

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Commercial and Industrial Common Interest Developments

February 2011

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN April 28, 2011.**

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
650-494-1335  
<commission@clrc.ca.gov>

## SUMMARY OF TENTATIVE RECOMMENDATION

In 1988, the Legislature drew a statutory distinction between (1) residential common interest developments and (2) commercial and industrial common interest developments, declaring that statutes developed for the protection of residential developments may be unnecessary and unduly burdensome for commercial and industrial developments. Civil Code Section 1373 was enacted to exempt commercial and industrial developments from a number of such statutes.

In the 22 years since that enactment, the statutes governing common interest developments have more than tripled in size, without any comprehensive analysis of whether the added provisions should be applied to commercial and industrial developments.

The Law Revision Commission has conducted such an analysis and recommends the broad expansion of the policy expressed by the Legislature in 1988.

The proposed law would establish a separate statute governing commercial and industrial common interest developments, comprised only of those provisions that are necessary and appropriate for such developments.

This tentative recommendation was prepared pursuant to Resolution Chapter 98 of the Statutes of 2009.

## COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENTS

1 A common interest development (“CID”) is a real property development that  
2 includes all of the following: (1) separate ownership of a lot or unit, coupled with  
3 an undivided interest in common property, (2) covenants, conditions, and  
4 restrictions that limit use of both the common area and separate ownership  
5 interests, and (3) management of common property and enforcement of  
6 restrictions by a community association.<sup>1</sup>

7 The Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”)<sup>2</sup>  
8 is the main body of statutory law that governs CIDs in California. The Davis-  
9 Stirling Act was enacted in 1985,<sup>3</sup> primarily to consolidate and standardize  
10 statutory provisions governing different types of CIDs.<sup>4</sup>

11 Shortly after enactment of the Davis-Stirling Act, concerns were expressed  
12 about the application of the Act to CIDs that are comprised entirely of commercial  
13 or industrial units, and do not contain any residences.<sup>5</sup> In response to those  
14 concerns, a bill was introduced to entirely exempt these nonresidential CIDs from  
15 the application of the Davis-Stirling Act.<sup>6</sup>

16 A building industry group suggested that the bill be amended to instead follow a  
17 more selective approach. While agreeing that the Davis-Stirling Act was  
18 “primarily ... enacted for the purpose of regulating residential developments,” the  
19 group argued that a number of the Act’s provisions were also necessary for  
20 commercial CIDs.<sup>7</sup> The bill was thereafter amended to add Civil Code Section  
21 1373 to the Davis-Stirling Act, and enacted.<sup>8</sup>

22 Section 1373 made several provisions of the Davis-Stirling Act inapplicable to  
23 commercial and industrial CIDs.<sup>9</sup> Section 1373 also included an explanatory  
24 statement of legislative findings:

25 The Legislature finds that the [provisions declared inapplicable to commercial  
26 or industrial CIDs] may be appropriate to protect purchasers in residential

---

1. Civ. Code §§ 1352, 1363(a); C. Sproul & K. Rosenberry, *Advising California Common Interest Communities*, §§ 1.2, 1.14, 1.15, pp. 3-4, 15-19 (2010).

2. Civ. Code §§ 1350-1378.

3. 1985 Cal. Stat. ch. 874.

4. C. Sproul & K. Rosenberry, *supra* Note 1, at § 1.4, pp. 5-6.

5. See letter from Jerold L. Miles to Michael Krisman (Sept. 16, 1986) (on file with Commission).

6. AB 2484 (Hauser) (1987).

7. See letter from Jeffrey G. Wagner to Assembly Member Daniel Hauser (June 12, 1987) (attached to Commission Staff Memorandum 2008-63 (Dec. 2, 2008), Exhibit pp. 1-2).

8. 1988 Cal. Stat. ch. 123.

9. Civ. Code § 1373(a). The provisions declared inapplicable were Civ. Code §§ 1356, 1363(b), 1365, 1365.5, 1366(b), 1366.1, and 1368. See 1988 Cal. Stat. ch. 123.

1 common interest developments, however, the provisions are not necessary to  
2 protect purchasers in commercial or industrial developments since the application  
3 of those provisions results in unnecessary burdens and costs for these types of  
4 developments.<sup>10</sup>

5 In the 22 years since the enactment of Section 1373, the Davis-Stirling Act has  
6 more than tripled in size,<sup>11</sup> without any comprehensive analysis of whether the  
7 added provisions should apply to commercial and industrial CIDs.

8 The Commission has conducted such an analysis, and recommends that the  
9 legislative policies reflected in the enactment of Section 1373 be extrapolated to  
10 address subsequent changes in the Davis-Stirling Act.

11 This would be achieved by exempting commercial and industrial CIDs from the  
12 existing Davis-Stirling Act, and creating a new statute that would govern only  
13 those CIDs. The new statute would carry forward all Davis-Stirling Act provisions  
14 that should continue to apply to these nonresidential CIDs. However, provisions  
15 presently in the Davis-Stirling Act that “are not necessary to protect purchasers in  
16 commercial or industrial developments” and would “[result] in unnecessary  
17 burdens and costs for these types of developments”<sup>12</sup> would not be carried forward  
18 into the new body of law.

19 The establishment of a separate body of law for commercial and industrial CIDs  
20 would make it easier for the Legislature to tailor the future development of CID  
21 law so that it appropriately reflects important distinctions between residential and  
22 commercial or industrial CIDs.

23 **PRIOR LEGISLATIVE POLICY**

24 Examination of the content of the Davis-Stirling Act at the time that Section  
25 1373 was added to that Act is helpful in understanding the legislative policy  
26 underlying the enactment of Section 1373. At that time, the Davis-Stirling Act  
27 consisted of only 25 sections, which mostly governed the establishment and basic  
28 structure of a CID, rather than mandating how a CID should conduct its daily  
29 affairs.

30 The provisions of the Act that continued to apply to a commercial or industrial  
31 CID after the enactment of Section 1373 included all of the following:

---

10. Civ. Code § 1373(b).

11. The Act has grown from 25 code sections in 1986 (spanning 10 pages of the Deering's *Civil Practice Code*), to 89 code sections in 2010 (spanning 46 pages of the equivalent LexisNexis Standard California Codes).

12. Civ. Code § 1373(b).

- 1 • *Definitions and other general provisions.*<sup>13</sup> These provisions are necessary to  
2 the operation of the statute and the definition of the CID property ownership  
3 form, and impose no significant burden on the operation of a CID.
- 4 • *Governing document provisions.*<sup>14</sup> These provisions define the character of a  
5 CID's founding documents.
- 6 • *Property ownership and transfer provisions.*<sup>15</sup> These provisions provide  
7 special rules relevant to the CID form of property ownership.
- 8 • *Basic governance provisions.*<sup>16</sup> These provisions establish the basic  
9 governance structure for the management and maintenance of CID common  
10 area, and the enforcement of mutual restrictions. They enable governance,  
11 without regulating governance operations.

12 By preserving the application of those types of provisions, the Legislature seems  
13 to have concluded that such provisions are necessary for commercial and  
14 industrial CIDs and are not unduly burdensome to their operations.

15 Significantly, Section 1373 exempted commercial and industrial CIDs from the  
16 following types of provisions:

- 17 • *Provisions regulating fiscal planning and reporting.*<sup>17</sup> These provisions state  
18 mandatory requirements governing an association's fiscal planning and  
19 reporting.
- 20 • *Judicial override of supermajority amendment requirement.*<sup>18</sup> This provision  
21 authorizes a court to approve an amendment of a CID's declaration,  
22 notwithstanding a failure to satisfy a supermajority member approval  
23 requirement stated in the declaration.
- 24 • *Transfer disclosure requirements.*<sup>19</sup> This provision requires that specified  
25 information be provided to a prospective purchaser of a separate interest in a  
26 CID, before transfer of title.

---

13. Civ. Code §§ 1350 (short title), 1351 (definitions), 1352 (application of Act).

14. Civ. Code §§ 1353 (content of declaration), 1354 (enforcement of restrictions as equitable servitudes), 1355 and 1357 (amendment of declaration).

15. Civ. Code §§ 1358 (transfer of separate interest), 1359 (partition), 1360 (separate interest improvements), 1361 (rights of ingress, egress, and support), 1362 (ownership of common area), 1369 (mechanics liens on common area), 1370 (liberal construction of title documents), 1371 (presumption regarding unit boundaries), 1372 (construction of local zoning ordinances).

16. Civ. Code §§ 1363(a) (existence and powers of association), 1364 (maintenance obligations), 1366(a) (authority to levy assessments), 1366(c) (authority to recover collection costs), 1366(d) (exemption from interest rate limitations), 1367 (authority to lien to collect overdue assessments).

17. Civ. Code §§ 1363(b) and 1365 (mandatory financial statement), 1365.5 (fiscal duties of board), 1366(b) and 1366.1 (limitations on assessment setting).

18. Civ. Code § 1356.

19. Civ. Code § 1368.

1 The exemption of commercial and industrial CIDs from those provisions  
2 indicates that the Legislature found them to be unnecessary and unduly  
3 burdensome for those types of CIDs.

4 The basis for these conclusions can be found in a legislative analysis of the bill  
5 that added Section 1373, which discussed the special character of commercial and  
6 industrial CIDs:

- 7 • Commercial and industrial CIDs are “business endeavors in which the parties  
8 engage the services of attorneys, accountants, management companies, and  
9 developers.”
- 10 • Unlike owners in residential CIDs, owners in commercial and industrial CIDs  
11 are “well-informed” and “governed by other provisions of commercial law.”
- 12 • “The operational needs of commercial and industrial CIDs are different than the  
13 needs of residential [CIDs].” For example, a commercial or industrial CID may  
14 require greater flexibility than a residential CID, in order to address significant  
15 business-related changes in the development’s use, facilities, and costs.
- 16 • Regulatory requirements designed to protect residential owners “interfere with  
17 commerce, and increase the costs of doing business.”<sup>20</sup>

18 Taken as a whole, the enactment of Section 1373 suggests the following  
19 policy principles:

- 20 • Provisions that define the basic property ownership and governance structure  
21 for CIDs are needed by commercial and industrial CIDs and do not unduly  
22 burden those CIDs.
- 23 • Provisions that are designed to help homeowners avoid mismanagement, by  
24 mandating specific management practices, are unnecessary and unduly  
25 burdensome for business owners in commercial and industrial CIDs.
- 26 • Provisions that are designed to help homeowners understand the consequences  
27 of purchasing a home in a CID are not needed by purchasers of units in  
28 commercial or industrial developments. Business owners purchasing  
29 commercial or industrial properties are presumably professionally advised and  
30 do not need the same statutory guidance appropriate for homeowners.
- 31 • A provision authorizing the court to circumvent a supermajority approval  
32 requirement for amendment of the declaration may be helpful in a residential  
33 CID, where homeowner apathy and fractiousness may make it difficult to obtain  
34 the approval required for a necessary amendment. By contrast, a business  
35 property owner may not need judicial intervention to resolve a dispute about  
36 amendment of the declaration. Furthermore, a business owner is likely to have  
37 read and relied on a CID’s governing documents before purchasing a unit in a  
38 commercial or industrial CID. A judicial override of the declaration could  
39 frustrate reasonable expectations.

