

2010 EDITION

THE DAVIS-STIRLING
COMMON INTEREST
DEVELOPMENT ACT &
COMMUNITY ASSOCIATION
MINI-LEGAL DICTIONARY.©



The Recognized Authority
in Community Association Law®

Compliments of

FIORE RACOBS & POWERS

— A PROFESSIONAL LAW CORPORATION —

TABLE OF CONTENTS

CIVIL CODE	SUBJECT MATTER	PAGE
§1350.	Name of Act	6
§1350.5.	Section Headings	6
§1350.7.	<i>Methods of Document Delivery</i>	6
§1351.	<i>Definition of Relevant Terms</i>	6
§1352.	Creation of Common Interest Development	9
§1352.5.	Removal of Discriminatory Restrictive Provision in Governing Documents	9
§1353.	CC&Rs Must Contain	9
§1353.5.	Flag of the United States Display	10
§1353.6.	Noncommercial Signs, Posters, Flags or Banners	10
§1353.7.	Roof Installation and Repair	10
§1353.8.	<i>Water-efficient Landscape</i>	11
§1354.	Enforceability of CC&Rs	11
§1355.	Amendability of CC&Rs	11
§1355.5.	Removing Developer’s Marketing-Related Provisions	11
§1356.	Petitioning for Relief from Voting Requirements to Amend CC&Rs	12
§1357.	Method to Extend Term of CC&Rs	13
§1357.100.	Rules Definitions	14
§1357.110.	Operating Rules	14
§1357.120.	Applicability of Sections 1357.130 and 1357.140	14
§1357.130.	Notice of Rules Changes - When Required	15
§1357.140.	Membership Vote to Reverse Rules Changes	15
§1357.150.	Applicability of Rules Changes	16
§1358.	Inclusion of Common Interest in Transfers of Separate Interest	16
§1359.	Petitioning for Partition of Condominium Project	17
§1360.	Owner’s Limited Right to Modify Separate Interest	17
§1360.5	Pet Restrictions	18

TABLE OF CONTENTS

CIVIL CODE	SUBJECT MATTER	PAGE
§1361.	Rights of Ingress, Egress and Support	18
§1361.5.	Physical Access Required for Separate Interest Owner or Occupant	18
§1362.	Common Area Ownership	18
§1363.	Managing Common Interest Development; Duties & Powers of Association; Meetings	18
§1363.001.	Board Member Education	19
§1363.005.	<i>Disclosure Documents Index</i>	20
§1363.03.	<i>Election and Voting Procedures</i>	20
§1363.04.	Use of Funds for Campaign Purposes	23
§1363.05.	Open Meeting Act	23
§1363.07.	Grant of Common Area	25
§1363.09.	Enforcement of Election and Meeting Requirements	25
§1363.1.	Prospective Managing Agent — Disclosure to Board Before Entering into Management Agreement	26
§1363.2.	Requirements for Manager’s Handling of Association’s Funds; Prohibition against Commingling Funds	26
§1363.5.	Statement Required to be Included in Corporate Filings	28
§1363.6.	Information by Association to Secretary of State	28
§1363.810.	Internal Dispute Resolution (“IDR”)	29
§1363.820.	Internal Procedure to Resolve Disputes; Local Dispute Resolution Programs	29
§1363.830.	Requirements of IDR Program	29
§1363.840.	“Default” IDR Procedure; Use of Procedures; Dispute Resolution Agreements; Conditions; Fees	30
§1363.850.	Notice of IDR Process	30
§1364.	Maintenance and Repair Duties of Association and Owners; Duty to Repair re: Wood-Destroying Organisms; Right and Procedure to Remove Occupants; Right to Access Telephone Wires	30

TABLE OF CONTENTS

CIVIL CODE	SUBJECT MATTER	PAGE
§1365.	Budgets, Reserves and Assessment Documents	31
§1365.1.	Written Notice by Association re: Assessments	34
§1365.2.	Inspection of Accounting Books and Records, Minutes of Proceedings	35
§1365.2.5.	<i>Reserve Disclosures; Calculating Amount of Reserves</i>	39
§1365.3	Community Service Organization Reports; Information on Components to Complete Disclosures or Reserve Reports	40
§1365.5.	Board’s Duties re: Accounts, Reserves and Expenses	41
§1365.6.	Contracts & Transactions	42
§1365.7.	Limitations on Liability of Association’s Officers and Directors	42
§1365.9.	Actions Against Owner of Separate Interest; Insurance Requirements	43
§1366.	Association’s Duty to Assess; Limitations on Increasing Assessment Amounts; Emergency Increases; Notice of Increases	44
§1366.1.	Prohibition Against Excessive Assessments	45
§1366.2.	Optional Recordation of Statement of Relevant Information for Association	45
§1366.4.	<i>Levy of Assessments Based on Taxable Value Prohibited</i>	45
§1367.	Lien for Delinquent Assessment	46
§1367.1.	Assessment; Lien Rights of Association	47
§1367.4.	Limitations on Nonjudicial Foreclosure	50
§1367.5.	Lien Recorded in Error	51
§1367.6.	Disputed Charges	52
§1368.	Disclosure Duties to Purchaser; Penalties	52
§1368.1.	Restrictions on Marketability of Property	54
§1368.3.	Association Standing	54
§1368.4.	Comparative Fault; Cross Complaints	54

TABLE OF CONTENTS

CIVIL CODE	SUBJECT MATTER	PAGE
§1368.5.	Written Notice to Members Prior to Filing Defect Lawsuit	55
§1369.	Mechanic’s Lien Rights	55
§1369.510.	Alternative Dispute Resolution (“ADR”) Definitions	55
§1369.520.	ADR	56
§1369.530.	Service of Request for Resolution; Contents of Request	56
§1369.540.	Time Limit for Completion of Resolution; Evidence Code; Costs	56
§1369.550.	Tolling Statute of Limitations	56
§1369.560.	Filing of Certificate for Enforcement Action	56
§1369.570.	Referral to ADR after Commencement of Enforcement Action; Attorneys Fees; Costs	57
§1369.580.	Attorneys Fees and Costs	57
§1369.590.	Annual Summary to Members	57
§1370.	Liberal Construction of Recorded Documents for Development’s Operation	57
§1371.	Conclusive Presumption of Condominium’s Physical Boundaries	57
§1372.	Uniform Application of Zoning Ordinances to all Developments	58
§1373.	Exemptions for Industrial and Commercial Developments	58
§1374.	Inapplicability to Developments without Common Areas	58
§1375.	<i>Defect Litigation Procedures [Inoperative July 1, 2017]</i>	58
§1375.05.	Court Procedures for Defect Matters [Inoperative July 1, 2010]	65
§1375.1.	Builder Settlement Disclosure by Association to Members	67
§1376.	Restrictions on Video or Television Antennas	67
§1378.	Architectural Review Procedures	68

THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT

§1350. Name of Act

This title shall be known and may be cited as the Davis-Stirling Common Interest Development Act.

§1350.5. Section Headings

Division, part, title, chapter, and section headings do not in any manner affect the scope, meaning, or intent of this title.

§1350.7. Methods of Document Delivery

a) This section applies to delivery of a document *listed in Section 1363.005 or* to the extent the section is made applicable by another provision of this title.

(b) A document shall be delivered by one or more of the following methods:

(1) Personal delivery.

(2) First-class mail, postage prepaid, addressed to a member at the address last shown on the books of the association or otherwise provided by the member. Delivery is deemed to be complete on deposit into the United States mail.

(3) E-mail, facsimile, or other electronic means, if the recipient has agreed to that method of delivery. *The agreement obtained by the association shall be consistent with the conditions for obtaining consumer consent described in Section 20 of the Corporations Code.* If a document is delivered by electronic means, delivery is complete at the time of transmission.

(4) By publication in a periodical that is circulated primarily to members of the association.

(5) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(6) A method of delivery provided in a recorded provision of the governing documents.

(7) Any other method of delivery, provided that the recipient has agreed to that method of delivery.

(c) A document may be included in or delivered with a billing statement, newsletter, or other document that is delivered by one of the methods provided in subdivision (b).

(d) 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 of the association to that method of delivery.

§1351. Definition of Relevant Terms

As used in this title, the following terms have the following meanings:

(a) “Association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

(b) “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. However, the common area for a planned development specified in paragraph (2) of subdivision (k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

(c) “Common interest development” means any of the following:

(1) A community apartment project.

(2) A condominium project.

(3) A planned development.

(4) A stock cooperative.

(d) “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.

(e) “Condominium plan” means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) 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 areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the following:

(A) The record owner of the fee title to that property included in the condominium project.

(B) In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years.

(C) In the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests.

(D) The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan. Further, 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.

A condominium plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by all the persons whose signatures would be required pursuant to this subdivision.

(f) A “condominium project” means a development consisting of condominiums. 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, or water, 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. 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, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

(g) “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.

(h) “Declaration” means the document, however denominated, which contains the information required by Section 1353.

FIORE RACOBS & POWERS

(i) “Exclusive use common area” means a portion of the common areas 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.

(1) 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 areas allocated exclusively to that separate interest.

(2) 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, are exclusive use common areas allocated exclusively to that separate interest.

(j) “Governing documents” means the declaration and any other documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

(k) “Planned development” means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area 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.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1.

(l) “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 subdivision (d).

(2) In a condominium project, “separate interest” means an individual unit, as specified in subdivision (f).

(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 subdivision (m).

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 areas.

The estate in a separate interest may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(m) “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.

A “stock cooperative” includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 817.

§1352. Creation of Common Interest Development

This title 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.

§1352.5. Removal of Discriminatory Restrictive Provision in Governing Documents

(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 of directors of an association, without approval of the owners, 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 after providing written notice to an association 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.

§1353. CC&Rs Must Contain

(a) (1) 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. If the property is located within an airport influence area, a declaration, recorded after January 1, 2004, shall contain the following statement:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(2) 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.

(3) If the property 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:

FIORE RACOBS & POWERS

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.

(4) 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.

(b) The declaration may contain any other matters the original signator of the declaration or the owners consider appropriate.

§1353.5. Flag of the United States Display

(a) Except as required for the protection of the public health or safety, no declaration or other governing document shall limit or prohibit, or be construed to limit or prohibit, the display of the flag of the United States by an owner on or in the owner's separate interest or within the owner's exclusive use common area, as defined in Section 1351.

(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 attorneys' fees and costs.

§1353.6. Noncommercial Signs, Posters, Flags or Banners

(a) The governing documents, including the operating rules, may not prohibit posting or displaying of noncommercial signs, posters, flags, or banners on or in an owner'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 9 square feet in size and noncommercial flags or banners that are more than 15 square feet in size.

§1353.7. Roof Installation and Repair

(a) No common interest development 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.

§1353.8. Water-efficient Landscape

(a) *Notwithstanding any other law, a provision of any of the governing documents of a common interest development shall be void and unenforceable if it does any of the following:*

(1) *Prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group.*

(2) *Has the effect of prohibiting or restricting compliance with either of the following:*

(A) *A water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of Section 65595 of the Government Code.*

(B) *Any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the Water Code.*

(b) *This section shall not prohibit an association from applying landscaping rules and regulations established in the governing documents, to the extent the rules and regulations fully conform with the requirements of subdivision (a).*

§1354. Enforceability of CC&Rs

(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.

§1355. Amendability of CC&Rs

(a) The declaration may be amended pursuant to the governing documents or this title. Except as provided in Section 1356, an amendment is effective after (1) the approval of the percentage of owners required by the governing documents has been given, (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, and (3) that writing has been recorded in each county in which a portion of the common interest development is located.

(b) Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration which fails to include provisions permitting its amendment at all times during its existence may be amended at any time. For purposes of this subdivision, an amendment is only effective after (1) the proposed amendment has been distributed to all of the owners of separate interests in the common interest development by first class mail postage prepaid or personal delivery not less than 15 days and not more than 60 days prior to any approval being solicited; (2) the approval of owners representing more than 50 percent, or any higher percentage required by the declaration for the approval of an amendment to the declaration, of the separate interests in the common interest development has been given, and that fact has been certified in a writing, executed and acknowledged by an officer of the association; and (3) the amendment has been recorded in each county in which a portion of the common interest development is located. A copy of any amendment adopted pursuant to this subdivision shall be distributed by first class mail postage prepaid or personal delivery to all of the owners of separate interest immediately upon its recordation.

