

**Davis-Stirling 2014:  
Mapping the Changes to Association Governance**

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Davis-Stirling 2014 is here. Are you ready? While most of the changes to Davis-Stirling are merely reorganization with the language of many sections staying the same, there are some provisions that will change how a community association conducts business. The changes noted below range from notices of board meetings, voting on restated documents, and board member conflicts. Some of the changes may seem small or not so different from what we've all been doing but remember, the devil is in the details!

Notice of Executive Session Board Meetings (Former Civil Code § 1363.05(f); New Civil Code § 4920)

In 2011, the law changed to require posting a notice and agenda for non-emergency executive session board meetings at least two days prior to the meeting. In Davis-Stirling 2014, this two day notice requirement is subject to any longer notice period provided in an association's own governing documents for a board meeting. For some associations, this means that a four day notice will be required for non-emergency executive session board meetings.

Some bylaws have a provision requiring a four day notice of board meetings and make no distinction between an open session board meeting and an executive session board meeting. When the bylaws have this type of notice requirement, a four day notice is required for a non-emergency executive session.

Remember that an emergency meeting in either executive session or an open session is exempt from the notice requirements. An "emergency" is defined in both the current law and Davis-Stirling 2014 as "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" the four or two day notice otherwise required.

Membership Votes On Amendments to Governing Documents (Former Civil Code § 1363.03; New Civil Code §§ 5100 – 5145)

For associations rewriting their governing documents, new § 5115(e) may be an expensive change. When voting on any amendments of the governing documents, associations will be required to deliver

the text of the amendments to the members with the ballot. Per § 5115(a), ballots must be mailed by first-class mail or “delivered by the association.”

Davis-Stirling 2014 includes detailed new provisions addressing delivery methods for notices between the association and its members. Notices from the association are divided into two categories – “individual notices or delivery” and “general notices or delivery.” Section 5115(a) addressing delivery of ballots and the text of amendments does not use the defined delivery terms but it must mean individual delivery. This means that the ballot and text of the amendments must be delivered to every owner by first-class mail or e-mail or other electronic means, if the owner has first consented, in writing, to receive the ballot and/or text of amendments by electronic means.

For a ballot and a simple one or two item amendment, first-class mail is not a problem. For a 60 to 100 page restatement of bylaws and CC&Rs, copying and mailing the entire text with the ballot may be very costly. Certainly, owners should be able to receive a complete text of the changes, but currently many associations provide the text by hand-delivery, which is not an option under the new law, or by posting on a website, providing a CD, or other similar means that are only an option with an owner’s prior written consent. Further, many associations provide the full text to the owners prior to the voting to allow owners’ an opportunity to review and comment prior to the voting and then just provide any changed pages with the ballot.

#### Inspection of Association Books and Records (Former Civil Code § 1365.2; New Civil Code §§ 5200 – 5230)

The new records inspection provisions are split into multiple sections, but there are no substantive changes. The scope or list of association records or enhanced association records that a member may inspect and copy or the method of delivery, time frames to produce such documents, ability of an association to charge the requesting member for mailing, copies, and redaction (when applicable), or other existing document inspection procedures remain the same.

#### Board Member Conflicts of Interest (New Civil Code § 5350)

This new law prohibits a director or member of a committee of the board from voting on the matters listed below. It is important to note that the new law does not prohibit a director from being present during any discussion of these matters, only that the director refrains from voting.

- Discipline of the director,
- Imposing an assessment against the director,
- Considering a request for a payment plan from the director,
- Deciding whether to foreclose on a lien against the director’s property,
- Reviewing an architectural request from the director, and

- Granting exclusive use common area to the director or committee member.

The existing provisions of Corporations Code § 7233 relating to contracts or transactions in which a director has a material financial interest are still in effect.

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