---

20. Senate Rules Committee Analysis of AB 2484 (May 18, 1988) (on file with Commission).

1 Section 1373 has been amended twice since its enactment. Both amendments are  
2 consistent with the principles set out above. They exempted commercial and  
3 industrial CIDs from provisions regulating governance operations:

- 4 • In 2003, Section 1373 was amended to exempt commercial and industrial  
5 CIDs from new statutory procedures for the adoption of operating rules.<sup>21</sup>
- 6 • In 2004, Section 1373 was amended to exempt commercial and industrial  
7 CIDs from new statutory procedures on architectural review  
8 decisionmaking.<sup>22</sup>

9 In summary, in enacting and amending Section 1373, the Legislature seems to  
10 have drawn a distinction between two broad classes of Davis-Stirling Act  
11 provisions:

- 12 • *Foundational Provisions.* These are provisions that address the fundamental  
13 character of the CID property ownership form. They include (1) definitions of  
14 key concepts, (2) provisions relating to a CID's founding documents, (3)  
15 provisions on property ownership, transfer, and maintenance, and (4)  
16 provisions establishing the governing association and prescribing its necessary  
17 powers. Foundational provisions also include provisions necessary for the  
18 operation of the statute, such as rules of construction and technical definitions.  
19 These provisions are necessary for all CIDs and do not impose operational  
20 burdens on CIDs.
- 21 • *Operational Provisions.* These are provisions that impose mandatory  
22 procedures for the operation of a CID's governing association. These  
23 provisions may assist and protect unsophisticated homeowners in managing  
24 their communities but are not needed by sophisticated commercial property  
25 owners. To the extent that they mandate "one-size-fits-all" management  
26 practices, they can unduly burden commercial and industrial CIDs.

## 27 RECOMMENDATION

28 The Commission recommends that the prior legislative policy judgments  
29 discussed above be continued and applied to the numerous provisions that have  
30 been added to the Davis-Stirling Act since 1988. The proposed law would do so  
31 by applying three broad principles:

- 32 • All foundational provisions should remain applicable to commercial and  
33 industrial CIDs.
- 34 • Most operational provisions should be made inapplicable to commercial and  
35 industrial CIDs.
- 36 • No change should be made to the law governing residential CIDs.

---

21. 2003 Cal. Stat. ch. 557.

22. 2004 Cal. Stat. ch. 346.

1 These policies should be effectuated by exempting commercial and industrial  
2 CIDs from the existing Davis-Stirling Act and creating a new statute to govern  
3 those CIDs. The creation of separate statutes for residential and commercial or  
4 industrial CIDs would preclude the need for any future review and analysis of the  
5 type described here. Going forward, any CID reform would need to be made  
6 expressly applicable to commercial and industrial CIDs if it was to have that  
7 application. This would allow for the independent development of law governing  
8 the two distinct categories of CIDs, and would avoid the inadvertent application of  
9 residential CID reforms to commercial or industrial CIDs.

10 Exceptions to these general principles are discussed below.

#### 11 **Special Notice Requirement**

12 Civil Code Section 1363(g) requires distribution of a schedule of monetary  
13 penalties that may be imposed as punishment for a violation of the governing  
14 documents. Although the provision could be characterized as operational, it seems  
15 appropriate as an element of a fair disciplinary procedure. The requirement does  
16 not appear to impose any significant burden on CID operation.

17 The Commission recommends that the proposed law include this provision.<sup>23</sup>

#### 18 **Assessment Collection Provisions**

19 Civil Code Section 1367.1 contains a detailed procedural scheme for the  
20 collection of delinquent assessment payments. While the section relates to an  
21 operational aspect of CID governance, the Commission tentatively concluded that  
22 the well-developed procedure might prove useful, and not unduly burdensome, in  
23 a commercial or industrial CID.

24 With the exception of provisions requiring alternate dispute resolution, the  
25 Commission recommends that the provisions of Section 1367.1 be continued in  
26 the new statute.<sup>24</sup>

#### 27 **Exemption from Constitutional Interest Rate Limitations**

28 Civil Code Section 1366(f) generally exempts CIDs from interest rate  
29 limitations imposed by Article XV of the California Constitution.

30 Although this provision could be characterized as operational, it does not appear  
31 to impose any burden on CID operations. To the extent that it facilitates  
32 assessment collection, it may provide a benefit to all CIDs, including commercial  
33 and industrial CIDs.

34 The Commission recommends that Section 1366(f) be continued in the new  
35 statute.<sup>25</sup>

---

23. See proposed Civ. Code § 6850 *infra*.

24. See proposed Civ. Code §§ 6808(a), 6810, 6812, 6814, 6816, 6818, 6820, 6822, 6824, and 6826 *infra*.

25. See proposed Civ. Code § 6808(b) *infra*.



1 **Construction Litigation Provisions**

2 Three sections of the Davis-Stirling Act govern construction defect litigation in  
3 a CID.<sup>26</sup> Although they might be described as operational provisions, the  
4 Commission recommends that they be preserved.<sup>27</sup> The well-developed procedures  
5 provided in those sections relate to a dispute between an association and a builder,  
6 a third party who is not involved in CID governance. Those provisions appear to  
7 be equally appropriate for the resolution of such disputes in any type of CID.<sup>28</sup>

8 **Assessment Based on Taxable Value**

9 Civil Code Section 1366.4 provides that, with limited exception, an association  
10 may not levy an assessment on a separate interest based on the taxable value of  
11 that separate interest, unless on or before December 31, 2009, the association  
12 levied assessments on such basis. Although the provision has a foundational aspect  
13 (the fundamental financial responsibility of any association), the Commission  
14 tentatively concluded that the operational aspect of the provision (the precise  
15 manner in which assessments may be calculated) appeared to predominate, and  
16 dictated that the provision not be included in the proposed law.<sup>29</sup>

17 Section 1366.4 was enacted after the Commission had conducted most of its  
18 evaluation of the applicability of provisions of the Davis-Stirling Act to  
19 exclusively commercial or industrial CIDs.<sup>30</sup> **The Commission therefore**  
20 **specifically invites comment on whether discontinuing the applicability of**  
21 **Section 1366.4 to an exclusively commercial or industrial CID would be**  
22 **problematic.**

23 **OVERVIEW OF PROPOSED LEGISLATION**

24 **Application of Proposed Law**

25 The proposed law would only apply to an exclusively commercial or industrial  
26 CID.<sup>31</sup> The application of the proposed law would be defined using the same  
27 language that is used to define the scope of existing Civil Code Section 1373,  
28 which applies to:

---

26. Civ. Code §§ 1368.5, 1375, and 1375.1.

27. A fourth section of the Davis-Stirling Act relating to CID construction defect litigation, Civil Code Section 1375.05, was repealed by operation of law on January 1, 2011, and is not continued in the proposed law.

28. See proposed Civ. Code §§ 6870, 6872, 6874, and 6876 *infra*.

29. The first sentence of Civil Code Section 1366(a), a provision of the Davis-Stirling Act providing an association with general authority to levy assessments, has been continued in the proposed law. See proposed Civ. Code § 6800 *infra*.

30. See 2009 Cal. Stat. ch. 431.

31. See proposed Civ. Code § 6582(a) *infra*.

1 [a] common interest development that is limited to industrial or commercial  
2 uses by zoning or by a declaration of covenants, conditions, and restrictions that  
3 has been recorded in the official records of each county in which the common  
4 interest development is located.<sup>32</sup>

#### 5 **Source of Statutory Language and Organization**

6 The purpose of the proposed law is to establish a new statute governing  
7 commercial and industrial CIDs, which would include only those provisions that  
8 are necessary for such CIDs and are not unduly burdensome to their operations.  
9 One way this could be accomplished would be by copying the exact language and  
10 organization of the existing Davis-Stirling Act provisions that are to be included in  
11 the proposed law.

12 The proposed law would take a different approach. It would instead incorporate  
13 statutory language and organization that has been developed as part of a pending  
14 Law Revision Commission proposal to simplify and reorganize the existing Davis-  
15 Stirling Act, to make it easier to use and understand.<sup>33</sup> That proposal is a mostly  
16 nonsubstantive cleanup project, though it does include some noncontroversial  
17 substantive improvements as well. It is expected that the proposed recodification  
18 of the Davis-Stirling Act will be presented to the Legislature for consideration  
19 prior to completion of work on the current study.

20 By incorporating the language and structure of the proposed recodification of  
21 the Davis-Stirling Act, the proposed law will include the benefits of improvements  
22 made in that separate study. This approach will also maximize the uniformity of  
23 language and structure between the law governing residential and commercial or  
24 industrial CIDs.

25 Any changes to existing law proposed in the recodification proposal are also  
26 included in the proposed law. Sections containing such changes will have the  
27 words “NEW” or “REVISED” in their headings. All changes are noted and  
28 described in the Comments and Notes following the new or revised provisions.  
29 **The Commission specifically invites comment on whether any of those**  
30 **changes would be problematic if applied to a commercial or industrial CID.**

31 If further changes are made to the Commission’s recodification proposal before  
32 it is finalized, those changes will also be considered for incorporation into the  
33 proposed statute on commercial and industrial CIDs.

#### 34 **Disposition Table**

35 A “disposition table” following the proposed law shows the relationship  
36 between the existing provisions of the Davis-Stirling Act and the provisions of the  
37 proposed law. This table also identifies the provisions of the Davis-Stirling Act

---

32. See proposed Civ. Code § 6556 *infra*.

33. See tentative recommendation on *Statutory Clarification and Simplification of CID Law* (Feb. 2010).

1 that have not been included in the proposed law, by an indication that those  
2 provisions are “not continued.”

3 **Conforming Revisions**

4 There are a number of code sections that include a cross-reference to a provision  
5 of the Davis-Stirling Act. To the extent that such a reference is relevant to  
6 commercial or industrial CIDs, it will need to be revised to include a reference to  
7 the corresponding provision of the proposed law. Amendments to accomplish this  
8 are included in the “Conforming Revisions” portion of the proposed law.

9 However, conforming revisions have not been proposed for code sections that  
10 fall into either of the following two categories:

- 11 • Code sections in which the referenced provision(s) of the Davis-Stirling Act  
12 would not be continued in the proposed legislation.<sup>34</sup>
- 13 • Code sections that, by virtue of either their plain language or another express  
14 statutory provision, do not apply to exclusively commercial or industrial  
15 CIDs.<sup>35</sup>

16 In instances in which the Commission believed it unclear whether a code section  
17 has any application to an exclusively commercial or industrial CID, a conforming  
18 revision of the code section has been proposed, followed by a note soliciting  
19 comment on whether the conforming revision is needed.<sup>36</sup>

20 **REQUEST FOR COMMENT**

21 The Commission requests that interested persons and groups carefully review  
22 the proposed legislation, and submit comments on both the inclusion and  
23 exclusion of Davis-Stirling Act provisions, as well as on the proposed substantive  
24 improvements.

---

34. See, e.g., Civ. Code § 2079.3.

35. See, e.g., Bus. & Prof. Code § 10131.01; see also Bus. & Prof. Code § 11010.10 (read in conjunction with Bus. & Prof. Code § 11010.3).

36. See Bus. & Prof. Code §§ 11003.2, 11004, Civ. Code §§ 714, 1133, 2924b, Gov’t Code § 66412, 66424, 66452.10, 66475.2, Health & Safety Code § 13132.7, Ins. Code § 790.031, Water Code § 13553.