§1355.5. Removing Developer’s Marketing-Related Provisions

(a) Notwithstanding any provision of the governing documents of a common interest development to the contrary, the board of directors of the association may, after the

developer of the common interest development has completed construction of the development, has terminated construction activities, and has terminated his or her 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 (a) completion of construction of the development, and (b) 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 of directors of the association shall mail to all owners of the separate interests, by first class mail, (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 of directors will consider adoption of the amendments. The board of directors of an association may consider adoption of amendments to the governing documents pursuant to subdivision (a) only at a meeting which is open to all owners of the separate interests in the common interest development, who shall be given opportunity to make comments thereon. All deliberations of the board of directors on any action proposed under subdivision (a) shall only be conducted in such an open meeting.

(d) The board of directors of the association may not amend the governing documents pursuant to this section without the approval of the owners, casting a majority of the votes at a meeting or election of the association constituting a quorum and conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of, and Section 7613 of, the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners who own no more than two separate interests in the development.

§1356. Petitioning for Relief from Voting Requirements to Amend CC&Rs

(a) If in order to amend a declaration, the declaration requires owners having more than 50 percent of the votes in the association, in a single class voting structure, or owners 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 owner of a separate interest, 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 owner 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 all applicable provisions of the governing documents.

(3) A reasonably diligent effort was made to permit all eligible members to vote on the proposed amendment.

(4) Owners 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, owners 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 owners having more than 50 percent of the votes in more than one class to vote in favor of an amendment, unless owners having more than 50 percent of the votes in each affected class approved the amendment.

(2) Would eliminate any special rights, preferences, or privileges designated in the declaration as belonging to the declarant, without the consent of the declarant.

(3) Would impair the security interest of a mortgagee of a mortgage or the beneficiary of a deed of trust without the approval of the percentage of the mortgagees and beneficiaries specified in the declaration, if the declaration requires the approval of a specified percentage of the mortgagees and beneficiaries.

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

(g) Within a reasonable time after the amendment is recorded the association shall mail a copy of the amendment to each member of the association, together with a statement that the amendment has been recorded.

§1357. Method to Extend Term of CC&Rs

(a) The Legislature finds that there are common interest developments that have been created with deed restrictions which do not provide a means for the property owners to extend the term of the declaration. The Legislature further finds that covenants and restrictions,

FIORE RACOBS & POWERS

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 areas 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 owners having more than 50 percent of the votes in the association choose to do so.

(b) A declaration which specifies a termination date, but which contains no provision for extension of the termination date, may be extended by the approval of owners having more than 50 percent of the votes in the association or any greater percentage specified in the declaration for an amendment thereto. If the approval of owners having more than 50 percent of the votes in the association is required to amend the declaration, the term of the declaration may be extended in accordance with Section 1356.

(c) Any amendment to a declaration made in accordance with subdivision (b) shall become effective upon recordation in accordance with Section 1355.

(d) 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.

§1357.100. Rules Definitions

As used in this article:

(a) "Operating rule" means a regulation adopted by the board of directors of the association 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 of directors of the association.

§1357.110. Operating Rules

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 of directors of the association conferred by law or by the declaration, articles of incorporation or association, or bylaws of the association.

(c) The rule is not inconsistent with governing law and the declaration, articles of incorporation or association, and 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.

§1357.120. Applicability of Sections 1357.130 and 1357.140

(a) Sections 1357.130 and 1357.140 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 1357.130 and 1357.140 do not apply to the following actions by the board of directors of an association:
 - (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 of directors 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.

§1357.130. Notice of Rules Changes - When Required

- (a) The board of directors shall provide written notice of a proposed rule change to the members 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 of directors 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 meeting of the board of directors, 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 of directors shall deliver notice of the rule change to every association member. 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 of directors 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.
- (e) A notice required by this section is subject to Section 1350.7.

§1357.140. Membership Vote to Reverse Rules Changes

- (a) Members of an association owning 5 percent or more of the separate interests may call a special meeting of the members to reverse a rule change.
- (b) A special meeting of the members may be called by delivering a written request to the president or secretary of the board of directors, after which the board shall deliver notice of the meeting to the association's members and hold the meeting in conformity with Section 7511 of the Corporations Code. The written request may not be delivered more than 30 days after the members of the association are notified of the rule change. Members are deemed to have been notified of a rule change on delivery of notice of the rule change, or on enforcement of the resulting rule, whichever is sooner. For the purposes of Section 8330 of the Corporations Code, collection of signatures to call a special meeting 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.
- (c) The rule change may be reversed 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 if the declaration or bylaws

FIORE RACOBS & POWERS

require a greater proportion, by the affirmative vote or written ballot of the proportion required. In lieu of calling the meeting described in this section, the board may distribute a written ballot to every member of the association in conformity with the requirements of Section 7513 of the Corporations Code.

(d) Unless otherwise provided in the declaration or bylaws, for the purposes of this section, a member may cast one vote per separate interest owned.

(e) A meeting called under this section is governed by Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of, and Sections 7612 and 7613 of, the Corporations Code.

(f) A rule change reversed under this section may not be readopted for one year after the date of the meeting reversing the rule change. Nothing in this section precludes the board of directors 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 of directors shall provide notice of the results of a member vote held pursuant to this section to every association member. Delivery of notice under this subdivision is subject to Section 1350.7.

(h) This section does not apply to an emergency rule change made under subdivision (d) of Section 1357.130.

§1357.150. Applicability of Rules Changes

(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 of directors of the association takes its first official action leading to adoption of the rule change.

§1358. Inclusion of Common Interest in Transfers of Separate Interest

(a) 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.

(b) In a condominium project the common areas are not subject to partition, except as provided in Section 1359. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common areas. 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.

(c) 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 areas, if any exist. 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.

(d) 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.

Nothing in this section 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.

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 of the Civil Code. However, these restrictions shall not extend beyond the period in which the right to partition a project is suspended under Section 1359.

§1359. Petitioning for Partition of Condominium Project

(a) Except as provided in this section, the common areas 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 areas. 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 areas 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) The conditions for such a sale, set forth in the declaration, have been met.

§1360. Owner's Limited Right to Modify Separate Interest

(a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the owner of the separate interest may do the following:

(1) Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify a unit in a condominium project, at the owner'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 unit for the purposes of this paragraph if the unit 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 owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project 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.

§1360.5. 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 his or her 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.

§1361. Rights of 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 areas 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 areas. The common areas are subject to these rights.

(b) In a stock cooperative, and in a planned development with common areas owned by the association, there is an easement for ingress, egress, and support, if necessary, appurtenant to each separate interest. The common areas are subject to these easements.

§1361.5. Physical Access Required for Separate Interest Owner or Occupant

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 an owner or occupant physical access to his or her separate interest, either by restricting access through the common areas to the owner’s separate interest, or by restricting access solely to the owner’s separate interest.

§1362. Common Area Ownership

Unless the declaration otherwise provides, in a condominium project, or in a planned development in which the common areas are owned by the owners of the separate interests, the common areas are owned as tenants in common, in equal shares, one for each unit or lot.

§1363. Managing Common Interest Development; Duties & Powers of Association; Meetings

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

(b) An association, whether incorporated or unincorporated, shall prepare a budget pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.

(c) 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.

The association, whether incorporated or unincorporated, may exercise the powers granted to an association in this title.

(d) 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.

(e) Notwithstanding any other provision of law, notice of meetings of the members shall specify those matters the board intends to present for action by the members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action.

(f) 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. The members of the association shall have the same access to the operating rules of the association as they have to the accounting books and records of the association.

(g) 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 or rules of the association, including any monetary penalty relating to the activities of a guest or invitee of a member, the board of directors shall adopt and distribute to each member, by personal delivery or first-class mail, 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. The board of directors shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members pursuant to this subdivision.

(h) When the board of directors is to meet to consider or impose discipline upon a member, the board shall notify the member in writing, by either personal delivery or first-class mail, at least 10 days prior to the meeting. 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, and a statement that the member has a right to attend and may address the board at the meeting. The board of directors of the association shall meet in executive session if requested by the member being disciplined.

If the board imposes discipline on a member, the board shall provide the member a written notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days following the action. A disciplinary action shall not be effective against a member unless the board fulfills the requirements of this subdivision.

(i) 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 (1) entitled to attend all meetings of the joint association other than executive sessions, (2) given reasonable opportunity for participation in those meetings, and (3) entitled to the same access to the joint association's records as they are to the participating association's records.

(j) Nothing in this section shall be construed to create, expand, or reduce the authority of the board of directors of an association to impose monetary penalties on an association member for a violation of the governing documents or rules of the association.

§1363.001. Board Member Education

To the extent existing funds are available, the Department of Consumer Affairs and the Department of Real Estate shall develop an on-line education course for the board of directors of an association regarding the role, duties, laws, and responsibilities of board members and prospective board members, and the nonjudicial foreclosure process.

FIORE RACOBS & POWERS

§1363.005. *Disclosure Documents Index*

The association shall, at the request of any member, distribute to the member, in the manner described in Section 1350.7, the following Disclosure Documents Index:

<i>Disclosure Documents Index</i>		
<i>Item</i>	<i>Description</i>	<i>Reference Code</i>
<i>1</i>	<i>Assessment and Reserve Funding Disclosure Summary (form)</i>	<i>Civil Code Sec. 1365.2.5</i>
<i>2</i>	<i>Pro Forma Operating Budget or Pro Forma Operating Budget Summary</i>	<i>Civil Code Sec. 1365(a)</i>
<i>3</i>	<i>Assessment Collection Policy</i>	<i>Civil Code Sec. 1365(e) and 1367.1(a)</i>
<i>4</i>	<i>Notice/Assessments and Foreclosure (form)</i>	<i>Civil Code Sec. 1365.1</i>
<i>5</i>	<i>Insurance Coverage Summary</i>	<i>Civil Code Sec. 1365(f)</i>
<i>6</i>	<i>Board Minutes Access</i>	<i>Civil Code Sec. 1363.05(e)</i>
<i>7</i>	<i>Alternative Dispute Resolution (ADR) Rights (summary)</i>	<i>Civil Code Sec. 1369.590</i>
<i>8</i>	<i>Internal Dispute Resolution (IDR) Rights (summary)</i>	<i>Civil Code Sec. 1363.850</i>
<i>9</i>	<i>Architectural Changes Notice</i>	<i>Civil Code Sec. 1378(c)</i>
<i>10</i>	<i>Secondary Address Notification Request</i>	<i>Civil Code Sec. 1367.1(k)</i>
<i>11</i>	<i>Monetary Penalties Schedule</i>	<i>Civil Code Sec. 1363(g)</i>
<i>12</i>	<i>Reserve Funding Plan (summary)</i>	<i>Civil Code Sec. 1365(b)</i>
<i>13</i>	<i>Review of Financial Statement</i>	<i>Civil Code Sec. 1365(c)</i>
<i>14</i>	<i>Annual Update of Reserve Study</i>	<i>Civil Code Sec. 1365(a)</i>

§1363.03. *Election and Voting Procedures*

(a) An association shall adopt rules, in accordance with the procedures prescribed by Article 4 (commencing with Section 1357.100) of Chapter 2, 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 of directors and any other elected position, and procedures for the nomination of candidates, consistent with the

FIORE RACOBS & POWERS

governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member of the association from nominating himself or herself for election to the board of directors.

(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 election 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 law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property pursuant to Section 1363.07 shall be held by secret ballot in accordance with the procedures set forth in this section. A quorum shall be required only if so stated in the governing documents of the association 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. 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.

(c)(1) The association shall select an independent third party or parties as an inspector of election. The number of inspectors of election shall be one or three.

(2) 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, and a responsible independent member of the board of directors or a candidate for the board of directors or related to a member of the board of directors or a candidate for the board of directors. 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 exempt from the rules of the Civil Code Section 1365.90(a) pursuant to paragraph (5) of subdivision (a).

