
30-day comment period	168
governing document	156, 167,
168, 169, 170	
mobilehome subdivision	57, 58
procedure to reverse	169

S

Sales	
corporate assets	314
unreasonable restrictions on	183
San Francisco Bay Conservation Comm.	
Notice of in declaration	163
Satellite Dishes	182, 588,
<i>also see Antennas</i>	
Searching, Copying and Printing the	
Digital Version	7
Secretary of State filings	315, 326
Separate Interest	
agriculture <i>see Agriculture, Personal</i>	
defined	158
excluded from common area	154
in community apartment project	158
in condominium project	155, 158
in planned development:	158
in stock cooperative:	158
maintenance duties	190
regulating use of	180
transfer of	179
Service of Process	
agent for .. <i>see Agent, service of process</i>	
gated community	461

Severability of Property Interests.....	180
Severability of Restrictions.....	160
Signed, defined	264
Signs	
asbestos	529
noncommercial, display of	181
political	58
real estate	50, 51, 55, 611
swimming pool.....	580, 581, 582
towing	569
Small Claims	
appeal	436, 441, 443
attorneys barred.....	436
fees.....	428
jurisdiction	427, 428
maximum claim.....	427
notice of appeal	443
participants	437
Solar Energy Systems	51, 52, 59, 555, 556, 557, 611
Speak at Meetings	
members' right to	<i>see Meetings, Member, members' right to speak</i>
Special Assessments	
delinquent date & exceptions	225
for termite treatment.....	191
liens.....	<i>see Liens, assessment</i>
limits on	223, 224
prior notice to owners of	224
to replace reserves	218
Standing to Sue	243
Statute of Limitations.....	83, 86, 454, 461
generally.....	<i>see Code of Civ. Proc. §§335-340</i>
Stock Cooperative	
as common interest development ...	154
conversion to condominium.....	99, 167
defined	158
generally.....	54
identified on declaration.....	162
ingress, egress	170
maintenance duties	191
separate interest in.....	54, 158
transfer of separate interest in	179
zoning effect.....	151
Suits by or against Association or Members	
prerequisites	240
Suspension of Rights	256, 291, 293
Swimming Pools.....	539, 540, 580, 581, 583
drain safety.....	540, 585, 586

T

Tax	256, 261, 462
Tax Exempt Organizations under 501(c)(3)	155
Taxation	
community apartment project	560
condominium units	559
condominiums.....	558
leased land	558
planned development	558
resident owned mobilehome park ..	565
time share project.....	561, 563
Teleconferences	
for board meetings	154, 193
Telephone Wiring.....	156, 191
Tenants in Common	170, 178, 306
Topic Headings.....	151
Towing	569, 577
Transfer	
of membership	179, 291, 292, 293, 294
of reserve funds.....	218
Transfer Fee.....	269, 273, <i>see Fees by Association, Transfer Fee</i>
Type, boldface or point.....	208, 210, 212, 226, 232, 491

U

Unincorporated Association	<i>see Association, unincorporated</i>
enforcing judgments against	334
generally	266, 478
liabilities in	334, 340, 341
Unruh Civil Rights Act.....	39

V

Vacancy.....	264, 281
Vehicles	
Electric.....	<i>see Electric Vehicles</i>
Verified, defined.....	264
Volunteer	260, 283, 462
liability & limited immunity	235
Vote / Voting	
abstention as approval	286, 321
approval by members	258, 299
board.....	256, 257, 258, 275
by multiple or fractional owners	290
definition.....	265
filling board vacancy	281
one vote entitlement.....	169, 305
removing directors	279, 281
rights/power	197, 198, 262, 265, 266, 321

solicitation rights.....	303
to remove directors.....	196
withholding on proxy	300

W

Water Conservation	
fines during drought	184, 594
plants, low water-using	183
state of emergency.....	184
Water-using Plants, Low	
..... <i>see Water Conservation</i>	
Welfare & Institutions Code	509,
510, 511, 512, 513, 579	
Wood-Destroying Pests	191
Written Ballot	
court order	300
electing directors by	299

form of	300
generally	265
in lieu of meeting	299
irrevocability	299
mail	272
regular meeting, failure to hold	295
requirements	299
solicitation	299
Written Consent	
directors	274
members	301
Written Notice by Corporation	152,
193, 257	
Written or In Writing, defined	265, 318

Z

Zoning	47, 151, 501, 504, 588
---------------------	------------------------