COMMERCIAL AND INDUSTRIAL COMMON  
INTEREST DEVELOPMENTS

TABLE OF CONTENTS

1 Civ. Code § 1373 (amended). Commercial or industrial common interest development ..... 17  
2 Civ. Code §§ 6500-6876 (added). Commercial and industrial common interest  
3 developments ..... 17  
4 PART 5.5. COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENTS ..... 18  
5 CHAPTER 1. GENERAL PROVISIONS ..... 18  
6 Article 1. Preliminary Provisions..... 18  
7 § 6500 (NEW). Short title..... 18  
8 § 6502 (REVISED). Effect of headings..... 18  
9 § 6505 (NEW). Application of act ..... 18  
10 § 6510 (REVISED). Construction of zoning ordinance ..... 19  
11 § 6512 (NEW). Delivered to an association ..... 19  
12 § 6514 (NEW). Individual notice ..... 20  
13 § 6516 (NEW). General notice..... 20  
14 § 6518 (NEW). Time and proof of delivery ..... 21  
15 § 6522 (NEW). Approved by majority of all members ..... 21  
16 § 6524 (NEW). Approved by majority of quorum of members ..... 21  
17 Article 2. Definitions ..... 22  
18 § 6526 (REVISED). Application of definitions ..... 22  
19 § 6528 (UNCHANGED). “Association” ..... 22  
20 § 6530 (NEW). “Board” ..... 22  
21 § 6531 (NEW). “Commercial or industrial common interest development” ..... 22  
22 § 6532 (REVISED). “Common area” ..... 22  
23 § 6534 (UNCHANGED). “Common interest development” ..... 23  
24 § 6536 (UNCHANGED). “Community apartment project” ..... 23  
25 § 6540 (NEW). “Condominium plan” ..... 23  
26 § 6542 (REVISED). “Condominium project” ..... 23  
27 § 6544 (UNCHANGED). “Declarant” ..... 24  
28 § 6546 (REVISED). “Declaration” ..... 24  
29 § 6548 (NEW). “Director” ..... 25  
30 § 6550 (REVISED). “Exclusive use common area” ..... 25  
31 § 6551 (NEW). “General notice” ..... 25  
32 § 6552 (REVISED). “Governing documents” ..... 26  
33 § 6553 (NEW). “Individual notice” ..... 26  
34 § 6554 (NEW). “Member” ..... 26  
35 § 6560 (NEW). “Person” ..... 26  
36 § 6562 (REVISED). “Planned development” ..... 26  
37 § 6564 (REVISED). “Separate interest” ..... 27  
38 § 6566 (UNCHANGED). “Stock cooperative” ..... 28  
39 CHAPTER 2. APPLICATION OF ACT ..... 28  
40 § 6580 (REVISED). Creation of common interest development ..... 28  
41 § 6582 (REVISED). Application of act ..... 28  
42 CHAPTER 3. GOVERNING DOCUMENTS ..... 29  
43 Article 1. General Provisions ..... 29  
44 § 6600 (NEW). Document authority ..... 29

1	§ 6602 (REVISED). Liberal construction of instruments .....	30
2	§ 6604 (UNCHANGED). Boundaries of units.....	30
3	§ 6606 (REVISED). Deletion of unlawful restrictive covenants .....	31
4	§ 6608 (REVISED). Deletion of declarant provisions in governing documents .....	31
5	§ 6610 (NEW). Correction of statutory cross-reference.....	33
6	Article 2. Declaration.....	33
7	§ 6614 (REVISED). Content of declaration.....	33
8	§ 6616 (REVISED). Amendment authorized.....	34
9	§ 6618 (REVISED). Amendment to extend term of declaration authorized.....	34
10	§ 6620 (REVISED). Amendment procedure.....	35
11	Article 3. Articles of Incorporation.....	36
12	§ 6622 (REVISED). Content of articles .....	36
13	Article 4. Condominium Plan .....	37
14	§ 6624 (REVISED). “Condominium plan” .....	37
15	§ 6626 (REVISED). Recordation of condominium plan .....	38
16	§ 6628 (REVISED). Amendment or revocation of condominium plan.....	38
17	CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS.....	39
18	Article 1. Ownership Rights and Interests.....	39
19	§ 6650 (REVISED). Ownership of common area.....	39
20	§ 6652 (REVISED). Appurtenant rights and easements.....	39
21	§ 6654 (REVISED). Access to separate interest property .....	39
22	Article 2. Restrictions on Transfers .....	40
23	§ 6656 (REVISED). Partition of condominium project .....	40
24	§ 6658 (REVISED). Lien for work performed in condominium project.....	41
25	Article 3. Transfer of Separate Interest .....	42
26	§ 6660 (UNCHANGED). Community apartment project .....	42
27	§ 6662 (REVISED). Condominium project .....	42
28	§ 6664 (REVISED). Planned development .....	42
29	§ 6666 (UNCHANGED). Stock cooperative .....	43
30	§ 6668 (REVISED). Transfer of exclusive use common area.....	43
31	§ 6670 (REVISED). Severability of interests.....	43
32	CHAPTER 4. PROPERTY USE AND MAINTENANCE .....	44
33	Article 1. Use of Separate Interest .....	44
34	§ 6700 (NEW). Application of article.....	44
35	§ 6702 (REVISED). Display of U.S. flag.....	44
36	§ 6704 (REVISED). Noncommercial sign .....	45
37	§ 6706 (REVISED). Pets .....	45
38	§ 6708 (REVISED). Television antenna or satellite dish .....	46
39	§ 6710 (REVISED). Marketing restriction.....	47
40	§ 6712 (REVISED). Low water-using plants.....	48
41	Article 2. Modification of Separate Interest.....	48
42	§ 6714 (REVISED). Improvements to separate interest.....	48
43	Article 3. Maintenance .....	49
44	§ 6716 (REVISED). Maintenance responsibility generally .....	49
45	§ 6718 (REVISED). Wood-destroying pests or organisms.....	50
46	§ 6720 (REVISED). Temporary removal of occupant to perform treatment of wood-	
47	destroying pests .....	51
48	§ 6722 (REVISED). Exclusive use communication wiring .....	51
49	CHAPTER 5. ASSOCIATION GOVERNANCE.....	52
50	Article 1. Association Existence and Powers.....	52
51	§ 6750 (REVISED). Association .....	52

1	§ 6752 (REVISED). Association powers .....	52
2	Article 2. Record Keeping .....	53
3	§ 6756 (NEW). Mailing-related requests .....	53
4	Article 3. Conflict of Interest .....	53
5	§ 6758 (REVISED). Interested director .....	53
6	Article 4. Government Assistance .....	54
7	§ 6760 (REVISED). Director training course .....	54
8	§ 6762 (REVISED). State registry .....	54
9	CHAPTER 6. ASSESSMENTS AND ASSESSMENT COLLECTION .....	56
10	Article 1. Establishment and Imposition of Assessments .....	56
11	§ 6800 (REVISED). Levy of assessment .....	56
12	§ 6804 (REVISED). Exemption from execution .....	56
13	Article 2. Assessment Payment and Delinquency .....	57
14	§ 6808 (REVISED). Assessment debt and delinquency .....	57
15	§ 6810 (REVISED). Payments .....	57
16	§ 6812 (REVISED). Pre-lien notice .....	58
17	§ 6814 (UNCHANGED). Notice of delinquent assessment .....	59
18	§ 6816 (REVISED). Lien priority .....	60
19	§ 6818 (UNCHANGED). Lien release .....	60
20	§ 6819 (REVISED). Procedural noncompliance .....	61
21	Article 3. Assessment Collection .....	61
22	§ 6820 (REVISED). Collection generally .....	61
23	§ 6822 (REVISED). Foreclosure .....	62
24	§ 6824 (REVISED). Limitations on authority to foreclose liens for monetary penalties	
25	and damage to the common area .....	62
26	§ 6826 (REVISED). Assignment or pledge .....	63
27	§ 6828 (NEW). Application of article .....	63
28	CHAPTER 7. INSURANCE AND LIABILITY .....	64
29	§ 6840 (REVISED). Limitation of member liability .....	64
30	CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT .....	65
31	Article 1. Disciplinary Action .....	65
32	§ 6850 (REVISED). Schedule of monetary penalties .....	65
33	§ 6854 (REVISED). No effect on authority of board .....	65
34	Article 4. Civil Actions .....	66
35	§ 6856 (UNCHANGED). Enforcement of governing documents .....	66
36	§ 6858 (REVISED). Standing .....	66
37	§ 6860 (UNCHANGED). Comparative fault .....	67
38	CHAPTER 9. CONSTRUCTION DEFECT LITIGATION .....	68
39	§ 6870 (REVISED). Actions for damages .....	68
40	§ 6874 (UNCHANGED). Notice of resolution .....	77
41	§ 6876 (REVISED). Notice of civil action .....	78
42	Uncodified (added). Operative date .....	78
43	CONFORMING REVISIONS .....	79
44	BUSINESS AND PROFESSIONS CODE .....	79
45	Bus. & Prof. Code § 10153.2 (amended). Course requirements for real estate broker	
46	license .....	79
47	Bus. & Prof. Code § 11003 (amended). “Planned development” .....	80
48	Bus. & Prof. Code § 11003.2 (amended). “Stock cooperative” .....	80
49	Bus. & Prof. Code § 11004 (amended). “Community apartment project” .....	80
50	Bus. & Prof. Code § 11004.5 (amended). Further definition of “subdivided lands” and	
51	“subdivision” .....	80