(3) The inspector or inspectors of election shall do all of the following:
 (A) Determine the number of memberships entitled to vote and the voting power of each.
 (B) Determine the authenticity, validity, and effect of proxies, if any.

(4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(5) All polls shall close, consistent with the governing documents.

(6) Determine the tabulated results of the election.
 (7) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section, the Corporations Code, and all applicable rules of the association regarding the election that are not in conflict with this section.

(8) An inspector of election shall perform his or her duties impartially in good faith, to the best of his or her ability, and as expeditiously as is practical. If there are three inspectors of election, 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 election shall be prima facie evidence of the facts stated in the report.

(9) Reserve Funding Plan (summary)

(10) Review of Financial Statement

Item	Description	Reference Code
1	Assessments and Reserve Funding Disbursement Summary (Form)	Civil Code Sec. 1365.25
2	Pro Forma Operating Budget or Pro Forma Operating Budget Summary	Civil Code Sec. 1365(a)
3	Insurance Coverage Summary	Civil Code Sec. 1365(f)
4	Notice Assessments and Foreclosure (Form)	Civil Code Sec. 1365.1
5	Alternative Dispute Resolution (ADR) Rights Summary	Civil Code Sec. 1369.590
6	Internal Dispute Resolution (IDR) Rights Summary	Civil Code Sec. 1363.850
7	Architectural Change Notice	Civil Code Sec. 1378(a)
8	Secondary Address Qualification Request	Civil Code Sec. 1367.1(c)
9	Monetary Penalties Schedule	Civil Code Sec. 1363(e)
10	Reserve Funding Plan (summary)	Civil Code Sec. 1365(b)
11	Review of Financial Statement	Civil Code Sec. 1365(c)

FIORE RACOBS & POWERS

(d) (1) For purposes of this section, the following definitions shall apply:

(A) “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.

(B) “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.

(2) 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 association’s governing documents, but the association shall not be required to prepare or distribute proxies pursuant to this section.

(3) 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.

(e) 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 his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her to vote.

(2) The second envelope is addressed to the inspector or inspectors of election, 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 election. The member may request a receipt for delivery.

(f) All votes shall be counted and tabulated by the inspector or inspectors of election or his or her designee in public at a properly noticed open meeting of the board of directors 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 election, or his or her designee, 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.

(g) The tabulated results of the election shall be promptly reported to the board of directors of the association and shall be recorded in the minutes of the next meeting of the board of directors and shall be available for review by members of the association. Within 15 days of the election, the board shall publicize the tabulated results of the election in a communication directed to all members.

(h) The sealed ballots at all times shall be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 7527 of the Corporations Code 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 election shall, upon written request, make the ballots available for inspection and review by an association member or his or her authorized representative. Any recount shall be conducted in a manner that

preserves the confidentiality of the vote.

(i) After the transfer of the ballots to the association, the ballots shall be stored by the association in a secure place for no less than one year after the date of the election.

(j) 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.

(k) Except for the meeting to count the votes required in subdivision (f), an election may be conducted entirely by mail unless otherwise specified in the governing documents.

(l) The provisions of this section apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

(m) The procedures set forth in this section shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

(n) In the event of a conflict between this section 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 section shall prevail.

(o) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2006.

§1363.04. Use of Funds for Campaign Purposes

(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 and ballot materials, within 30 days of an election. This is not a campaign purpose if the communication is one for which subdivision (a) of Section 1363.03 requires that equal access be provided to another candidate or advocate.

§1363.05. Open Meeting Act

(a) This section shall be known and may be cited as the Common Interest Development Open Meeting Act.

(b) Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to 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 1367 or 1367.1. The board of directors of the association shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.

(c) 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.

(d) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the board of directors of an association, 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 of the association upon request and upon reimbursement of the association’s costs for making that distribution.

FIORE RACOBS & POWERS

(e) Members of the association shall be notified in writing at the time that the pro forma budget required in Section 1365 is distributed, or at the time of any general mailing to the entire membership of the association, of their right to have copies of the minutes of meetings of the board of directors, and how and where those minutes may be obtained.

(f) Unless the time and place of meeting is fixed by the bylaws, or unless the bylaws provide for a longer period of notice, members shall be given notice of the time and place of a meeting as defined in subdivision (j), except for an emergency meeting, at least four days prior to the meeting. Notice shall be given by posting the notice in a prominent place or places within the common area and by mail to any owner who had requested notification of board meetings by mail, at the address requested by the owner. Notice may also be given, by mail or delivery of the notice to each unit in the development or by newsletter or similar means of communication. The notice shall contain the agenda for the meeting.

(g) An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body 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 this section.

(h) The board of directors of the association shall permit any member of the association to speak at any meeting of the association or the board of directors, 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 of directors or before a meeting of the association shall be established by the board of directors.

(i) (1) Except as described in paragraphs (2) to (4), inclusive, the board of directors of the association 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 posted and distributed pursuant to subdivision (f). This subdivision does not prohibit a resident who is not a member of the board from speaking on issues not on the agenda.

(2) Notwithstanding paragraph (1), a member of the board of directors, a managing agent or other agent of the board of directors, or a member of the staff of the board of directors, may do any of the following:

(A) Briefly respond to statements made or questions posed by a person speaking at a meeting as described in subdivision (h).

(B) Ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities, whether in response to questions posed by a member of the association or based upon his or her own initiative.

(3) Notwithstanding paragraph (1), the board of directors or a member of the board of directors, subject to rules or procedures of the board of directors, may do any of the following:

(A) Provide a reference to, or provide other resources for factual information to, its managing agent or other agents or staff.

(B) Request its managing agent or other agents or staff to report back to the board of directors 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.

(C) Direct its managing agent or other agents or staff to perform administrative tasks that are necessary to carry out this subdivision.

(4) (A) Notwithstanding paragraph (1), the board of directors may take action on any item of business not appearing on the agenda posted and distributed pursuant to subdivision (f) under any of the following conditions:

(i) Upon a determination made by a majority of the board of directors 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.

(ii) Upon a determination made by the board by a vote of two-thirds of the members 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 members 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 posted and distributed pursuant to subdivision (f).

(iii) The item appeared on an agenda that was posted and distributed pursuant to subdivision (f) for a prior meeting of the board of directors 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.

(B) Before discussing any item pursuant to this paragraph, the board of directors shall openly identify the item to the members in attendance at the meeting.

(j) As used in this section, “meeting” includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.

§1363.07. Grant of Common Area

(a) After an association acquires fee title to or any easement right over a common area, unless the association’s 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 of directors may grant exclusive use of any portion of that common area to any member, except for any of the following:

(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) Any grant in connection with an expressly zoned industrial or commercial development, or any grant within a subdivision of the type defined in Section 1373.

(b) Any measure placed before the members requesting that the board of directors 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.

§1363.09. Enforcement of Election and 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 an association of which he or she is a member, 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

FIORE RACOBS & POWERS

article, or the adoption of and adherence to rules provided by Article 4 (commencing with Section 1357.100) of Chapter 2, were not followed, a court may void any results of the election.

(b) A member who prevails in a civil action to enforce his or her 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 Section 1363.03 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.

§1363.1. Prospective Managing Agent — Disclosure to Board Before Entering into Management Agreement

(a) A prospective managing agent of a common interest development shall provide a written statement to the board of directors of the association of a common interest development 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:

(1) 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.

(2) 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 paragraph (1). If a license is currently held by any of those persons, the statement shall contain the following information:

- (A) What license is held.
- (B) The dates the license is valid.
- (C) The name of the licensee appearing on that license.

(3) 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 paragraph (1), 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:

- (A) What the certification or designation is and what entity issued it.
- (B) The dates the certification or designation is valid.
- (C) The names in which the certification or designation is held.

(b) As used in this section, a "managing agent" is a person or entity who, for compensation or in expectation of compensation, exercises control over the assets of a common interest development. A "managing agent" does not include either of the following:

- (1) A full time employee of the association.
- (2) Any regulated financial institution operating within the normal course of its regulated business practice.

§1363.2. Requirements for Manager's Handling of Association's Funds; Prohibition Against Commingling Funds

(a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit all such 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 of directors of the association, 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 or entity 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 of directors of the association 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 his or her 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 his or her own money or with the money of others that he or she 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 directors of each association that he or she 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 directors of each association.

(2) The managing agent discloses in the written agreement whether he or she 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 directors 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, a "managing agent" is a person or entity, who for compensation or, in expectation of compensation, exercises control over the assets of the association. However, a "managing agent" does not include a full time employee of the association or a regulated financial institution operating within the normal course of business, or an attorney at law

acting within the scope of his or her license.

(g) As used in this section, “completed payment” means funds received which clearly identify the account to which the funds are to be credited.

§1363.5. Statement Required to be Included in Corporate Filings

(a) The articles of incorporation of a common interest development association filed with the Secretary of State on or after January 1, 1995, 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 nine-digit ZIP Code, 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, as defined in Section 1363.1, if any.

(b) The statement of principal business activity contained in the annual statement filed by an incorporated association with the Secretary of State pursuant to Section 1502 of the Corporations Code shall also contain the statement specified in subdivision (a).

§1363.6. Information by Association to Secretary of State

(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 association’s onsite office, or, if none, of the responsible officer or managing agent of the association.

(4) The name, address and either the daytime telephone number or e-mail address of the president of the association, other than the address, telephone number, or e-mail address of the association’s onsite office or managing agent of the association.

(5) The name, street address, and daytime telephone number of the association’s managing agent, if any.

(6) 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.

(7) If the development is in an unincorporated area, the city closest in proximity to the development.

(8) The nine-digit ZIP Code, front street, and nearest cross street of the physical location of the development.

(9) The type of common interest development, as defined in subdivision (c) of Section 1351, managed by the association.

(10) The number of separate interests, as defined in subdivision (l) of Section 1351, 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 biennial statement of principal business activity with the Secretary of State pursuant to Section 8210 of the Corporations Code.

(2) By unincorporated associations, in July of 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) On and after January 1, 2006, 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 Secretary of State shall make the information submitted pursuant to paragraph (4) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. The information submitted pursuant to this section shall be made available for governmental or public inspection, as the case may be, on or before July 1, 2004, and thereafter.

§1363.810. Internal Dispute Resolution (“IDR”)

(a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this title, 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 2 (commencing with Section 1369.510) of Chapter 7, relating to alternative dispute resolution as a prerequisite to an enforcement action.

§1363.820. Internal Procedure to Resolve Disputes; Local Dispute Resolution Programs

(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 1363.840 applies and satisfies the requirement of subdivision (a).

§1363.830. Requirements of IDR Program

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.

FIORE RACOBS & POWERS

(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 association's board of directors.

(e) A resolution 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. An agreement 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.

(g) A member of the association shall not be charged a fee to participate in the process.

§1363.840. "Default" IDR Procedure; Use of Procedures; Dispute Resolution Agreements; Conditions; Fees

(a) This section applies in an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.

(3) The association's board of directors shall designate a member of the board to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board of directors to its designee or the agreement is ratified by the board of directors.

(d) A member of the association may not be charged a fee to participate in the process.

§1363.850. Notice of IDR Process

The notice provided pursuant to Section 1369.590 shall include a description of the internal dispute resolution process provided pursuant to this article.

§1364. Maintenance and Repair Duties of Association and Owners; Duty to Repair re: Wood-Destroying Organisms; Right and Procedure to Remove Occupants; Right to Access Telephone Wires

(a) Unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, or maintaining the common areas, other than exclusive use common areas, 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) (1) In a community apartment project, condominium project, or stock cooperative, as defined in Section 1351, 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.

(2) In a planned development as defined in Section 1351, 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, the responsibility for such repair and maintenance may be delegated to the association, which shall be entitled to recover the cost thereof as a special assessment.

(c) 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.

(d) (1) 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.

(2) 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.

(3) Notice by the association shall be deemed complete upon either:

(A) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the owners, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the association.

(B) By sending a copy of the notice to the occupants at the separate interest address and a copy of the notice to the owners, if different than the occupants, by first-class mail, postage prepaid, at the most current address shown on the books of the association.

(e) For purposes of this section, “occupant” means an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession on the separate interest.