1	Bus. & Prof. Code § 23426.5 (amended). Tennis club .....	81
2	Bus. & Prof. Code § 23428.20 (amended). Further definition of “club” .....	82
3	CIVIL CODE .....	82
4	Civ. Code § 714 (amended). Unenforceability of restrictions on use of solar energy	
5	system.....	82
6	Civ. Code § 714.1 (amended). Permissible restrictions by common interest development	
7	association .....	84
8	Civ. Code § 782 (amended). Discriminatory provision in deed of real property .....	85
9	Civ. Code § 782.5 (amended). Revision of instrument to omit provision that restricts	
10	rights based on race or color .....	85
11	Civ. Code § 783 (amended). “Condominium” .....	86
12	Civ. Code § 783.1 (amended). Separate and correlative interests as interests in real	
13	property .....	86
14	Civ. Code § 1098 (amended). Transfer fee defined .....	86
15	Civ. Code § 1133 (amended). Sale or lease of subdivision lot subject to blanket	
16	encumbrance .....	87
17	Civ. Code § 1633.3 (amended). Transactions governed by title .....	88
18	Civ. Code § 2924b (amended). Request for copy of notice of default or sale .....	89
19	Civ. Code § 2955.1 (amended). Disclosures regarding earthquake insurance requirements .....	93
20	CODE OF CIVIL PROCEDURE.....	94
21	Code Civ. Proc. § 86, as it reads in 2010 Cal. Stat. ch. 697, § 21 (amended). Specific	
22	cases and proceedings that are limited civil cases.....	94
23	Code Civ. Proc. § 116.540 (amended). Participation by individuals other than plaintiff	
24	and defendant.....	96
25	GOVERNMENT CODE.....	98
26	Gov’t Code § 12191 (amended). Miscellaneous business entity filing fees .....	98
27	Gov’t Code § 12956.1 (amended). Restrictive covenant based on discriminatory grounds .....	99
28	Gov’t Code § 12956.2 (amended). Restrictive Covenant Modification .....	99
29	Gov’t Code § 53341.5 (amended). Lot, parcel, or unit of subdivision subject to special tax .....	101
30	Gov’t Code § 65008 (amended). Invalidity of discriminatory act .....	102
31	Gov’t Code § 66411 (amended). Local control of common interest developments and	
32	subdivision design and improvement.....	104
33	Gov’t Code § 66412 (amended). Application of Subdivision Map Act .....	105
34	Gov’t Code § 66424 (amended). Subdivision .....	108
35	Gov’t Code § 66427 (amended). Map of condominium, community apartment project, or	
36	stock cooperative project .....	108
37	Gov’t Code § 66452.10 (amended). Stock cooperative or community apartment project.....	109
38	Gov’t Code § 66475.2 (amended). Local transit facilities.....	110
39	HEALTH AND SAFETY CODE .....	111
40	Health & Safety Code § 13132.7 (amended). Fire retardant roof covering that meets	
41	building standards.....	111
42	Health & Safety Code § 19850 (amended). Filing of building plans .....	113
43	Health & Safety Code § 25400.22 (amended). Lien placed on contaminated property .....	114
44	Health & Safety Code § 25915.2 (amended). Publication and mailing of notice.....	117
45	Health & Safety Code § 33050 (amended). Legislative declaration of policy in	
46	undertaking community redevelopment projects .....	119
47	Health & Safety Code § 33435 (amended). Obligation of lessees and purchasers to refrain	
48	from discrimination .....	120
49	Health & Safety Code § 33436 (amended). Nondiscrimination and nonsegregation	
50	clauses .....	120
51	Health & Safety Code § 35811 (amended). Consideration of ethnicity, religion, sex,	
52	marital status, or national origin .....	122



1	Health & Safety Code § 37630 (amended). Equal opportunity .....	122
2	Health & Safety Code § 50955 (amended). Civil rights and equal employment	
3	opportunity .....	123
4	Health & Safety Code § 51602 (amended). Nondiscrimination in occupancy of housing .....	125
5	Health & Safety Code § 116048 (amended). Public swimming pool in common interest	
6	development.....	125
7	INSURANCE CODE.....	126
8	Ins. Code § 790.031 (amended). Application of Sections 790.034, 2071.1 and 10082.3 .....	126
9	REVENUE AND TAXATION CODE.....	126
10	Rev. & Tax. Code § 2188.6 (amended). Separate assessment of property divided into	
11	condominiums .....	126
12	VEHICLE CODE.....	127
13	Veh. Code § 21107.7 (amended). Private road not open to public use.....	127
14	Veh. Code § 22651 (amended). Circumstances in which removal of vehicle is permitted.....	128
15	Veh. Code § 22651.05 (amended). Removal of vehicle by trained volunteer in specified	
16	circumstances.....	132
17	Veh. Code § 22658 (amended). Removal of vehicle from private property by property	
18	owner.....	133
19	WATER CODE .....	141
20	Water Code § 13553 (amended). Recycled water.....	141
21	DISPOSITION OF EXISTING LAW .....	143



## PROPOSED LEGISLATION

1 **Civ. Code § 1373 (amended). Commercial or industrial common interest development**

2 SECTION 1. Section 1373 of the Civil Code is amended to read:

3 1373. (a) This title does not apply to a commercial or industrial common interest  
4 development, as defined in Section 6531.

5 **Comment.** Section 1373 is amended to make the provisions of the Davis-Stirling Common  
6 Interest Development Act inapplicable to an exclusively commercial or industrial common  
7 interest development, as defined in Section 6531. Many provisions of that act are continued and  
8 made applicable to exclusively commercial or industrial common interest developments by the  
9 Commercial and Industrial Common Interest Development Act, Part 5.5 (commencing with  
10 Section 6500) of Division 4. To determine whether that act continues a particular provision of the  
11 Davis-Stirling Common Interest Development Act, see *Commercial and Industrial Common*  
12 *Interest Developments*, \_\_ Cal. L. Revision Comm'n Reports \_\_ (201\_).

13 **Civ. Code §§ 6500-6876 (added). Commercial and industrial common interest developments**

14 SEC. \_\_\_\_. Part 5.5 (commencing with Section 6500) is added to Division 4 of  
15 the Civil Code to read:

16 **Note.** Each of the provisions below has a parenthetical description following the section  
17 number in its heading. The descriptions have the following meanings:

18 **(UNCHANGED).** A section with this description would continue existing law almost  
19 verbatim, to the extent that existing law presently applies to an exclusively commercial or  
20 industrial common interest development. Minor technical changes might be made to (1) correct a  
21 cross-reference to reflect the new number of the referenced provision, (2) add or modify  
22 subdivision or paragraph designators (e.g., unnumbered paragraphs might be designated as  
23 subdivisions), or (3) conform to technical stylistic conventions (e.g., to avoid use of the word  
24 “such” or the phrase “he or she”). If any of these changes are made, they will be clearly identified  
25 in the Comment following the section.

26 **(REVISED).** A section with this description would continue or restate existing law verbatim to  
27 the extent that existing law presently applies to an exclusively commercial or industrial common  
28 interest development, except as specifically indicated in the Comment and “Note” that follow the  
29 section. Changes made to a “(REVISED)” section may include the rewording of ambiguous or  
30 confusing language or minor substantive improvements to existing law. Any such changes will be  
31 expressly identified.

32 **(NEW).** A section with this description would be largely new. A boxed “Note” following the  
33 Comment will explain the purpose of the new section.

1                                   PART 5.5. COMMERCIAL  
2                                   AND INDUSTRIAL COMMON INTEREST  
3                                   DEVELOPMENTS

4                                   CHAPTER 1. GENERAL PROVISIONS

5                                   Article 1. Preliminary Provisions

6   **§ 6500 (NEW). Short title**

7       6500. This part shall be known and may be cited as the Commercial and  
8   Industrial Common Interest Development Act. In a provision of this part, the part  
9   may be referred to as the act.

10   **Comment.** Section 6500 is new.

11       Common interest developments in general are governed by the Davis-Stirling Common Interest  
12   Development Act. See Sections 1350-1378. However, common interest developments that are  
13   exclusively commercial or industrial were exempted from the provisions of that act by 2011 Cal.  
14   Stat. ch. \_\_\_\_\_. See Section 1373.

15       This part (Sections 6500-6876) was added to establish a separate body of law, largely based on  
16   provisions of the Davis-Stirling Common Interest Development Act, that would apply to and  
17   govern exclusively commercial or industrial common interest developments.

18       The Comments to the sections of this act identify sections of the Davis-Stirling Common  
19   Interest Development Act that are sources of the provisions of this act, and describe how each  
20   provision in this act compares with its source.

21   ☞ **Note.** Proposed Section 6500 would provide a short title for this part, to distinguish it from  
22   the Davis-Stirling Common Interest Development Act. It would also provide for simplified  
23   reference to the part as a whole.

24   **§ 6502 (REVISED). Effect of headings**

25       6502. Division, part, title, chapter, article, and section headings do not in any  
26   manner affect the scope, meaning, or intent of this act.

27   **Comment.** With respect to a commercial or industrial common interest development, Section  
28   6502 continues Section 1350.5 without change, except as indicated below.

29       The following nonsubstantive changes were made:

- 30       • “Article” has been added to the list of headings.  
31       • The last word of the sentence is replaced with “act.”

32       Section 6502 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam.  
33   Code § 5; Prob. Code § 4.

34       For further information, see Section 6500 Comment.

35   ☞ **Note.** Proposed Section 6502 would add “article” to the list of headings in existing Section  
36   1350.5. The omission of articles from that list appears to have been inadvertent.


37   **§ 6505 (NEW). Application of act**

38       6505. Nothing in the act that added this part shall be construed to invalidate a  
39   document prepared or action taken before January 1, 2014, if the document or

1 action was proper under the law governing common interest developments at the  
2 time that the document was prepared or the action was taken.

3 **Comment.** Section 6505 is new. It makes clear that any changes to former law made by  
4 enactment of this act shall not be construed to retroactively invalidate documents prepared or  
5 actions taken prior to the operative date of the act.

6 See also Section 6534 (“common interest development”).

7  **Note.** Proposed Section 6505 would make clear that any changes to former law made by  
8 enactment of this act are not intended to retroactively invalidate documents prepared or actions  
9 taken prior to the operative date of the act.

10 **§ 6510 (REVISED). Construction of zoning ordinance**

11 6510. Unless a contrary intent is clearly expressed, a local zoning ordinance is  
12 construed to treat like structures, lots, parcels, areas, or spaces in like manner  
13 regardless of the form of the common interest development.

14 **Comment.** With respect to a commercial or industrial common interest development, Section  
15 6510 continues Section 1372 without change, except as indicated below.

16 The following nonsubstantive change was made:

- 17 • A list of all of the types of common interest developments has been replaced with general  
18 language.

19 For further information, see Section 6500 Comment.

20 See also Section 6534 (“common interest development”).

21 **§ 6512 (NEW). Delivered to an association**

22 6512. (a) If a provision of this act requires that a document be delivered to an  
23 association, the document shall be delivered to the president or secretary of the  
24 association.

25 (b) A document delivered pursuant to this section may be delivered by any of  
26 the following methods:


27 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or  
28 overnight delivery by an express service carrier.

29 (2) By e-mail, facsimile, or other electronic means, if the association has  
30 assented to that method of delivery.

31 (3) By personal delivery, if the association has assented to that method of  
32 delivery. If the association accepts a document by personal delivery it shall  
33 provide a written receipt acknowledging delivery of the document.

34 **Comment.** Section 6512 is new. It provides a standard rule for delivery of a document to the  
35 association.

36 See also Section 6528 (“association”).

37  **Note.** Proposed Section 6512 is new. It would provide a clear rule for official communication  
38 with the association.

1 § 6514 (NEW). Individual notice

2 6514. (a) If a provision of this act requires that an association deliver a  
3 document by “individual delivery” or “individual notice,” the document shall be  
4 delivered to the member to be notified by one of the following methods:

5 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or  
6 overnight delivery by an express service carrier. The document shall be addressed  
7 to the recipient at the address last shown on the books of the association.


8 (2) E-mail, facsimile, or other electronic means, if the recipient has consented, in  
9 writing, to that method of delivery. The consent may be revoked, in writing, by the  
10 recipient.

11 (b) For the purposes of this section, an unrecorded provision of the governing  
12 documents providing for a particular method of delivery does not constitute  
13 agreement by a member to that method of delivery.

14 **Comment.** Section 6514 is new. It specifies acceptable methods for delivery of a notice to an  
15 individual member, as distinguished from a notice that is to be delivered to every member. See  
16 Section 6516 (general notice). The methods listed in subdivision (a) are drawn from Section  
17 1350.7(b)(2)-(3).

18 Subdivision (b) is drawn from Section 1350.7(d). It precludes use of electronic delivery  
19 methods when the recipient has not consented to use of those methods or has withdrawn such  
20 consent.

21 See also Sections 6528 (“association”), 6552 (“governing documents”), 6554 (“member”).

22  **Note.** Proposed Section 6514 is new. It is drawn from and generalizes much of the substance  
23 of existing Section 1350.7.

24 § 6516 (NEW). General notice

25 6516. (a) If a provision of this act requires “general delivery” or “general  
26 notice,” the document shall be provided by one or more of the following methods:

27 (1) Any method provided for delivery of an individual notice pursuant to Section  
28 6514.

29 (2) Inclusion in a billing statement, newsletter, or other document that is  
30 delivered by one of the methods provided in this section.

31 (3) Posting the printed document in a prominent location that is accessible to all  
32 members, if the location has been designated for the posting of general notices by  
33 the association.

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

37 (b) Notwithstanding subdivision (a), if a member requests to receive general  
38 notices by individual delivery, all general notices to that member, given under this  
39 section, shall be delivered pursuant to Section 6514.

40 **Comment.** Section 6516 is new. It specifies acceptable methods for delivery of a notice to the  
41 membership generally, as distinguished from a notice that is to be delivered to a specific member.  
42 See Section 6514 (individual notice). Nothing in this section prevents an association from using  
43 supplemental notice methods, such as posting on an Internet website, so long as one or more  
44 methods authorized by this section are also used.

1 Subdivision (b) reserves the right of any member, on request, to receive general notices by the  
2 delivery methods provided for delivery of an individual notice. Thus, in an association that posts  
3 general notices on a notice board in a prominent location pursuant to subdivision (a)(3),  
4 individual members would still have the right, on request, to receive those notices by mail.

5 See also Sections 6528 (“association”), 6554 (“member”).

6 **Note.** Proposed Section 6516 is new. It would enhance efficiency by allowing an association  
7 to “broadcast” notices of general interest, while reserving the right of individual members to  
8 receive those notices as individual notices on request.

9 **§ 6518 (NEW). Time and proof of delivery**

10 6518. (a) This section governs the delivery of a document pursuant to this act.

11 (b) If a document is delivered by mail, delivery is deemed to be complete on  
12 deposit into the United States mail.

13 (c) If a document is delivered by electronic means, delivery is complete at the  
14 time of transmission.

15 **Comment.** Section 6518 is new. Subdivision (b) is drawn from the second sentence of Section  
16 1350.7(b)(2).

17 Subdivision (c) is drawn from the second sentence of Section 1350.7(b)(3).

18 **Note.** Proposed Section 6518 is new. It would generalize the timing rules provided in existing  
19 Section 1350.7, so that they would apply to any notice delivered by the specified methods. This  
20 will provide greater certainty in resolving timing disputes.

21 **§ 6522 (NEW). Approved by majority of all members**

22 6522. If a provision of this act requires that an action be approved by a majority  
23 of all members, the action shall be approved or ratified by an affirmative vote of a  
24 majority of the votes entitled to be cast.

25 **Comment.** Section 6522 is new. It is added for drafting convenience. This section only  
26 governs an election conducted pursuant to a provision of this act (i.e., the Commercial and  
27 Industrial Common Interest Development Act). An election that is not required by this act would  
28 be governed by the association’s governing documents.

29 See also Section 6554 (“member”).

30 **Note.** Proposed Section 6522 is new. It would add guidance on the procedure for approval of  
31 a proposed action that must be approved “by a majority of all members.”

32 **§ 6524 (NEW). Approved by majority of quorum of members**

33 6524. If a provision of this act requires that an action be approved by a majority  
34 of a quorum of the members, the action shall be approved or ratified by an  
35 affirmative vote of a majority of the votes represented and voting at a duly held  
36 meeting at which a quorum is present, which affirmative votes also constitute a  
37 majority of the required quorum.

38 **Comment.** Section 6524 is new. It is added for drafting convenience. This section only  
39 governs an election conducted pursuant to a provision of this act (i.e., the Commercial and  
40 Industrial Common Interest Development Act). An election that is not required by this act would  
41 be governed by the association’s governing documents.

42 See also Section 6554 (“member”).

1 **Note.** Proposed Section 6524 is new. It would add guidance on the procedure for approval of  
2 a proposed action that must be approved “by a majority of a quorum of the members.”

3 Article 2. Definitions

4 **§ 6526 (REVISED). Application of definitions**

5 6526. The definitions in this article govern the construction of this act.

6 **Comment.** With respect to a commercial or industrial common interest development, Section  
7 6526 continues the substance of the introductory clause of Section 1351.

8 For further information, see Section 6500 Comment.

9 **Note.** Proposed Section 6526 recasts the introductory clause of Section 1351 to better fit  
10 within the new organization, without any substantive change in its meaning.

11 **§ 6528 (UNCHANGED). “Association”**

12 6528. “Association” means a nonprofit corporation or unincorporated  
13 association created for the purpose of managing a common interest development.

14 **Comment.** With respect to a commercial or industrial common interest development, Section  
15 6528 continues Section 1351(a) without change.

16 For further information, see Section 6500 Comment.

17 See also Section 6534 (“common interest development”).

18 **§ 6530 (NEW). “Board”**

19 6530. “Board” means the board of directors of the association.

20 **Comment.** Section 6530 is new.

21 See also Sections 6528 (“association”).

22 **Note.** Proposed Section 6530 is added for drafting convenience.

23 **§ 6531 (NEW). “Commercial or industrial common interest development”**

24 6531. A “commercial or industrial common interest development” means a  
25 common interest development that is limited to industrial or commercial uses by  
26 zoning or by a declaration of covenants, conditions, and restrictions that has been  
27 recorded in the official records of each county in which the common interest  
28 development is located.

29 **Comment.** Section 6531 is drawn from Section 1373(a). It is added for drafting convenience.

30 See also Section 6534 (“common interest development”).

31 **Note.** The Commission invites comment as to the adequacy of this definition of commercial  
32 or industrial common interest development.

33 **§ 6532 (REVISED). “Common area”**

34 6532. (a) “Common area” means the entire common interest development  
35 except the separate interests therein. The estate in the common area may be a fee,  
36 a life estate, an estate for years, or any combination of the foregoing.




1 (b) Notwithstanding subdivision (a), in a planned development described in  
2 subdivision (b) of Section 6562, the common area may consist of mutual or  
3 reciprocal easement rights appurtenant to the separate interests.

4 **Comment.** With respect to a commercial or industrial common interest development,  
5 subdivision (a) of Section 6532 continues the first two sentences of Section 1351(b) without  
6 change.

7 With respect to a commercial or industrial common interest development, subdivision (b)  
8 continues the substance of the third sentence of Section 1351(b), but restates it for clarity.

9 For further information, see Section 6500 Comment.

10 See also Sections 6534 (“common interest development”), 6562 (“planned development”),  
11 6564 (“separate interest”).

12  **Note.** Proposed Section 6532(b) would restate the third sentence of existing Section 1351(b),  
13 to improve its clarity without changing its meaning.

14 **§ 6534 (UNCHANGED). “Common interest development”**

15 6534. “Common interest development” means any of the following:

16 (a) A community apartment project.

17 (b) A condominium project.

18 (c) A planned development.

19 (d) A stock cooperative.

20 **Comment.** With respect to a commercial or industrial common interest development, Section  
21 6534 continues Section 1351(c) without change.

22 For further information, see Section 6500 Comment.


23 See also Sections 6536 (“community apartment project”), 6542 (“condominium project”), 6562  
24 (“planned development”), 6566 (“stock cooperative”).

25 **§ 6536 (UNCHANGED). “Community apartment project”**

26 6536. “Community apartment project” means a development in which an  
27 undivided interest in land is coupled with the right of exclusive occupancy of any  
28 apartment located thereon.

29 **Comment.** With respect to a commercial or industrial common interest development, Section  
30 6536 continues Section 1351(d) without change.


31 For further information, see Section 6500 Comment.

32  **Note.** The Commission invites comment on whether an exclusively commercial or industrial  
33 common interest development may be organized as a community apartment project.

34 **§ 6540 (NEW). “Condominium plan”**

35 6540. “Condominium plan” means a plan described in Section 6624.

36 **Comment.** Section 6540 is new. It is included for drafting convenience.

37  **Note.** Proposed Section 6540 is added for drafting convenience.

38 **§ 6542 (REVISED). “Condominium project”**

39 6542. (a) A “condominium project” means a real property development  
40 consisting of condominiums.

1 (b) A condominium consists of an undivided interest in common in a portion of  
2 real property coupled with a separate interest in space called a unit, the boundaries  
3 of which are described on a recorded final map, parcel map, or condominium plan  
4 in sufficient detail to locate all boundaries thereof. The area within these  
5 boundaries may be filled with air, earth, water, or fixtures, or any combination  
6 thereof, and need not be physically attached to land except by easements for  
7 access and, if necessary, support. The description of the unit may refer to (1)  
8 boundaries described in the recorded final map, parcel map, or condominium plan,  
9 (2) physical boundaries, either in existence, or to be constructed, such as walls,  
10 floors, and ceilings of a structure or any portion thereof, (3) an entire structure  
11 containing one or more units, or (4) any combination thereof.

12 (c) The portion or portions of the real property held in undivided interest may be  
13 all of the real property, except for the separate interests, or may include a  
14 particular three-dimensional portion thereof, the boundaries of which are described  
15 on a recorded final map, parcel map, or condominium plan. The area within these  
16 boundaries may be filled with air, earth, water, or fixtures, or any combination  
17 thereof, and need not be physically attached to land except by easements for  
18 access and, if necessary, support.

19 (d) An individual condominium within a condominium project may include, in  
20 addition, a separate interest in other portions of the real property.

21 **Comment.** With respect to a commercial or industrial common interest development, Section  
22 6542 continues Section 1351(f) without change, except as indicated below.

23 The following nonsubstantive changes were made:

- 24 • The section has been organized into subdivisions for ease of reference.
- 25 • In subdivision (a), a reference to a “development” is revised to refer to a “real property  
26 development.”
- 27 • Subdivisions (b) and (c) make clear that the contents of the area within the boundaries of  
28 a condominium may include “fixtures.”

29 For further information, see Section 6500 Comment.

30 See also Sections 6540 (“condominium plan”), 6564 (“separate interest”).

31 **§ 6544 (UNCHANGED). “Declarant”**

32 6544. “Declarant” means the person or group of persons designated in the  
33 declaration as declarant, or if no declarant is designated, the person or group of  
34 persons who sign the original declaration or who succeed to special rights,  
35 preferences, or privileges designated in the declaration as belonging to the signator  
36 of the original declaration.

37 **Comment.** With respect to a commercial or industrial common interest development, Section  
38 6544 continues Section 1351(g) without change.

39 For further information, see Section 6500 Comment.

40 See also Sections 6546 (“declaration”), 6560 (“person”).

41 **§ 6546 (REVISED). “Declaration”**

42 6546. “Declaration” means the document, however denominated, that contains  
43 the information required by Section 6614.

1 **Comment.** With respect to a commercial or industrial common interest development, Section  
2 6546 continues Section 1351(h) without change, except as indicated below.

3 The following nonsubstantive changes were made:

- 4 • The word “which” has been replaced with “that.”
- 5 • The cross-reference has been updated to reflect the new location of the referenced  
6 provision.


7 For further information, see Section 6500 Comment.

8 **§ 6548 (NEW). “Director”**

9 6548. “Director” means a natural person who serves on the board.