(f) Notwithstanding the provisions of the declaration, the owner of a separate interest is entitled to reasonable access to the common areas for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common areas of a separate interest pursuant to paragraph (2) of subdivision (i) of Section 1351. 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 areas, and other conditions as the association determines reasonable.

§1365. Budgets, Reserves and Assessment Documents

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

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association’s reserves based upon the most recent review or study conducted pursuant to Section 1365.5, based only on assets held in cash or cash equivalents, which shall be printed in boldface type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

FIORE RACOBS & POWERS

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). Instead of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.

(C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).

(D) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of clause (ii) of subparagraph (B) from the amount determined for purposes of clause (i) of subparagraph (B) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.

(3) A statement as to all of the following:

(A) Whether the board of directors of the association has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.

(B) Whether the board of directors of the association, consistent with the reserve funding plan adopted pursuant to subdivision (e) of Section 1365.5, has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor. If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment.

(C) The mechanism or mechanisms by which the board of directors will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms.

(D) Whether the association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain. The report shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (b) of Section 1365.2.5, and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

Notwithstanding a contrary provision in the governing documents, a copy of the operating budget shall be annually distributed not less than 30 days nor more than 90 days prior to the beginning of the association's fiscal year.

(b) Commencing January 1, 2009, a summary of the reserve funding plan adopted by the board of directors of the association, as specified in paragraph (4) of subdivision (e) of Section 1365.5. The summary shall include notice to members that the full reserve study plan is available upon request, and the association shall provide the full reserve plan to any member upon request.

(c) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(d) Instead of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(e) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members not less than 30 days nor more than 90 days immediately preceding the beginning of the association's fiscal year.

(f) (1) A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies, which shall be distributed not less than 30 days nor more than 90 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

- (A) The name of the insurer.
- (B) The type of insurance.
- (C) The policy limits of the insurance.
- (D) The amount of deductibles, if any.

(2) The association shall, as soon as reasonably practicable, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: "This summary of the association's policies of insurance provides only certain information, as required by subdivision (f) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

§1365.1. Written Notice by Association re: Assessments

(a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7 may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

"NOTICE ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Section 1367.4 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 1366, 1367.1, and 1367.4 of the Civil Code)

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 areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 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 1367.1 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 1367.1 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 1367.1 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, he or she 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 1367.1 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 5 (commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 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 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 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 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a timeshare 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 exist. (Section 1367.1 of the Civil Code)

The board of directors 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 1367.1 of the Civil Code)”

(c) A member of an association may provide written notice by facsimile transmission or United States mail to the association of a secondary address. If a secondary address is provided, the association shall send any and all correspondence and legal notices required pursuant to this article to both the primary and the secondary address.

1365.2. Inspection of Accounting Books and Records, Minutes of Proceedings

- (a) For the purposes of this section, the following definitions shall apply:
 - (1) “Association records” means all of the following:
 - (A) Any financial document required to be provided to a member in Section 1365.
 - (B) Any financial document or statement required to be provided in Section 1368.
 - (C) Interim financial statements, periodic or as compiled, containing any of the following:
 - (i) Balance sheet.
 - (ii) Income and expense statement.
 - (iii) Budget comparison.
 - (iv) 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 subparagraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

- (D) Executed contracts not otherwise privileged under law.
- (E) Written board approval of vendor or contractor proposals or invoices.

FIORE RACOBS & POWERS

(F) State and federal tax returns.
(G) Reserve account balances and records of payments made from reserve accounts.
(H) Agendas and minutes of meetings of the members, the board of directors and any committees appointed by the board of directors pursuant to Section 7212 of the Corporations Code; excluding, however, agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05.

(I) (i) Membership lists, including name, property address, and mailing address, if the conditions set forth in clause (ii) are met and except as otherwise provided in clause (iii).

(ii) The member requesting the 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 subdivision (f), the association shall have the burden to prove that the member would have allowed use of the information for purposes unrelated to his or her interest as a member.

(iii) A member of the association may opt out of the sharing of his or her name, property address, and mailing address by notifying the association in writing that he or she 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.

(J) Check registers.

(2) "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, provided that the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request.

(b) (1) The association shall make available association records and enhanced association records for the time periods and within the timeframes provided in subdivisions (i) and (j) for inspection and copying by a member of the association, or the member's designated representative. The association may bill the requesting member for the direct and actual cost of copying requested documents. The association shall inform the member of the amount of the copying costs before copying the requested documents.

(2) 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) (1) The association shall make the specified association records available for inspection and copying in the association's business office within the common interest development.

(2) 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 that the requesting member and the association agree upon.

(3) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph (2), 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 mailing copies of the specifically identified records to the member by first-class mail within the timeframes set forth in subdivision (j).

(4) 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.

(5) 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 the enhanced association records as provided in paragraph (2) of subdivision (a). The association shall inform the member of the estimated costs, and the member shall agree to pay those costs, before retrieving the requested documents.

(d) (1) Except as provided in paragraph (2), the association may withhold or redact information from the association records for any of the following reasons:

(A) 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.

(B) The release of the information is reasonably likely to lead to fraud in connection with the association.

(C) 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.

(D) The release of the information is reasonably likely to compromise the privacy of an individual member of the association.

(E) The information contains any of the following:

(i) Records of a-la-carte goods or services provided to individual members of the association for which the association received monetary consideration other than assessments.

(ii) Records of disciplinary actions, collection activities, or payment plans of members other than the member requesting the records.

(iii) 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.

(iv) Agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05, except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services.

(v) Personnel records other than the payroll records required to be provided under paragraph (2).

(vi) Interior architectural plans, including security features, for individual homes.

(2) 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.

(3) 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 subdivision unless the failure to withhold or redact the information was intentional, willful, or negligent.

(4) 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.

(e) (1) 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 section for injunctive relief and for actual damages to the association caused by the violation.

(2) This section 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 section or to limit the right of an association to injunctive relief to stop the misuse of this information.

FIORE RACOBS & POWERS

(3) 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 section.

(f) A member of an association may bring an action to enforce the 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. 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. A prevailing association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.

(g) The provisions of this section apply to any community service organization or similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368, that is related to the association, and this section shall operate to give a member of the community service organization or similar entity a right to inspect and copy the records of that organization or entity equivalent to that granted to association members by this section.

(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.

(i) The time periods for which specified records shall be provided is as follows:

(1) Association records shall be made available for the current fiscal year and for each of the previous two fiscal years.

(2) Minutes of member and board meetings shall be permanently made available. 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 made available.

(j) The timeframes in which access to specified records shall be provided to a requesting member are as follows:

(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 Section 1365 or 1368, within the timeframe specified therein.

(4) Minutes of member and board meetings, within the timeframe specified in subdivision (d) of Section 1363.05.

(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.

(k) There shall be no liability pursuant to this section for an association that fails to retain records for the periods specified in subdivision (i) that were created prior to January 1, 2006.

(l) As applied to an association and its members, the provisions of this section are intended to supersede the provisions of Sections 8330 and 8333 of the Corporations Code to the extent those sections are inconsistent.

(m) The provisions of this section shall not apply to any common interest development in which separate interests are being offered for sale by a subdivider under the authority of a public report issued by the Department of Real Estate so long as the subdivider or all subdividers offering those separate interests for sale, or any employees of those subdividers or any other person who receives direct or indirect compensation from any of those subdividers,

comprise a majority of the members of the board of directors of the association. Notwithstanding the foregoing, this section 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.

(n) This section shall become operative on July 1, 2006.

§1365.2.5. Reserve Disclosures; Calculating Amount of Reserves

(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.

FIORE RACOBS & POWERS

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5, 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 1365.2.5 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next five budget years is \$____, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is \$____, leaving the reserve at ____ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be \$____, leaving the reserve at ____ percent funding.

Note: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change. *At the time this summary was prepared, the assumed long-term before-tax interest rate earned on reserve funds was ____ percent per year, and the assumed long-term inflation rate to be applied to major component repair and replacement costs was ____ percent per year.*

(b) For the purposes of preparing a summary pursuant to this section:

(1) "Estimated remaining useful life" means the time reasonably calculated to remain before a major component will require replacement.

(2) "Major component" has the meaning used in Section 1365.5. 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 pro forma operating budget or summary thereof that is delivered pursuant to this article. 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.

§1365.3. Community Service Organization Reports; Information on Components to Complete Disclosures or Reserve Reports

Unless the governing documents impose more stringent standards, any community service organization as defined in paragraph (3) of subdivision (c) of Section 1368 whose funding from the association or its members exceeds 10 percent of the organization's annual budget shall prepare and distribute to the association a report that meets the requirements of Section 5012 of the Corporations Code, and that describes in detail administrative costs and identifies the payees of those costs in a manner consistent with the provisions of Section 1365.2. 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

organization, and shall provide access to the information pursuant to the provisions of Section 1365.2.

§1365.5. Board’s Duties re: Accounts, Reserves and Expenses

(a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

(1) Review a current reconciliation of the association’s operating accounts on at least a quarterly basis.

(2) Review a current reconciliation of the association’s reserve accounts on at least a quarterly basis.

(3) Review, on at least a quarterly basis, the current year’s actual reserve revenues and expenses compared to the current year’s budget.

(4) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(5) Review an income and expense statement for the association’s operating and reserve accounts on at least a quarterly basis.

(b) The signatures of at least two persons, who shall be members of the association’s board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of moneys from the association’s reserve accounts.

(c) (1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components that the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(2) However, the board may authorize the temporary transfer of moneys from a reserve fund to the association’s general operating fund to meet short-term cashflow requirements or other expenses, if the board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Section 1363.05. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the board authorizes the transfer, the board shall issue a written finding, recorded in the board’s minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(d) When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association’s office.

(e) At least once every three years, the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as

FIORE RACOBS & POWERS

part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association, excluding the association's reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

The study required by this subdivision shall at a minimum include:

(1) Identification of the major components that the association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(5) A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plan shall be adopted by the board of directors at an open meeting before the membership of the association as described in Section 1363.05. If the board of directors determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in Section 1366.

(f) As used in this section, "reserve accounts" means both of the following:

(1) Moneys that the association's board of directors has identified for use to defray the future repair or replacement of, or additions to, those major components that the association is obligated to maintain.

(2) The funds received, and not yet expended or disposed of, from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from funds described in paragraph (1).

(g) As used in this section, "reserve account requirements" means the estimated funds that the association's board of directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components that the association is obligated to maintain.

(h) This section does not apply to an association that does not have a "common area" as defined in Section 1351.

§1365.6. Contracts & Transactions

Notwithstanding any other law, and regardless of whether an association is a corporation, as defined in Section 162 of the Corporations Code, the provisions of Section 310 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.

§1365.7. Limitations on Liability of Association's Officers and Directors

(a) A volunteer officer or volunteer director of an association, as defined in subdivision (a) of Section 1351, which 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 which 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 amount:

(A) At least five hundred thousand dollars (\$500,000) if the common interest development consists of 100 or fewer separate interests.

(B) At least one million dollars (\$1,000,000) if the common interest development consists of more than 100 separate interests.

(b) The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director's or officer's status as a volunteer within the meaning of this section.

(c) An officer or director who at the time of the act or omission was a declarant, as defined in subdivision (g) of Section 1351, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest, as defined in subdivision (l) of Section 1351, 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.

§1365.9. Actions Against Owner of Separate Interest; Insurance Requirements

(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 areas 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

FIORE RACOBS & POWERS

owners of the separate interests, as defined in subdivision (l) of Section 1351, 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 which 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.

§1366. Association's Duty to Assess; Limitations on Increasing Assessment Amounts; Emergency Increases; Notice of Increases

(a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners of an association.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors 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 owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than 50 percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) 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.
- (3) 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 pro forma operating budget under Section 1365. 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.

(c) Regular assessments imposed or collected to perform the obligations of an association under the governing documents or 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 an 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.

(d) The association shall provide notice by first class mail to the owners of the separate interests 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.

(e) 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.

(f) Associations are hereby exempted from interest rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

§1366.1. Prohibition Against Excessive Assessments

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.