10 **Comment.** Section 6548 is new. It is added for drafting convenience.

11 See also Section 6530 (“board”).

12  **Note.** Proposed Section 6548 is added for drafting convenience.

13 **§ 6550 (REVISED). “Exclusive use common area”**

14 6550. (a) “Exclusive use common area” means a portion of the common area  
15 designated by the declaration for the exclusive use of one or more, but fewer than  
16 all, of the owners of the separate interests and which is or will be appurtenant to  
17 the separate interest or interests.

18 (b) Unless the declaration otherwise provides, any shutters, awnings, window  
19 boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes,  
20 and hardware incident thereto, screens and windows or other fixtures designed to  
21 serve a single separate interest, but located outside the boundaries of the separate  
22 interest, are exclusive use common area allocated exclusively to that separate  
23 interest.

24 (c) Notwithstanding the provisions of the declaration, internal and external  
25 telephone wiring designed to serve a single separate interest, but located outside  
26 the boundaries of the separate interest, are exclusive use common area allocated  
27 exclusively to that separate interest.

28 **Comment.** With respect to a commercial or industrial common interest development, Section  
29 6550 continues Section 1351(i) without change, except as indicated below.

30 The following nonsubstantive change was made:

- 31 • Several references to “common areas” are singularized.


32 For further information, see Section 6500 Comment.

33 See also Sections 6532 (“common area”), 6546 (“declaration”), 6564 (“separate interest”).

34 **§ 6551 (NEW). “General notice”**

35 6551. “General notice” means the delivery of a document pursuant to Section  
36 6516.

37 **Comment.** Section 6551 is new. It is added for drafting convenience.

38  **Note.** Proposed Section 6551 is added for drafting convenience.

1 § 6552 (REVISED). “Governing documents”

2 6552. “Governing documents” means the declaration and any other documents,  
3 such as bylaws, operating rules, articles of incorporation, or articles of association,  
4 which govern the operation of the common interest development or association.

5 **Comment.** With respect to a commercial or industrial common interest development, Section  
6 6552 continues Section 1351(j) without change, except as indicated below.

7 The following nonsubstantive change was made:

- 8 • The superfluous words “of the association” have not been continued.


9 For further information, see Section 6500 Comment.

10 See also Sections 6528 (“association”), 6534 (“common interest development”), 6546  
11 (“declaration”).

12 § 6553 (NEW). “Individual notice”

13 6553. “Individual notice” means the delivery of a document pursuant to Section  
14 6514.

15 **Comment.** Section 6553 is new. It is added for drafting convenience.


16  **Note.** Proposed Section 6553 is added for drafting convenience.

17 § 6554 (NEW). “Member”

18 6554. “Member” means an owner of a separate interest.

19 **Comment.** Section 6554 is new. It is added for drafting convenience.


20 See also Section 6564 (“separate interest”).

21  **Note.** Proposed Section 6554 is added for drafting convenience.

22 § 6560 (NEW). “Person”

23 6560. “Person” means a natural person, corporation, government or  
24 governmental subdivision or agency, business trust, estate, trust, partnership,  
25 limited liability company, association, or other entity.

26 **Comment.** Section 6560 is new. It is added for drafting convenience.

27  **Note.** Proposed Section 6560 is new. It reflects the standard statutory definition of “person”  
28 as including both natural persons and legal entities. See, e.g., Prob. Code § 56.

29 § 6562 (REVISED). “Planned development”

30 6562. “Planned development” means a real property development (other than a  
31 community apartment project, a condominium project, or a stock cooperative)  
32 having either or both of the following features:

33 (a) Common area that is owned either by an association or in common by the  
34 owners of the separate interests who possess appurtenant rights to the beneficial  
35 use and enjoyment of the common area.

36 (b) Common area and an association that maintains the common area with the  
37 power to levy assessments that may become a lien upon the separate interests in  
38 accordance with Article 2 (commencing with Section 6808) of Chapter 6.

1 **Comment.** With respect to a commercial or industrial common interest development, Section  
2 6562 continues the substance of Section 1351(k), except as indicated below.

3 The following nonsubstantive changes were made:

- 4 • In the introductory clause, the term “development” has been revised to read “real  
5 property development.”
- 6 • Subdivision (a) has been restated for clarity.
- 7 • Subdivision (b) has been restated for clarity and to update a cross-reference.

8 For further information, see Section 6500 Comment.

9 See also Sections 6528 (“association”), 6532 (“common area”), 6536 (“community apartment  
10 project”), 6542 (“condominium project”), 6564 (“separate interest”), 6566 (“stock cooperative”).

11 **Note.** Proposed Section 6562(b) replaces the existing reference in Section 1351(k) to  
12 “Section 1367 or 1367.1” with a reference to “Article 2 (commencing with Section 6808) of  
13 Chapter 6.” That reference encompasses all of the provisions of Sections 1367 and 1367.1 that  
14 this act makes applicable to an exclusively commercial or industrial common interest  
15 development under which an “assessment ... may become a lien.”

16 **§ 6564 (REVISED). “Separate interest”**

17 6564. (a) “Separate interest” has the following meanings:

18 (1) In a community apartment project, “separate interest” means the exclusive  
19 right to occupy an apartment, as specified in Section 6536.

20 (2) In a condominium project, “separate interest” means a separately owned  
21 unit, as specified in Section 6542.

22 (3) In a planned development, “separate interest” means a separately owned lot,  
23 parcel, area, or space.

24 (4) In a stock cooperative, “separate interest” means the exclusive right to  
25 occupy a portion of the real property, as specified in Section 6566.

26 (b) Unless the declaration or condominium plan, if any exists, otherwise  
27 provides, if walls, floors, or ceilings are designated as boundaries of a separate  
28 interest, the interior surfaces of the perimeter walls, floors, ceilings, windows,  
29 doors, and outlets located within the separate interest are part of the separate  
30 interest and any other portions of the walls, floors, or ceilings are part of the  
31 common area.

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

34 **Comment.** With respect to a commercial or industrial common interest development, Section  
35 6564 continues Section 1351(l) without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • In subdivision (a)(2), the term “individual unit” is replaced with “separately owned unit.”
- 38 • The last two unnumbered paragraphs of former Section 1351(l) are designated as  
39 subdivisions (b) and (c).
- 40 • Cross-references are updated to reflect the new location of referenced provisions.
- 41 • A reference to “common areas” is singularized.

42 For further information, see Section 6500 Comment.

43 See also Sections 6532 (“common area”), 6536 (“community apartment project”), 6540  
44 (“condominium plan”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned  
45 development”), 6566 (“stock cooperative”).


1 **§ 6566 (UNCHANGED). “Stock cooperative”**

2 6566. “Stock cooperative” means a development in which a corporation is  
3 formed or availed of, primarily for the purpose of holding title to, either in fee  
4 simple or for a term of years, improved real property, and all or substantially all of  
5 the shareholders of the corporation receive a right of exclusive occupancy in a  
6 portion of the real property, title to which is held by the corporation. The owners’  
7 interest in the corporation, whether evidenced by a share of stock, a certificate of  
8 membership, or otherwise, shall be deemed to be an interest in a common interest  
9 development and a real estate development for purposes of subdivision (f) of  
10 Section 25100 of the Corporations Code.

11 **Comment.** With respect to a commercial or industrial common interest development, Section  
12 6566 continues the first paragraph of Section 1351(m) without change.

13 For further information, see Section 6500 Comment.

14 See also Section 6534 (“common interest development”).

15  **Note.** The Commission invites comment on whether an exclusively commercial or industrial  
16 common interest development may be organized as a stock cooperative.

17 **CHAPTER 2. APPLICATION OF ACT**

18 **§ 6580 (REVISED). Creation of common interest development**

19 6580. Subject to Section 6582, this act applies and a common interest  
20 development is created whenever a separate interest coupled with an interest in the  
21 common area or membership in the association is, or has been, conveyed,  
22 provided all of the following are recorded:

23 (a) A declaration.

24 (b) A condominium plan, if any exists.

25 (c) A final map or parcel map, if Division 2 (commencing with Section 66410)  
26 of Title 7 of the Government Code requires the recording of either a final map or  
27 parcel map for the common interest development.

28 **Comment.** With respect to a commercial or industrial common interest development, Section  
29 6580 continues Section 1352 without change, except as indicated below.

30 The following nonsubstantive changes were made:

- 31 • The term “title” is replaced with “act.”
- 32 • A cross-reference is added to refer to Section 6582.

33 For further information, see Section 6500 Comment.

34 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest  
35 development”), 6540 (“condominium plan”), 6546 (“declaration”), 6564 (“separate interest”).

36 **§ 6582 (REVISED). Application of act**

37 6582. (a) This act applies only to a commercial or industrial common interest  
38 development.

39 (b) Nothing in this act may be construed to apply to a real property development  
40 that does not contain common area. This subdivision is declaratory of existing law.

1 **Comment.** Subdivision (a) of Section 6582 is consistent with Section 1373 as that section  
2 provided prior to the enactment of 2012 Cal. Stat. ch. \_\_\_\_, except that the act that added this  
3 section makes the following provisions of the Davis-Stirling Common Interest Development Act  
4 inapplicable to a commercial or industrial common interest development: Section 1350.7, the  
5 second paragraph of Section 1351(d), the provisions of Section 1353 that require notice if a  
6 development is within an airport influence area or within the jurisdiction of the San Francisco  
7 Bay Conservation and Development Commission, Section 1353.7, a portion of Section 1355(b), a  
8 portion of Section 1357(b)-(c), Sections 1363(d), (e), (f), (h), and (i), Section 1363.03, Section  
9 1363.04, Section 1363.05, Section 1363.07, Section 1363.09, Section 1363.1, Sections 1363.810  
10 through 1363.850, Section 1363.2, Section 1365.1, Section 1365.2, Section 1365.2.5, Section  
11 1365.7, the last two sentences of Section 1366(a), Section 1366(d), Section 1366(e), Section  
12 1366.2, Section 1367.1(c), Section 1367.1(n), Section 1367.4, Section 1367.5, Section 1367.6,  
13 and Sections 1369.510 through 1369.590.

14 A common interest development is created as provided in Section 6580.

15 With respect to a commercial or industrial common interest development, subdivision (b)  
16 continues Section 1374 without change, except as indicated below.

17 The following nonsubstantive changes were made:

- 18 • The term “title” is replaced with “act.”
- 19 • The phrase “wherein there does not exist” has been restated for clarity.

20 For further information, see Section 6500 Comment.

21 See also Sections 6532 (“common area”), 6534 (“common interest development”).

22 **Note.** This proposed legislation is intended to apply only to a CID that is exclusively  
23 commercial or industrial (i.e., that does not contain any residential separate interests). Mixed use  
24 developments would continue to be governed by the existing Davis-Stirling act. That rule is  
25 expressed in proposed Section 6582(a) and in proposed Section 6531, which defines “commercial  
26 or industrial common interest development” using language drawn from existing Section 1373.

27 The Commission invites comment on whether there are any problems with that approach. For  
28 example, are there any scenarios in which the proposed definition of “commercial or industrial  
29 common interest development” might include a development that has one or more residential  
30 separate interests? If so, suggestions for how to eliminate that possibility are invited.