§1366.2. Optional Recordation of Statement of Relevant Information for Association

(a) In order to facilitate the collection of regular assessments, special assessments, transfer fees, and similar charges, the board of directors of any association 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:

(1) The name of the association as shown in the conditions, covenants, and restrictions or the current name of the association, if different.

(2) 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.

(3) A daytime telephone number of the authorized party identified in paragraph (2) if a telephone number is available.

(4) 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.

(5) The recording information identifying the declaration or declarations of covenants, conditions, and restrictions governing the association.

(6) If an amended statement is being recorded, the recording information identifying the prior statement or statements which the amendment is superseding.

(b) The county recorder is authorized to charge a fee for recording the document described in subdivision (a), which fee shall be based upon the number of pages in the document and the recorder's per-page recording fee.

1366.4. Levy of Assessments Based on Taxable Value Prohibited

(a) Except as provided in subdivision (b), notwithstanding any provision of this title 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.

§1367. Lien for Delinquent Assessments

(a) A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. Before an association may place a lien upon the separate interest of an owner to collect a debt which is past due under this subdivision, the association shall notify the owner in writing by certified mail of the fee and penalty procedures of the association, provide an itemized statement of the charges owed by the owner, including items on the statement which indicate the assessments owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the association, including the right of the association to the reasonable costs of collection. In addition, any payments toward that debt shall first be applied to the assessments owed, and only after the principal owed is paid in full shall the payments be applied to interest or collection expenses.

(b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's 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 Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (e) the name and address of the trustee authorized by the association to enforce the lien by sale. 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, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Upon payment of the sums specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. A monetary penalty imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible 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.

(c) Except as indicated in subdivision (b), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(d) A lien created pursuant to subdivision (b) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(e) After the expiration of 30 days following the recording of a lien created pursuant to subdivision (b), 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. Any sale by the trustee shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts.

(f) Nothing in this section 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 this section or prohibits an association from taking a deed in lieu of foreclosure.

(g) This section only applies to liens recorded on or after January 1, 1986 and prior to January 1, 2003.

§1367.1. Assessment; Lien Rights of Association

(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 Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. 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 this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) 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 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.”

(2) 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.

(3) 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.

(4) The right to request a meeting with the board as provided by paragraph (3) of subdivision (c).

(5) 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 5 (commencing with Section 1363.810) of Chapter 4.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 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.

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), 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. 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. The association shall provide a mailing address for overnight payment of assessments.

FIORE RACOBS & POWERS

(c) (1) (A) 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 5 (commencing with Section 1363.810) of Chapter 4.

(B) Prior to initiating a foreclosure for delinquent assessments, an association shall offer the owner and, if so requested by the owner, shall participate in dispute resolution pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7. 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.

(2) 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 of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting.

(3) An owner, other than an owner of any interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. 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 members to meet with the owner. Payment plans may incorporate any assessments that accrue during the payment plan period. 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. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. 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.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, 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 Section 1366, 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. The itemized statement of the charges owed by the owner described in paragraph (2) of subdivision (a) shall be recorded together with the notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. 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. 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. 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. 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 areas and facilities for which the member or the member's guests or tenants were responsible 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.

(e) Except as indicated in subdivision (d), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(f) A lien created pursuant to subdivision (d) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(g) 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; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), 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. 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. 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 (j) of Section 1367.1.

(2) The decision of the board to foreclose upon the separate interest of an owner as described in paragraph (3) of subdivision (c) of Section 1367.4.

(h) Nothing in this section 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 this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) 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.

(j) In addition to the requirements of Section 2924, a notice of default shall be served by the association on the owner's legal representative 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. The owner's legal representative shall be the person whose name is shown as the owner of a separate interest in the association's records, unless

another person has been previously designated by the owner as his or her legal representative in writing and mailed to the association in a manner that indicates that the association has received it.

(k) Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by this section to the secondary address provided. The association shall notify owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to Section 1365. The owner's request shall be in writing and shall be mailed to the association in a manner that shall indicate the association has received it. The owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the association shall only be required to send notices to the indicated secondary address from the point the association receives the request.

(l) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(m) This section only applies to liens recorded on or after January 1, 2003.

(n) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

1367.4. Limitations on Nonjudicial Foreclosure

(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 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 Title 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 5 (commencing with Section 1363.810) of Chapter 4.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) An association that seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any assessments secured by the lien that are more than 12 months delinquent, may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) 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 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7. 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.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members 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.

(3) The board shall provide notice by personal service in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a separate interest who occupies the separate interest or to the owner's legal representative, if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address.

(4) 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 paragraph.

(d) The limitation on foreclosure of assessment liens for amounts under the stated minimum in this section does not apply to assessments owed by owners of separate interests in timeshare estates, as defined in subdivision (x) of Section 11112 of the Business and Professions Code, or to assessments owed by developers.

§1367.5. Lien Recorded in Error

If it is determined through dispute resolution pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 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 subdivision (a) of Section 1367.1, and costs of recordation and release of the lien authorized under subdivision (b) of Section 1367.4, and pay all costs related to the dispute resolution or alternative dispute resolution.

1367.6. Disputed Charges

(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 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 5 (commencing with Section 1363.810) of Chapter 4, 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 (e) of Section 1366, 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 Sections 1367.1 and 1367.4.

§1368. Disclosure Duties to Purchaser; Penalties

(a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, including any operating rules, and including a copy of the association's articles of incorporation, or, if not incorporated, 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 Section 1365.

(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 Section 1367 or 1367.1.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 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 preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph does not waive any privilege attached to the document. The preliminary 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 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The items required to be made available pursuant to this section may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the association maintains these items in electronic form. The association may charge a reasonable fee for this service based upon the association's actual cost to procure, prepare, and reproduce the requested items.

(c) (1) Subject to the provisions of paragraph (2), 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 subdivision (b).

(2) The amendments made to this subdivision by the act adding this paragraph do not apply to a community service organization or similar entity that is described in subparagraph (A) or (B):

(A) The community service organization or similar entity satisfies both of the following requirements:

(i) The community service organization or similar entity was established prior to February 20, 2003.

(ii) The community service organization or similar entity 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) The community service organization or similar entity satisfies all of the following requirements:

(i) The community service organization or similar entity is not an organization or entity described in subparagraph (A).

(ii) The community service organization or similar entity was established and received a transfer fee prior to January 1, 2004.

(iii) On and after January 1, 2006, the community service organization or similar entity offers a purchaser the following payment options for the fee or charge it collects at time of transfer:

(I) Paying the fee or charge at the time of transfer.

(II) 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 community service organization or similar 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, he or she shall pay the remaining balance prior to transfer.

(3) For the purposes of this subdivision, 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 areas or facilities are available to the public. A "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.

FIORE RACOBS & POWERS

(d) Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

§1368.1. Restrictions on Marketability of Property

(a) Any rule or regulation of an association that arbitrarily or unreasonably restricts an owner's ability to market his or her interest in a common interest development is void.

(b) No association may adopt, enforce, or otherwise impose any rule or regulation 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 Section 1366.1.

(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 areas 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.

§1368.3. Association Standing

An association established to manage a common interest development 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 individual owners of the common interest development, 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.

§1368.4. Comparative Fault; Cross Complaints

(a) In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 1368.3, 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

1368.3, 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 which causes damages to another.

§1368.5. Written Notice to Members Prior to Filing Defect Lawsuit

(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 of directors of the association shall provide 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.

§1369. Mechanic's Lien Rights

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 his or her agent or his or her 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. Labor performed or services or materials furnished for the common areas, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each condominium owner. The owner of any condominium may remove his or her 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 which is attributable to his or her condominium.

§1369.510. Alternative Dispute Resolution ("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 decision making 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 title.

(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 of a common interest development.

§1369.520. ADR

(a) An association or an owner or a member of a common interest development 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.

§1369.530. Service of Request for Resolution; Contents of Request

(a) Any party to a dispute may initiate the process required by Section 1369.520 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 owner of a separate interest, 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.

§1369.540. Time Limit for Completion of Resolution; Evidence Code; Costs

(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.

§1369.550. Tolling Statute of Limitations

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 1369.530 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 1369.540 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 1369.540.

§1369.560. Filing of Certificate for Enforcement 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 is 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.

§1369.570. Referral to ADR after Commencement of Enforcement Action; Attorneys Fees; Costs

- (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.

§1369.580. Attorneys Fees and Costs

In an enforcement action in which fees and costs may be awarded pursuant to subdivision (c) of Section 1354, 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.

§1369.590. Annual Summary 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 1369.520 of the Civil Code may result in the loss of your 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 provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner prescribed in Section 5016 of the Corporations Code. The summary shall include a description of the association's internal dispute resolution process, as required by Section 1363.850.

§1370. Liberal Construction of Recorded Documents for Development's Operation

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 this division shall operate to invalidate any provisions of the governing documents of a common interest development.

§1371. Conclusive Presumption of Condominium's Physical 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.

§1372. Uniform Application of Zoning Ordinances to all Developments

Unless a contrary intent is clearly expressed, local zoning ordinances shall be construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless of whether the common interest development is a community apartment project, condominium project, planned development, or stock cooperative.

§1373. Exemptions for Industrial and Commercial Developments

(a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:

(1) Section 1356.
(2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part 4 of Division 2.

- (3) Subdivision (b) of Section 1363.
(4) Section 1365.
(5) Section 1365.5.
(6) Subdivision (b) of Section 1366.
(7) Section 1366.1.
(8) Section 1368.
(9) Section 1378.

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common interest developments, however, the provisions may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions could result in unnecessary burdens and costs for these types of developments.

§1374. Inapplicability to Developments Without Common Areas

Nothing in this title may be construed to apply to a development wherein there does not exist a common area as defined in subdivision (b) of Section 1351.

This section is declaratory of existing law.

§1375. Defect Litigation Procedures [Inoperative 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 of directors of the association. 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 (b) of Section 1363.05. 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, 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, 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 *identity is* 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 be bound by any settlement reached pursuant to subdivision (d) of Section 1375.05, advise the recipient that it may be deemed to have waived rights to conduct inspection and testing pursuant to subdivision (c) of Section 1375.05, 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

FIORE RACOBS & POWERS

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 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 paragraph 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 paragraph, 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

FIORE RACOBS & POWERS

shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive, except that the parties may dispense with one or more of these elements if they agree that it is appropriate to do so. The case management statement shall provide that the following elements shall take place in the following order:

(1) Establishment of a document depository, located in the county where the project is located, for deposit of documents, defect lists, demands, and other information provided for under this section. All documents exchanged by the parties and all documents created pursuant to this subdivision shall be deposited in the document depository, which shall be available to all parties throughout the prefiling dispute resolution process and in any subsequent litigation. When any document is deposited in the document depository, the party depositing the document shall provide written notice identifying the document to all other parties. The costs of maintaining the document depository shall be apportioned among the parties in the same manner as the costs of the dispute resolution facilitator.

(2) Provision of a more detailed list of defects by the association to the respondent after the association completes a visual inspection of the project. This list of defects shall provide sufficient detail for the respondent to ensure that all potentially responsible subcontractors and design professionals are provided with notice of the dispute resolution process. If not already completed prior to the case management meeting, the Notice of Commencement of Legal Proceedings shall be served by the respondent on all additional subcontractors and design professionals whose potential responsibility appears on the face of the more detailed list of defects within seven days of receipt of the more detailed list. The respondent shall serve a copy of the case management statement, including the name, address, and telephone number of the dispute resolution facilitator, to all the potentially responsible subcontractors and design professionals at the same time.

(3) Nonintrusive visual inspection of the project by the respondent, subcontractors, and design professionals.

(4) Invasive testing conducted by the association, *as* 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 *that* 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, *as* 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

(k) (1) (A) At a time to be determined by the dispute resolution facilitator, the respondent may submit to the association all of the following:

- (i) A request to meet with the board to discuss a written settlement offer.
- (ii) A written settlement offer, and a concise explanation of the reasons for the terms of the offer.
- (iii) A statement that the respondent has access to sufficient funds to satisfy the conditions of the settlement offer.
- (iv) A summary of the results of testing conducted for the purposes of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the respondent with actual test results.

(B) If the respondent does not timely submit the items required by this subdivision, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision only.