## 31 CHAPTER 3. GOVERNING DOCUMENTS

### 32 Article 1. General Provisions

#### 33 § 6600 (NEW). Document authority

34 6600. (a) The governing documents may not include a provision that is  
35 inconsistent with the law. To the extent of any inconsistency between the  
36 governing documents and the law, the law controls.

37 (b) The articles of incorporation may not include a provision that is inconsistent  
38 with the declaration. To the extent of any inconsistency between the articles of  
39 incorporation and the declaration, the declaration controls.

40 (c) The bylaws may not include a provision that is inconsistent with the  
41 declaration or the articles of incorporation. To the extent of any inconsistency  
42 between the bylaws and the articles of incorporation or declaration, the articles of  
43 incorporation or declaration control.

1 (d) The operating rules may not include a provision that is inconsistent with the  
2 declaration, articles of incorporation, or bylaws. To the extent of any inconsistency  
3 between the operating rules and the bylaws, articles of incorporation, or  
4 declaration, the bylaws, articles of incorporation, or declaration control.

5 **Comment.** Subdivisions (a) and (b) of Section 6600 are new.

6 Subdivision (c) is consistent with Corporations Code Section 7151(c) providing that the bylaws  
7 shall be consistent with the articles of incorporation.

8 Subdivision (d) is drawn from Section 1357.110 providing that an operating rule may not be  
9 inconsistent with the declaration, articles of incorporation, or bylaws of the association.

10 See also Sections 6546 (“declaration”), 6552 (“governing documents”).

11 **Note.** Proposed Section 6600 is new. Subdivision (a) would make clear that an association’s  
12 governing documents are subordinate to the law and are not enforceable to the extent they are  
13 contradicted by the law. Subdivisions (b), (c), and (d) would provide guidance in resolving  
14 conflicts between different governing documents.

15 **§ 6602 (REVISED). Liberal construction of instruments**

16 6602. Any deed, declaration, or condominium plan for a common interest  
17 development shall be liberally construed to facilitate the operation of the common  
18 interest development, and its provisions shall be presumed to be independent and  
19 severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of  
20 Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the  
21 governing documents.

22 **Comment.** With respect to a commercial or industrial common interest development, Section  
23 6602 continues Section 1370 without change, except as indicated below.

24 The following nonsubstantive changes were made:

- 25 • “This division” has been replaced with “Division 2.”
- 26 • The phrase “of a common interest development” has not been continued.

27 For further information, see Section 6500 Comment.

28 See also Sections 6534 (“common interest development”), 6540 (“condominium plan”), 6546  
29 (“declaration”), 6552 (“governing documents”).

30 **§ 6604 (UNCHANGED). Boundaries of units**

31 6604. In interpreting deeds and condominium plans, the existing physical  
32 boundaries of a unit in a condominium project, when the boundaries of the unit are  
33 contained within a building, or of a unit reconstructed in substantial accordance  
34 with the original plans thereof, shall be conclusively presumed to be its boundaries  
35 rather than the metes and bounds expressed in the deed or condominium plan, if  
36 any exists, regardless of settling or lateral movement of the building and  
37 regardless of minor variance between boundaries shown on the plan or in the deed  
38 and those of the building.

39 **Comment.** With respect to a commercial or industrial common interest development, Section  
40 6604 continues Section 1371 without change.

41 For further information, see Section 6500 Comment.

42 See also Sections 6540 (“condominium plan”), 6542 (“condominium project”).



1 **Note.** The Commission has received comment suggesting that Section 1371 is inadequate to  
2 address some situations. The Commission invites further comment on this issue and particularly  
3 invites specific suggestions for how the language of proposed Section 6604 should be changed to  
4 address any problems with the scope of the section.

5 **§ 6606 (REVISED). Deletion of unlawful restrictive covenants**

6 6606. (a) No declaration or other governing document shall include a restrictive  
7 covenant in violation of Section 12955 of the Government Code.

8 (b) Notwithstanding any other provision of law or provision of the governing  
9 documents, the board, without approval of the members, shall amend any  
10 declaration or other governing document that includes a restrictive covenant  
11 prohibited by this section to delete the restrictive covenant, and shall restate the  
12 declaration or other governing document without the restrictive covenant but with  
13 no other change to the declaration or governing document.

14 (c) If the declaration is amended under this section, the board shall record the  
15 restated declaration in each county in which the common interest development is  
16 located. If the articles of incorporation are amended under this section, the board  
17 shall file a certificate of amendment with the Secretary of State pursuant to  
18 Section 7814 of the Corporations Code.

19 (d) If after providing written notice to an association, pursuant to Section 6512,  
20 requesting that the association delete a restrictive covenant that violates  
21 subdivision (a), and the association fails to delete the restrictive covenant within  
22 30 days of receiving the notice, the Department of Fair Employment and Housing,  
23 a city or county in which a common interest development is located, or any person  
24 may bring an action against the association for injunctive relief to enforce  
25 subdivision (a). The court may award attorney's fees to the prevailing party.

26 **Comment.** With respect to a commercial or industrial common interest development, Section  
27 6606 continues Section 1352.5 without change, except as indicated below.

28 The following nonsubstantive changes were made:

- 29 • Subdivision (b) is revised to replace the term “board of directors of an association” with  
30 the defined term “board.” See Section 6530 (“board” defined).
- 31 • Subdivision (b) is revised to replace “owners” with “members.” See Section 6554  
32 (“member” defined).
- 33 • Subdivision (c) is added.
- 34 • Subdivision (d) is revised to include a reference to the provision governing notice to an  
35 association (Section 6512).

36 For further information, see Section 6500 Comment.

37 See also Sections 6528 (“association”), 6530 (“board”), 6534 (“common interest  
38 development”), 6546 (“declaration”), 6552 (“governing documents”), 6560 (“person”).

39 **Note.** Proposed Section 6606(c) is added to require that a governing document that is in the  
40 public record be publicly updated to reflect an amendment made pursuant to this section.

41 **§ 6608 (REVISED). Deletion of declarant provisions in governing documents**

42 6608. (a) Notwithstanding any provision of the governing documents to the  
43 contrary, the board may, after the developer has completed construction of the

1 development, has terminated construction activities, and has terminated marketing  
2 activities for the sale, lease, or other disposition of separate interests within the  
3 development, adopt an amendment deleting from any of the governing documents  
4 any provision which is unequivocally designed and intended, or which by its  
5 nature can only have been designed or intended, to facilitate the developer in  
6 completing the construction or marketing of the development. However,  
7 provisions of the governing documents relative to a particular construction or  
8 marketing phase of the development may not be deleted under the authorization of  
9 this subdivision until that construction or marketing phase has been completed.

10 (b) The provisions which may be deleted by action of the board shall be limited  
11 to those which provide for access by the developer over or across the common  
12 area for the purposes of (1) completion of construction of the development, and (2)  
13 the erection, construction, or maintenance of structures or other facilities designed  
14 to facilitate the completion of construction or marketing of separate interests.

15 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board  
16 shall deliver to all members, by individual delivery pursuant to Section 6514, (1) a  
17 copy of all amendments to the governing documents proposed to be adopted under  
18 subdivision (a), and (2) a notice of the time, date, and place the board will consider  
19 adoption of the amendments. The board may consider adoption of amendments to  
20 the governing documents pursuant to subdivision (a) only at a meeting that is open  
21 to all members, who shall be given opportunity to make comments thereon. All  
22 deliberations of the board on any action proposed under subdivision (a) shall only  
23 be conducted in an open meeting.

24 (d) The board may not amend the governing documents pursuant to this section  
25 without the approval of a majority of a quorum of the members, pursuant to  
26 Section 6524. For the purposes of this section, “quorum” means more than 50  
27 percent of the members who own no more than two separate interests in the  
28 development.

29 **Comment.** With respect to a commercial or industrial common interest development, Section  
30 6608 continues Section 1355.5 without change, except as indicated below.

31 The following substantive change was made:

- 32 • Subdivision (c) is revised to provide for individual delivery of the specified notice. See  
33 Section 6514.

34 The following nonsubstantive changes were made:

- 35 • The phrase “his or her” is not continued in subdivision (a).
- 36 • The phrase “of a common interest development” has not been continued in subdivision  
37 (a).
- 38 • The terms “board of directors” and “board of directors of the association” are replaced  
39 throughout with the defined term “board.” See Section 6530 (“board” defined).
- 40 • Subdivision (b) has been revised to use numerals to number the listed items, rather than  
41 letters.
- 42 • Subdivisions (c) and (d) are revised to use the defined term “member.” See Section 6554  
43 (“member” defined).
- 44 • Subdivision (c) is revised to delete the unnecessary word “such.”
- 45 • Subdivision (c) is revised to replace “which” with “that.”

- Subdivision (d) is revised to use the standard term “approval of a majority of a quorum of the members.” See Section 6524.

For further information, see Section 6500 Comment.

See also Sections 6530 (“board”), 6532 (“common area”), 6552 (“governing documents”), 6564 (“separate interest”).

**§ 6610 (NEW). Correction of statutory cross-reference**

6610. (a) Notwithstanding any other provision of law or provision of the governing documents, if the governing documents include a reference to a provision of the Davis Stirling Common Interest Development Act that was continued in a new provision by the act that added this section, the board may amend the governing documents, solely to correct the cross-reference, by adopting a board resolution that shows the correction.

(b) A declaration that is corrected under this section may be restated in corrected form and recorded, provided that a copy of the board resolution authorizing the corrections is recorded along with the restated declaration.

**Comment.** Section 6610 is new. It is intended to provide a simplified method to correct statutory cross-references in an association’s governing documents that are required as a result of the enactment of the act that added this section. No other amendment can be made under this section.

See also Sections 6530 (“board”), 6552 (“governing documents”).

**Note.** Proposed Section 6610 is new. It would provide a simplified method to update statutory cross-references to reflect changes made by the proposed law. This would reduce the transitional complications resulting from the enactment of this act.

**Article 2. Declaration**

**§ 6614 (REVISED). Content of declaration**

6614. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal description of the common interest development, and a statement that the common interest development is a community apartment project, condominium project, planned development, stock cooperative, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.

(b) The declaration may contain any other matters the declarant or the members consider appropriate.

**Comment.** With respect to a commercial or industrial common interest development, subdivision (a) of Section 6614 continues the first two sentences of Section 1353(a)(1) without change.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1353(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

- The defined term “declarant” is used in place of “original signator of the declaration.” See Section 6544 (“declarant”).

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6534 (“common interest development”), 6536 (“community apartment project”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6566 (“stock cooperative”).

**Note.** Proposed Section 6614(b) would use the defined term “declarant” in place of “original signator of the declaration.” That would seem to be a slight substantive change, as the existing language could be read to apply only to the *original* declarant (as opposed to any successor declarant). However, the staff does not see any good policy reason to preclude a successor declarant, who may own a large percentage of the separate interests within a CID, from having a say as to what is appropriate for inclusion in the declaration. The Commission invites comment on whether the proposed change would cause any problems.

#### § 6616 (REVISED). Amendment authorized

6616. Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration that fails to include provisions permitting its amendment at all times during its existence may be amended at any time.

**Comment.** With respect to a commercial or industrial common interest development, Section 6616 continues the first sentence of Section 1355(b) without change, except as indicated below.

The following nonsubstantive change was made:

- The term “which” is replaced with “that.”

For further information, see Section 6500 Comment.