(C) No less than 10 days after the respondent submits the items required by this paragraph, the respondent and the board of directors of the association shall meet and confer about the respondent's settlement offer.

(D) If the association's board of directors 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 paragraph (E) are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(H) No more than one request to meet and discuss a written settlement offer may be made by the respondent pursuant to this subdivision.

(I) Except for the purpose of in camera review as provided in subdivision (c) of Section 1375.05, 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

FIORE RACOBS & POWERS

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, *that* 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 time frames 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 the 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 subdivision (a) of Section 1351.

(2) "Builder" means the declarant, as defined in subdivision (g) of Section 1351.

(3) "Common interest development" shall have the same meaning as in subdivision (c) of Section 1351, 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

64 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.

§1375.05. Court Procedures for Defect Matters [Inoperative July 1, 2010]

(a) Upon the completion of the mandatory prefiling dispute resolution process described in Section 1375, if the parties have not settled the matter, the association or its assignee may file a complaint in the superior court in the county in which the project is located. Those matters shall be given trial priority.

(b) In assigning trial priority, the court shall assign the earliest possible trial date, taking into consideration the pretrial preparation completed pursuant to Section 1375, and shall deem the complaint to have been filed on the date of service of the Notice of Commencement of Legal Proceedings described under Section 1375.

(c) Any respondent, subcontractor, or design professional who received timely prior notice of the inspections and testing conducted under Section 1375 shall be prohibited from engaging in additional inspection or testing, except if all of the following specific conditions are met, upon motion to the court:

(1) There is an insurer for a subcontractor or design professional, that did not have timely notice that legal proceedings were commenced under Section 1375 at least 30 days prior to the commencement of inspections or testing pursuant to paragraph (6) of subdivision (h) of Section 1375.

(2) The insurer's insured did not participate in any inspections or testing conducted under the provisions of paragraph (6) of subdivision (h) of Section 1375.

(3) The insurer has, after receiving notice of a complaint filed in superior court under subdivision (a), retained separate counsel, who did not participate in the Section 1375 dispute resolution process, to defend its insured as to the allegations in the complaint.

(4) It is reasonably likely that the insured would suffer prejudice if additional inspections or testing are not permitted.

(5) The information obtainable through the proposed additional inspections or testing is not available through any reasonable alternative sources.

If the court permits additional inspections or testing upon finding that these requirements are met, any additional inspections or testing shall be limited to the extent reasonably necessary to avoid the likelihood of prejudice and shall be coordinated among all similarly situated parties to ensure that they occur without unnecessary duplication. For purposes of providing notice to an insurer prior to inspections or testing under paragraph (6) of subdivision (h) of Section 1375, if notice of the proceedings was not provided by the insurer's insured, notice may be made via certified mail either by the subcontractor, design professional, association, or respondent to the address specified in the Statement of Insurance provided under paragraph (2) of subdivision (e) of Section 1375. Nothing herein shall affect the rights of an intervenor who files a complaint in intervention. If the association alleges defects that were not specified in the prefiling dispute resolution process under Section 1375, the respondent, subcontractor, and design professionals shall be permitted to engage in testing or inspection necessary to respond to the additional claims. A party who seeks additional inspections or testing based upon the amendment of claims shall apply to the court for leave to conduct those inspections or that testing.

If the court determines that it must review the defect claims alleged by the association in the prefiling dispute resolution process in order to determine whether the association alleges new or additional defects, this review shall be conducted in camera. Upon objection of any party, the court shall refer the matter to a judge other than the assigned trial judge to determine if the claim has been amended in a way that requires additional testing or inspection.

(d) Any subcontractor or design professional who had notice of the facilitated dispute resolution conducted under Section 1375 but failed to attend, or attended without settlement authority, shall be bound by the amount of any settlement reached in the facilitated dispute resolution in any subsequent trial, although the affected party may introduce evidence as to the allocation of the settlement. Any party who failed to participate in the facilitated dispute resolution because the party did not receive timely notice of the mediation shall be relieved of any obligation to participate in the settlement. Notwithstanding any privilege

applicable to the pre-filing dispute resolution process provided by Section 1375, evidence may be introduced by any party to show whether a subcontractor or design professional failed to attend or attended without settlement authority. The binding effect of this subdivision shall in no way diminish or reduce a nonsettling subcontractor or design professional's right to defend itself or assert all available defenses relevant to its liability in any subsequent trial. For purposes of this subdivision, a subcontractor or design professional shall not be deemed to have attended without settlement authority because it asserted defenses to its potential liability.

(e) Notice of the facilitated dispute resolution conducted under Section 1375 must be mailed by the respondent no later than 20 days prior to the date of the first facilitated dispute resolution session to all parties. Notice shall also be mailed to each of these parties' known insurance carriers. Mailing of this notice shall be by certified mail. Any subsequent facilitated dispute resolution notices shall be served by any means reasonably calculated to provide those parties actual notice.

(f) As to the complaint, the order of discovery shall, at the request of any defendant, except upon a showing of good cause, permit the association's expert witnesses to be deposed prior to any percipient party depositions. The depositions shall, at the request of the association, be followed immediately by the defendant's experts and then by the subcontractors' and design professionals' experts, except on a showing of good cause. For purposes of this section, in determining what constitutes "good cause," the court shall consider, among other things, the goal of early disclosure of defects and whether the expert is prepared to render a final opinion, except that the court may modify the scope of any expert's deposition to address those concerns.

(g) (1) The only method of seeking judicial relief for the failure of the association or the respondent to complete the dispute resolution process under Section 1375 shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the respondent after that action has been filed. A verified application asserting a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the respondent alleging substantial noncompliance with Section 1375, the court shall schedule a hearing within 21 days of the application to determine whether the association or respondent has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association or the respondent did not substantially comply with this paragraph, the court shall stay the action for up to 90 days to allow the noncomplying party to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance. At any time, the court may, for good cause shown, extend the period of the stay upon application of the noncomplying party.

(B) If, within the time set by the court pursuant to this paragraph, the association or the respondent has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the respondent has complied with this section.

(h) This section is operative on July 1, 2002, but does not apply to any action or proceeding pending on that date.

(i) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

1375.1. Builder Settlement Disclosure by Association to Members

(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.

§1376. Restrictions on Video or Television Antennas

(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 the owner of a separate interest, as defined in Section 1351, 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.

§1378. Architectural Review Procedures

(a) This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner'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 of directors.

(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 of directors.

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors of the association that made the decision, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors or a body that has the same membership as the board of directors, at a meeting that satisfies the requirements of Section 1363.05. Reconsideration by the board does not constitute dispute resolution within the meaning of Section 1363.820.

(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.

- END -

COMMUNITY ASSOCIATION MINI-LEGAL DICTIONARY©

“1542 Waiver” - *this term constitutes a waiver of a settling party’s rights under California Civil Code Section 1542. The effect is to release not only all claims known at the time of execution of the release, but also all unknown claims which existed at the time of the signing of the release.*

“998 Offer” - *an offer of settlement pursuant to California Code of Civil Procedure Section 998. If the other party does not recover relief greater than that offered in settlement, the party making this offer has the right to recover the costs of expert witnesses.*

“Adjourn” - *to postpone or put-off a meeting for another future date (e.g. adjourn a meeting).*

“ADR” - *any form of alternative dispute resolution other than court process, includes mediation, arbitration, mini-trial, etc.*

“Affidavit”/“Declaration” - *a written statement signed under the penalty of perjury or in the presence of a notary attesting to the existence of the fact(s) set forth.*

“Affirmative Defense” - *part of the answer that sets forth basis of the defendant’s or cross-defendant’s contention why they are not liable.*

“Agenda” - *A list of items to be discussed at a Board or Member Meeting. Per Civil Code Section 1363.05 the agenda items must be shown and posted in order to be discussed at a Board Meeting.*

“Annexation” - *the process by which additional properties made subject to a Declaration of Restrictions that extends to the common plan of a development and brings the additional property under the control of the existing owners association. Annexation is frequently used in common interest developments so that the developer does not have to originally commit to develop more separate interests and can reasonably be sold in a short period of time. Each new area to be annexed (i.e., a phase) must be the subject of a separate public report.*

“Answer” - *the defendant(s)’ or cross-defendant(s)’ formal response to the complaint or cross-complaint, which denies or affirms complaint or cross-complaint in whole or in part.*

“Arbitration” - *an informal trial proceeding per court order or agreement; decision of the arbitrator may be “binding” or “non-binding.” “Binding” - arbitrator’s decision is final absent fraud. “Non-Binding” - either party may ignore the arbitrator’s decision.*

“Arbitrator’s Decision/Award” - *the decision of the arbitrator after a hearing on the dispute, similar to a judgment after a trial.*

“Articles of Incorporation” - *the Articles of Incorporation are basically the corporate charter of an association which is incorporated. This corporate charter is filed with the Secretary of State’s office in Sacramento.*

“Attorney-Client Privilege” - *a rule of evidence providing that neither an attorney nor the attorney’s client may be compelled to disclose confidential information.*

FIORE RACOBS & POWERS

“Attorneys’ Fees” - *attorneys’ fees, usually charged at hourly rates, include charges incurred for services provided by attorneys and communications between the client and his/her attorney. (Costs may not include attorneys’ fees).*

“Attorney Work Product Privilege” - *a rule of evidence providing that an attorney’s “work product” such as written or recorded materials containing the attorney’s mental impressions, conclusions, opinions or legal theories prepared in anticipation of litigation is not subject to disclosure.*

“Audit” - *the highest level of review of a corporation’s books and records by a certified public accountant, in accordance with the guidelines of the American Institute of Certified Public Accountants. It generally involves a complete reconciliation of all vouchers, charges, and expenditures, including an authentication of accounts. A complete audit of an association’s books and records is not required by the association’s governing documents, by the provisions of the Davis-Stirling Act or the California Corporations Code.*

“Ballot” / “Secret Ballot” - *a piece of paper by which an association member expresses his/her choice on certain matters to be voted upon by the association’s membership at a meeting or by mail under Civil Code Section 1363.03. This term should not be confused with “written ballot” under Corporations Code Section 7513.*

“Bond” - *see “Undertaking”.*

“Brown Act” - *Government Code Section 54950, et seq.) This Act provides that all meetings of a legislative body of a local agency are to be opened to the public. As such, the Act is directed toward conduct of public officials, and is not applicable to boards of directors of community associations.*

“Burden of Proof” - *the plaintiff/cross-complainant has the initial burden to prove the allegations in the complaint/cross-complaint are true.*

“Business Judgment Rule” - *this standard of care is generally applicable to officers and directors of a community association under Corporations Code Section 7231(a). This section provides that a director/officer must perform his or her duties, including the director’s duties as the member of any committee of the board, in good faith, and in a manner in which the director believes to be in the best interest of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.*

“Bylaws” - *the document which sets forward the requirements for a corporation to follow in conducting its business, including the information regarding quorum, the number and terms of directors, the time frameworks for noticing meetings. The Bylaws are not recorded or filed.*

“Cause of Action” - *the individual claims and theories of liability (e.g., contract, tort, injunction) for which some type of relief/remedy is sought in the complaint or cross-complaint.*

“CC&Rs” - *a Declaration of Covenants, Conditions and Restrictions - also known as the “Declaration.” This is a set of documents which is recorded in the County Recorder’s Office for the County in which the real property is located. The CC&Rs run with the land, meaning they bind each owner of land within the project covered by the CC&Rs to the conditions set forward therein. CC&Rs are also enforceable as equitable servitudes, under Civil Code Section*

“Certificate of Good Standing” - a certificate issued by the California Secretary of State indicating that an Association is in current compliance with all of its requirements for non-profit mutual benefit corporations.

“Certificate of Occupancy” - a certificate provided by the local governmental agency allowing for the occupancy of a residence or other building.

“Code” / “Statute” - various adopted and published laws at both Federal and State levels.

“Commingle” - to mix or combine funds (e.g., to commingle reserves and operating accounts).

“Common Area” - as defined by California Civil Code Section 1351, this term generally denotes the entire common interest development except the separate interest, such as individually owned lots or condominium units. It may also include, in the context of a planned development, easement rights appurtenant to the separate interests.

“Common Interest Development” - also known as a C.I.D.; means any of the following: a) Community apartment project; b) Condominium project; c) Planned development; d) Stock cooperative.

“Community Service Organization” - is defined by Civil Code Section 1368 (c)(3) as 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 areas or facilities are available to the public. A “community service organization or similar entity” does not include an entity that has been organized solely to raise money 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.

“Complaint” - (sometimes referred to as a “lawsuit” or “suit”) the document filed with the court to formally start the lawsuit and state (allege) claims (cause of action) against defendant (complaint can also be amended voluntarily or otherwise, e.g., First Amended Complaint, Second Amended Complaint, etc.).

“Condominium Conversion” - the process by which an apartment project or a cooperative housing project is legally transformed into a statutory condominium. Most counties and municipalities have strict ordinances regulating the conversion of such housing to statutory condominiums.

“Condominium” - a form of common interest development, consisting of an undivided interest in common or a portion of real property coupled with a separate interest in space called a “unit,” the boundaries of which are described in a recorded condominium plan. (See California Civil Code Section 1351(f).)

“Condominium Plan” - a recorded plan consisting of a description or survey map of a condominium project containing a three dimensional description of the project in sufficient detail to identify both the common areas and each separate interest, together with a certificate consenting to the recordation of the plan signed and acknowledged by the record owner of fee title to the real property subject to the plan. (See California Civil Code Section 1351(e).)

FIORE RACOBS & POWERS

“Conflict of Interest” - Generally speaking, the term “conflict of interest” may be applied to any transaction or dealing between a director or officer of the association where the director’s own interests conflict with the director/officer’s duty of utmost loyalty to the association. However, as defined by California Corporations Code Section 7233, conflicts of interests are limited to contracts or transactions in which the director/officer has a material financial interest. Such transactions may be considered void or voidable by the corporation, unless they are approved by a majority of the association’s disinterested directors, after full disclosure of the material facts concerning the transaction by the affected director.

“Contract” - an agreement entered into between at least two parties. The contract must specify the parties, the duration, and the consideration for the agreement.

“Costs” - “costs” incurred in the prosecution of a lawsuit generally include court filing fees, service fees, motion fees, jury fees, court reporter and deposition costs, and witness fees.

“Cross-Complaint” - if the defendant has claims (causes of action) against the plaintiff or others, he/she may file a counter suit or a new suit in the same action.

“Cross-Complainant” - this is how the defendant or cross-defendant is characterized when referring to them in regard to their bringing of a cross-complaint.

“Cross-Defendant” - the person or company sued by the defendant and/or other cross-defendant(s) via a cross-complaint filed in the litigation.

“Cumulative Voting” - a system of voting by which the members of the association have a number of votes equal to the number of directors to be chosen at the annual election, and are allowed to cast all of their votes for one person or distribute them among the candidates as the member sees fit.

“Davis-Stirling Act” - California Civil Code Sections 1350, *et seq.*, containing the bulk of the statutory framework for the operations and management of common interest developments in California.

“Declaration” - see “Affidavit.”

“Defendant” - the person/company who is sued directly by the plaintiff (there may be many defendants).

“Demurrer” - a technical response by the defendant(s) or cross-defendant(s) filed in lieu of an answer to the complaint, which states why the complaint is legally deficient in some way (the court hears this by way of a motion).

“Department of Real Estate” - the Department of California’s State government which is vested with regulatory jurisdiction over common interest developments, under the Subdivided Lands Act (Business and Professions Code Sections 11000, *et seq.*) (“DRE”)

“Deposition” - formal question and answer session of potential witnesses, parties, experts, or others, which takes place before a court reporter under oath, which is later typed into booklet signed under penalty of perjury by the person deposed (“deponent”).

“Discovery” - formal investigation by the parties normally by way of depositions, interrogatories, document production requests, etc.

“Document Production” - *a written request to a party to produce documents to which they must respond in writing agreeing to produce the documents, raising objections thereto, or stating the documents do not exist or cannot be found.*

“Easement” - *an interest in real property which bestows a right upon the owner of one parcel of land to use the land of another for a special purpose. For example, an association may typically have an easement over the property of individual lot owners in a planned development for slope maintenance, or for other maintenance and repair purposes.*

“Equitable Servitude” - *a theory by which the use restrictions and other covenants in an association’s recorded declaration will be enforced by the courts, provided that the restrictions are set forth in at least one prior deed to the development, which states that the restrictions are for the benefit of other owners of separate interests in the development. In addition, the restrictions must generally be found to be in accordance with the general plan or scheme for the entire development.*

“Estoppel” - *an equitable doctrine that prevents a person from asserting a right or defense where the person’s own acts or conduct causes the party against whom the right or defense is claimed to detrimentally rely upon such acts or conduct.*

“Exclusive Use Common Area” - *that portion of an Association’s common area which is used exclusively by only one member of the Association, also known as Restricted Common Area.*

“F.C.C.” - *the Federal Communications Commission which regulates satellite “dish” antennas and other receiving and sending devices.*

“Fee” - *a complete interest in real property; “fee” ownership indicates an ownership of all aspects of the property as opposed to a future expectancy or a mere easement interest.*

“Fiduciary” - *a person charged with highest level of trust/confidence and duty of good faith towards corporation and members.*

“Foreclosure Sale” - *a sale of mortgaged or lien property by a trustee (e.g., nonjudicial foreclosure) or marshal (e.g., judicial foreclosure) for the purpose of satisfying a mortgage or lien against the property from the proceeds of the sale.*

“General Release” - *a clause in certain settlement documents whereby one or more settling parties releases not only claims related to the specific litigation, but also all other claims which the releasing party knew existed prior to, or at, the time of the signing of the release.*

“Homestead Exemption” - *law allowing a householder or head of a family to designate a principal dwelling house as the owner’s homestead and thereby exempting a portion of the value of the dwelling house (e.g., \$50,000 for a single individual, and \$75,000 for a married couple) from execution for satisfaction of general debts.*

“Indemnity” - *contract or agreement by which one person agrees to secure another against an anticipated loss or claim, including the legal consequences of breach of some responsibility assumed by the party to be indemnified. For example, an insurance policy is a contract of indemnity, whereby the insurance agrees to secure the insured from anticipated losses in accordance with the terms of the policy.*

FIORE RACOBS & POWERS

“Injunction” - a request for the court to order a party to not do something (or sometimes to do something), to keep conditions the way they currently exist until trial (to preserve the status quo).

“Intentional Tort” - a cause of action (claim) for personal injury, injury to real property seeking monetary damages arising out an intentional act. Examples; slander, assault and battery, willful destruction of property.

“Interrogatories” - formal written questions by one party to another.

“Judgment on the Pleadings” - a request that can be brought by defendant(s) or cross-defendant(s) by motion at any time during the litigation requesting the court to find that the complaint or cross-complaint is legally deficient in some way.

“Judicial Foreclosure” - filing a lawsuit for collection of assessments and foreclosure of an association’s assessment lien by court order. Thus, as part of the judgment in an assessment collection action, the court orders the marshal to sell the property for satisfaction of the association’s assessment lien.

“Laches” - an equitable doctrine similar to a statute of limitations, which operates to preclude a person from asserting a claim or right when the person waited an unreasonable and unexplained length of time to assert the claim based on unfairness.

“Latent Defect” - a defective condition that is not discoverable upon a reasonable inspection.

“Law Clerk” - usually a person attending law school working for law firm part time, during summer, or while awaiting bar exam results.

“Lawyer”/“Attorney” - someone who has passed required courses of study and successfully completed Bar Exam; must be licensed by State Bar to practice law in California.

“Legal Secretary” - secretary trained by school or experience to do work for lawyer, including preparation and typing of legal documents.

“License” - a grant of personal permission of authority by the owner of land to another to do a particular act or series of acts upon the owner’s land. License agreements are typically used in condominium projects, as a means for the association to give permission to an owner of a separate interest to construct an improvement attached to the common area.

“Lis Pendens” - also known as a “notice of pending action.” This document is filed simultaneously with a lawsuit which relates to title to or possession of real property. The purpose of the lis pendens, which is also recorded with the county Recorder, is to provide notice to any potential buyer of the existence of a lawsuit which may affect his/her purchase and will appear on a title report for the property.

“Litigation” - is the entire process of prosecuting a lawsuit after the complaint is filed, including cross-complaints. (Sometimes referred to as the “action”).

“Litigator” - lawyer who participates in the litigation process (usually used in the context of an attorney who goes to court) (also known as a “Trial Attorney”).

compensation, exercises control over the assets of the association. It does not include a full-time employee of the association or a regulated financial institution operating within the normal course of business, or an attorney at law acting within the scope of his or her license. Persons or companies meeting the definition of managing agent are subject to strict requirements concerning the handling of association funds, under Civil Code Section 1363.2.

“Mechanic’s Lien” - *a lien which may be placed on real property by a contractor licensed to do work in California. The mechanic’s lien is recorded with the County Recorder and must specify the amount which the contractor is seeking to recover. A lawsuit must be filed to foreclose upon the mechanic’s lien within ninety days of the recording of the mechanic’s lien.*

“Mediation” - *neutral third person who tries to work with parties to reach a negotiated agreement/resolution to the dispute.*

“Mitigate” / “Mitigation” - *to alleviate or cause damage to be less severe; also substitute for (e.g., mitigation measures are steps to take to stop actions, such as water intrusion, from causing as much damage).*

“Motion” - *a formal request, usually in writing, to the court to set a hearing and render a decision on an issue relevant to the litigation.*

“Motion in Limine” - *a written motion filed prior to trial asking the Court to exclude evidence before it is mentioned to a jury in opening statement.*

“MSC” - *a commonly used abbreviation for a Mandatory Settlement Conference. All parties (a quorum of the Board of Directors or legal liaison representative) are required to attend to discuss settlement prior to trial.*

“Nonjudicial Foreclosure” - *does not involve the court process; rather a trustee identified in the association’s assessment lien may proceed with a private foreclosure sale of the property to satisfy the assessment lien by recording a notice of default, and, thereafter, a notice of sale, after expiration of the statutory notice periods.*

“Notice of Cessation of Work” - *a notice filed by an owner of property that a work of improvement has been stopped requiring all persons who may have a claim or lien arising out of the work improvement to file their liens within a statutory time period.*

“Notice of Completion” - *begins the time period in which a claim or lien must be filed.*

“Notice of Meeting” - *written notice of either a Board or Member Meeting.*

“Notice of Non-Compliance” - *an instrument, similar to a lien, sometimes authorized under the CC&Rs which may be recorded in the County Recorder’s Office against an owner’s property to evidence the owner’s violation of the provisions of the CC&Rs and thereby putting prospective purchasers of the property on notice of the violation. California case law has held such notices are not recordable in the recorder’s office.*

“Nuisance” - *the result or consequences which arise from a person’s unreasonable or unlawful use of his or her own property in a manner causing obstruction or injury to the rights of another, or to the public, and creating a material annoyance, inconvenience and discomfort, such as persistent loud noises, odors, or unsightly care of property.*

FIORE RACOBS & POWERS

“Operating Rule” - *Civil Code* Section 1357.100 defines as a “regulation adopted by the board of directors that applies generally to the management and operation of the common interest development or the conduct of the business and affairs of the association.”

“Ordinances” - laws adopted at the local county and city level.

“Paralegal” - same as a legal assistant; many attend schools both accredited and unaccredited by the State Bar; certificates awarded but not licenses. Cannot appear in court and may have no career path to become a lawyer.

“Parties” - all plaintiff(s), defendant(s) and cross-defendant(s) in the litigation.

“Patent Defect” - a defective condition that is discoverable upon a reasonable inspection.

“Permanent Injunction” - an Order by the Court issued after trial prohibiting a party from engaging in certain conduct. It may also order a party to perform mandatory affirmative acts.

“Petition” - a document like a complaint where plaintiff has the legal right to get into court before a judge on certain issues (e.g., to challenge an association election).

“Phasing Schedule” - the schedule by which the developer intends to annex additional pieces of property to the common interest development. This schedule is generally disclosed to the Department of Real Estate, but can be modified on a phase-by-phase basis when the developer seeks issuance of additional public reports from the Department of Real Estate for each phase.

“Plaintiff” - the person or company who has a claim (cause of action) and who files a lawsuit.

“Planned Development” - a form of common interest development, having either or both of the following features: (1) the common areas are owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the use and enjoyment of the common area; and/or (2) a power exists in the association to enforce an obligation of the owner of the separate interest with respect to the use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests. (See *California Civil Code* Section 1351(k).)

“Pleading” - technically this means only the complaint, cross-complaint, answers (affirmative defenses), demurrer or judgment on the pleadings. However, in practice, “pleading” may refer generically to any document filed with court on pleading paper (paper numbered at the margin).

“Preliminary Injunction” - a hearing held approximately 15-20 days after the issuance of a Temporary Restraining Order. At that time the Court decides whether to continue a restraining order in effect until trial.

“Priority of Liens” - liens are generally ranked in the order in which they are first “perfected.” Thus, liens which are recorded first in time will be superior to liens recorded at a later date.

“Pro Forma Budget” - the term, “pro forma” simply means a form - a pro forma budget is one that the Board of Directors adopts to state the basic financial requirements and needs for the association for the coming year, along with anticipated expenses. The Davis-Stirling Common Interest Development Act sets forth specific requirements (*Civil Code* Section 1365(a)) for information which must be contained within the pro forma operating budget, as well as

the time framework within which the budget must be distributed.

“Proof of Service” - *a written statement in which a person serving a legal document swears under penalty of perjury they have served it.*

“Proxy” - *a proxy is a person who is appointed to act as an agent for another person, typically by representing that person at a meeting or in some public body. The term “proxy” also refers to the written instrument which contains the appointment of agency (see generally Corporations Code Section 7613).*

“Public Report” - *a final public subdivision public report is essentially a permit, issued by the Department of Real Estate to the developer of a common interest subdivision, allowing the developer to market and sell the separate interests. It is the primary means of accomplishing subdivision regulation, and protects buyers of separate interests by requiring disclosure of all material facts and by assuring adherence to the Department of Real Estate’s applicable standards for creating, operating, financing, and preparing documentation for the project. (aka “White Report”).*

“Quorum” - *the minimum number of people needed to legally hold a meeting. A quorum can be either a quorum for a board meeting or a quorum for an annual or special meeting of the members. If the quorum requirement is not met, the meeting may be adjourned.*

“Reasonable Arrangements” - *a section of the Department of Real Estate regulations governing subdivision management documents, which set forth “pre-approved” provisions of both an association’s CC&Rs and Bylaws, which the DRE has deemed “reasonable” concerning the management, maintenance, preservation, operation, use, right of resale, and control of subdivision properties.*

“Record Date” - *the legal date which may be set by the corporation for determining a member’s right to vote, be nominated for office, or receive legal notice of association meetings. (See generally California Corporations Code Section 7611.)*

“Recuse” - *to remove someone, or disallow participation (e.g., recuse a director from voting based on conflict of interest).*

“Release” - *a waiver of claims against persons or entities arising by agreement or operation of law.*

“Remedy/Relief” - *the type of compensation sought by the plaintiff; money damages, injunctions, etc.*

“Request for Admission” - *a formal written request propounded by a party requesting that the other party admit the truth of certain facts.*

“Request for Documents” - *see “Document Production.”*

“Request for Resolution” - *offer of ADR served on owner to initiate ADR process. The Request for Resolution must include (1) a brief description of the dispute; 2) a request for alternative dispute resolution; and 3) notice that the party receiving the Request is required to respond thereto within 30 days of receipt or it will be deemed rejected. (Civil Code Section 1369.530.)*

FIORE RACOBS & POWERS

“Reserve Accounts” - monies that the association’s board of directors have identified for use to defray the future repair, or replacement of, or additions to, major components which the association is obligated to maintain. (See California Civil Code Section 1365.5(f).)

“Reserve Study” - a study of the association’s reserve account requirements, identifying the major components which the association is obligated to repair, replace, restore, or maintain, for their probably remaining useful life; an estimate of the cost to repair, replace, restoration, or maintenance of the components, and an estimate of the total annual contribution necessary to defray such costs. (See generally California Civil Code Sections 1365(a) and 1365.5(e).)

“Review” - a less stringent review of a corporation’s books and records when compared to an audit, but also conducted in accordance with the guidelines of the American Institute of Certified Public Accountants. A review prepared by a certified public accountant is required by California Civil Code Section 1365(c) for any fiscal year in which the association’s gross income exceeds \$75,000.00.

“Rules and Regulations” - this is a Governing Document which is adopted by the Board of Directors, generally as an interpretive document to the CC&Rs. Generally member approval is not required for adoption of rules and regulations, although some older Bylaws and CC&Rs may require member approval for rules and regulations, as well as for the adoption of fines. The rules and regulations are not recorded at the County Recorder’s Office. See also “Operating Rule.”

“Separate Interests” - as defined by California Civil Code Section 1351(l), separate interests in a condominium project means an individual unit. In the context of a planned development, it means a separately owned lot, parcel, area, or space.

“Single Family Attached/Detached Unit” - construction, marketing term for either a planned development or condominium unit where association may or may not have exterior maintenance duties.

“Statute of Limitations” - a time period within which a complaint must be filed or claim is forever barred.

“Stop Notice” - a notice given by a person/entity involved with a work of improvement to the owner of the property or construction lender. The stop notice requires the owner to withhold sufficient money to answer the claims set forth in the stop notice. Unless the stop notice is bonded, a construction lender, at its discretion, may withhold monies in a sufficient amount to cover the claims set forth in the stop notice.

“Subdivided Lands Act” - (California Business and Professions Code Sections 11000, *et seq.*) The statutory scheme regulating the sale of residential houses in subdivisions, which generally prohibits any person from offering to sell or lease interests in a subdivision without obtaining a Public Report (i.e., a permit) from the California Department of Real Estate. With its companion regulations (see Reasonable Arrangements), the Subdivided Lands Act provides an important consumer protection function aimed at protecting buyers of subdivision interests by requiring disclosure of material facts to protect the public from fraud or misrepresentation, and insuring adherence by developers to applicable standards for creating, operating, financing, and documenting such projects.

78 **“Subordination”** - the act, process, or agreement by which a person’s rights are ranked below the rights of others.

“Subpoena” - a court order to a non-party to appear either in court or at deposition and/or to produce documents.

“Subsidy Agreement” - an agreement by the developer of a common interest development, approved by the DRE, which permits the developer to underwrite all or a portion of the common area maintenance and repair costs that would otherwise be funded through association assessments.

“Summary Adjudication/Judgment” - a complex motion to the court to determine as a matter of law one or more issues which will be dispositive of the case. The court must find that there are no triable issues of material fact in order to grant the motion, which means that if there is even one factual issue which must be tried, the motion will not be granted. If the motion is granted, the case may be over and a judgement entered for the moving party.

“Summary Proceeding” - any proceeding where a controversy is settled, a case is disposed of, or trial conducted in a prompt and simple manner, without a jury, such as a Petition to the court to enforce an owner’s right to inspect corporate records, an unlawful detainer action for eviction of a tenant in a landlord/tenant case, and/or a small claims action.

“Summons” - a document which is served with the complaint stating the lawsuit has been filed with the court, has been properly served and stating that the party served must respond within 30 days.

“Surety Bond” - a form of insurance, whereby the surety company agrees to assume the responsibility to pay the debt of an officer or director or other person or corporation, in the event that they default.

“Tender” - to provide to, or legally give notice of tender (e.g., make an insurance claim to the carrier).

“Tort” - a cause of action (claim) for injury, including injury to person or real property (a civil wrong) seeking monetary damages (a “tortfeasor” is a person committing a tort).

“Townhouse”/“Townhome” - a marketing term for an attached, residential structure. This type of unit can legally be either a planned development, where the owner’s separate interest consists of that portion of the residential structure physically situated on an individually owned lot, or a condominium unit.

“Tract Map” - this is a document recorded by the subdivider of the real property in the County Recorder’s Office as required by the Subdivided Lands Act and the Subdivision Map Act. This map generally shows the location of all lots within a tract and provides specific descriptions, including dimensions. Also known as a subdivision map.

“Transactional Attorney” - lawyer who specializes in non-litigation oriented work. Generally in connection with common interest developments, the “corporate counsel” for Associations are transactional attorneys.

“TRO” - an abbreviation for a Temporary Restraining Order. This court order is obtained on very short notice and orders the defendant to stop performing some prohibited activity. It remains in effect for approximately 15-20 days until a Preliminary Injunction hearing can be held.

FIORE RACOBS & POWERS

“Twenty (20) Day Preliminary Notice” - a notice required to be provided to the owner of the property upon which a work of improvement is being constructed by one supplying services or materials other than the original contractor in order to perfect a claim of lien.

“UBC” - abbreviation for the Uniform Building Code. The Uniform Building Code sets construction standards that are required to be followed in the construction of homes and improvements.

“Undertaking” - a promise or stipulation given in the course of legal proceedings. Most typically, this term is used in conjunction with a director’s promise to repay the corporation in return for the corporation paying defense costs on behalf of the director/officer under the provisions of California Corporations Code Section 7237.

“Unincorporated Association” - a non-profit corporation created for the purpose of managing a common interest development, which is not incorporated. Generally, incorporated associations are governed by a separate set of bylaws or “compact.” Unincorporated associations create special tax and liability problems which may need to be carefully examined, with respect to their management and operation.

“Unruh Civil Rights Act” - California Civil Code Sections 51, *et seq.*, generally prohibiting discrimination as a violation of State law against certain protected classes of persons. This group of protected persons includes protection from age discrimination, except for residents of senior citizen housing as defined by Section 51.3.

“Verification” - a statement under penalty of perjury by the party that must accompany a response to interrogatories or a response to a demand to produce documents stating that the responses are true and correct.

“Voting Instructions” - required to be sent with Secret Ballot, two envelopes for Membership Votes per Civil Code Section 1363.03.

“Waiver” - the intentional or voluntary relinquishment of a known right, claim or privilege, or conduct creating an inference of relinquishment of such right, claim, or privilege.

“Written Ballot” - the means by which a corporation may conduct a member vote without holding an actual meeting of the membership, pursuant to California Corporations Code Section 7513. A written ballot may not be used to vote on matters required to be voted on by Secret Ballot under Civil Code Section 1363.03.

“Zoning Power” - a comprehensive system of land use controls, stemming from the grant of local police power to cities and counties granted under California Constitution Article XI, Section 7, and Government Code Sections 65800, *et seq.* Zoning ordinances, and the authority of the city or county to enforce such ordinances, are separate and apart from the authority of an association to enforce its own covenants.

Copyrighted 1995-2010 by Fiore Racobs & Powers, APLC

FIORE RACOBS & POWERS

— A PROFESSIONAL LAW CORPORATION —

Established in 1973, Fiore Racobs & Powers is **The Recognized Authority In Community Association Law**. Our expertise includes CC&R/Architectural Enforcement, Document Amendment, Elections, Corporate Counsel, Legal Opinions, Assessment Collection, Litigation, Appeals & General Legal Services.

Our Firm's mission is to provide quality legal services to our clientele while setting the example for others to follow in the legal community. We are dedicated to the success of community associations through the practice of law, the education of our clients and industry professionals, and the advancement of public policy.

With thirty-eight years of experience and dedication, Fiore Racobs & Powers remains committed to making a difference through the practice of law.

www.fiorelaw.com
877-31-FIORE

FIORE RACOBS & POWERS

— A PROFESSIONAL LAW CORPORATION —

ORANGE COUNTY OFFICE

**38 Technology Drive
Suite 250
Irvine, CA 92618-2301
949-727-3111
Fax 949-727-3311**

INLAND EMPIRE OFFICE

**6820 Indiana Avenue
Suite 140
Riverside, CA 92506
951-369-6300
Fax 951-369-6355**

COACHELLA VALLEY OFFICE

**74-130 Country Club Drive
Suite 102
Palm Desert, CA 92260
760-776-6511
Fax 760-776-6517**

www.fiorelaw.com
877-31-FIORE