See also Section 6546 (“declaration”).

**Note.** Proposed Section 6616 continues the authority to amend a declaration that is silent as to whether it may be amended, but does not continue the procedure specified for doing so. Instead, the amendment would be made using the general procedure for amending a declaration, which is provided in proposed Section 6620.

#### § 6618 (REVISED). Amendment to extend term of declaration authorized

6618. (a) The Legislature finds that there are common interest developments that have been created with deed restrictions that do not provide a means for the members to extend the term of the declaration. The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method for protecting the common plan of developments and to provide for a mechanism for financial support for the upkeep of common area including, but not limited to, roofs, roads, heating systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the supply of affordable units could be impacted adversely. The Legislature further finds and declares that it is in the public interest to provide a vehicle for extending the term of the declaration if the extension is approved by a majority of all members, pursuant to Section 6522.

1 (b) A declaration that specifies a termination date, but that contains no provision  
2 for extension of the termination date, may be extended, before its termination date,  
3 by the approval of members pursuant to Section 6620.

4 (c) No single extension of the terms of the declaration made pursuant to this  
5 section shall exceed the initial term of the declaration or 20 years, whichever is  
6 less. However, more than one extension may occur pursuant to this section.

7 **Comment.** With respect to a commercial or industrial common interest development,  
8 subdivision (a) of Section 6618 continues Section 1357(a) without change, except as indicated  
9 below.

10 The following nonsubstantive changes were made:

- 11 • The defined term “member” is used. See Section 6554 (“member”).
- 12 • A reference to “common areas” is singularized.
- 13 • The term “which” is replaced with “that.”
- 14 • A reference to approval by “members having more than 50 percent of the votes in the  
15 association” is replaced with standard terminology.
- 16 • A reference to “housing” is deleted.

17 With respect to a commercial or industrial common interest development, subdivision (b)  
18 continues part of the substance of Section 1357(b), authorizing extension of the termination date  
19 of a declaration that does not provide for extension of the termination date, except as indicated  
20 below.

21 The following nonsubstantive change was made:

- 22 • Language has been added to make clear that the extension must occur before the  
23 termination date.

24 The procedure for extension of the termination date provided in Section 1357(b)-(c) is not  
25 continued. An extension would instead be made pursuant to the general procedure for amendment  
26 of a declaration. See Section 6620.

27 With respect to a commercial or industrial common interest development, subdivision (c)  
28 continues Section 1357(d) without change.

29 For further information, see Section 6500 Comment.

30 See also Sections 6532 (“common area”), 6534 (“common interest development”), 6546  
31 (“declaration”), 6554 (“member”).

32 **Note.** Proposed Section 6618 continues the authority to amend a declaration to extend its  
33 term, but does not continue the procedure specified for doing so. Instead, the extension would be  
34 made using the general procedure for amending a declaration, which is provided in proposed  
35 Section 6620.

36 **§ 6620 (REVISED). Amendment procedure**

37 6620. (a) A declaration may be amended pursuant to the declaration or this act.  
38 An amendment is effective after all of the following requirements have been met:

39 (1) The proposed amendment has been delivered by individual notice to all  
40 members not less than 15 days and not more than 60 days prior to any approval  
41 being solicited.

42 (2) The amendment has been approved by the percentage of members required  
43 by the declaration and any other person whose approval is required by the  
44 declaration.

1 (3) That fact has been certified in a writing executed and acknowledged by the  
2 officer designated in the declaration or by the association for that purpose, or if no  
3 one is designated, by the president of the association.

4 (4) The amendment has been recorded in each county in which a portion of the  
5 common interest development is located.

6 (b) If the declaration does not specify the percentage of members who must  
7 approve an amendment of the declaration, an amendment may be approved by a  
8 majority of all members, pursuant to Section 6522.

9 **Comment.** With respect to a commercial or industrial common interest development,  
10 subdivision (a) of Section 6620 continues Section 1355(a) without change, except as indicated  
11 below.

12 The following substantive changes were made:

- 13 • A notice requirement drawn from Section 1355(b) is added.
- 14 • References to the “governing documents” have been replaced with references to the  
15 declaration.
- 16 • Paragraph (a)(2) is revised to recognize that a declaration may require that an amendment  
17 be approved of a non-member.

18 The following nonsubstantive changes were made:

- 19 • The first word is replaced with “a.”
- 20 • The term “title” is replaced with “act.”
- 21 • A reference to a statutory exception that is not continued in this act is deleted.
- 22 • The defined term “member” is used. See Section 6554 (“member” defined).
- 23 • The subdivision has been divided into paragraphs, with conforming technical adjustments  
24 to the language.

25 Subdivision (b) generalizes a rule stated in Sections 1355(b) and 1357.

26 For further information, see Section 6500 Comment.

27 See also Sections 6528 (“association”), 6534 (“common interest development”), 6546  
28 (“declaration”), 6553 (“individual notice”), 6554 (“member”).

29 **Note.** Proposed Section 6620(b) would provide a default rule on member approval of an  
30 amendment where the governing documents are silent on the matter. That rule is drawn from  
31 Sections 1355(b) and 1357.

## 32 Article 3. Articles of Incorporation

### 33 § 6622 (REVISED). Content of articles

34 6622. (a) The articles of incorporation of an association filed with the Secretary  
35 of State on or after January 1, 1995, shall include a statement, which shall be in  
36 addition to the statement of purposes of the corporation, that does all of the  
37 following:

38 (1) Identifies the corporation as an association formed to manage a common  
39 interest development under the Commercial and Industrial Common Interest  
40 Development Act.

41 (2) States the business or corporate office of the association, if any, and, if the  
42 office is not on the site of the common interest development, states the nine-digit

1 ZIP Code, front street, and nearest cross street for the physical location of the  
2 common interest development.

3 (3) States the name and address of the association’s managing agent, if any.

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

8 **Comment.** With respect to a commercial or industrial common interest development, Section  
9 6622 continues Section 1363.5 without change, except as indicated below.

10 The following substantive change was made:

- 11 • A reference to this act is substituted for a reference to the Davis Stirling Common Interest  
12 Development Act.

13 The following nonsubstantive changes were made:

- 14 • A cross-reference to the definition of “managing agent” has not been continued.
- 15 • The term “common interest development association” is replaced with “association.”

16 For further information, see Section 6500 Comment.

17 See also Corp. Code §§ 1502 (annual statement), 7130-7135 (content of articles of  
18 incorporation), 7810-7820 (amendment of articles of incorporation), 7150-7153 (content and  
19 amendment of bylaws).

20 See also Sections 6528 (“association”), 6534 (“common interest development”).

## 21 Article 4. Condominium Plan

### 22 § 6624 (REVISED). “Condominium plan”

23 6624. A condominium plan shall contain all of the following:

24 (a) A description or survey map of a condominium project, which shall refer to  
25 or show monumentation on the ground.

26 (b) A three-dimensional description of a condominium project, one or more  
27 dimensions of which may extend for an indefinite distance upwards or  
28 downwards, in sufficient detail to identify the common area and each separate  
29 interest.

30 (c) A certificate consenting to the recordation of the condominium plan pursuant  
31 to this act that is signed and acknowledged as provided in Section 6626.

32 **Comment.** With respect to a commercial or industrial common interest development, Section  
33 6624 continues Section 1351(e)(1)-(2) and a part of Section 1351(e)(3) without change, except as  
34 indicated below.

35 The following nonsubstantive changes were made:

- 36 • The enumerated items are set out as subdivisions.
- 37 • A reference to “this title” has been changed to “this act.”
- 38 • The list of persons who must sign and acknowledge the certificate consenting to  
39 recordation of the condominium plan has been replaced with a reference to the section  
40 governing the creation and recordation of a condominium plan.

41 For further information, see Section 6500 Comment.

42 See also Sections 6532 (“common area”), 6542 (“condominium project”), 6564 (“separate  
43 interest”).

1 **§ 6626 (REVISED). Recordation of condominium plan**

2 6626. (a) The certificate consenting to the recordation of a condominium plan  
3 that is required by subdivision (c) of Section 6624 shall be signed and  
4 acknowledged by all of the following persons:

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

7 (2) In the case of a condominium project that will terminate upon the  
8 termination of an estate for years, by all lessors and lessees of the estate for years.

9 (3) In the case of a condominium project subject to a life estate, by all life  
10 tenants and remainder interests.

11 (4) The trustee or the beneficiary of each recorded deed of trust, and the  
12 mortgagee of each recorded mortgage encumbering the property.

13 (b) Owners of mineral rights, easements, rights-of-way, and other nonpossessory  
14 interests do not need to sign the certificate.

15 (c) In the event a conversion to condominiums of a community apartment  
16 project or stock cooperative has been approved by the required number of owners,  
17 trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the  
18 Government Code, the certificate need only be signed by those owners, trustees,  
19 beneficiaries, and mortgagees approving the conversion.

20 **Comment.** With respect to a commercial or industrial common interest development, Section  
21 6626 continues the substance of Section 1351(e)(3), except as indicated below.

22 The following nonsubstantive changes were made:

- 23 • The last paragraph of Section 1351(e) is not continued in this section.
- 24 • A cross-reference to Section 6624(c) is added to the first paragraph.
- 25 • Subdivision (b) is revised to make clear that it states an exception to who must sign the  
26 certificate of consent to recordation, rather than the condominium plan itself.

27 For further information, see Section 6500 Comment.

28 See also Sections 6536 (“community apartment project”), 6540 (“condominium plan”), 6542  
29 (“condominium project”), 6560 (“person”), 6566 (“stock cooperative”).

30 **Note.** Proposed Section 6626 would restate the procedural provisions of existing Section  
31 1351(e)(3). Doing so necessitates a number of minor nonsubstantive language revisions.

32 **§ 6628 (REVISED). Amendment or revocation of condominium plan**

33 6628. A condominium plan may be amended or revoked by a recorded  
34 instrument that is acknowledged and signed by all the persons who, at the time of  
35 amendment or revocation, are persons whose signatures are required under Section  
36 6626.

37 **Comment.** With respect to a commercial or industrial common interest development, Section  
38 6628 continues the last paragraph of Section 1351(e) without change, except as indicated below.

39 The following nonsubstantive change was made:

- 40 • Language is added to make clear that the persons whose signatures are required for  
41 amendment or revocation of a condominium plan are the persons who fall within the  
42 groups described in Section 6626 at the time of amendment or revocation.

43 For further information, see Section 6500 Comment.

44 See also Sections 6540 (“condominium plan”), 6560 (“person”).



**Note.** Proposed Section 6628 is revised to make its meaning more clear, as described in the Comment following the section.

## CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS

### Article 1. Ownership Rights and Interests

#### § 6650 (REVISED). Ownership of common area

6650. Unless the declaration otherwise provides, in a condominium project, or in a planned development in which the common area is owned by the owners of the separate interests, the common area is owned as tenants in common, in equal shares, one for each separate interest.

**Comment.** With respect to a commercial or industrial common interest development, Section 6650 continues Section 1362 without change, except as indicated below.

The following nonsubstantive changes were made:

- The references to “common areas” are singularized.
- The phrase “unit or lot” is replaced with the defined term “separate interest.”

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6564 (“separate interest”).

#### § 6652 (REVISED). Appurtenant rights and easements

6652. Unless the declaration otherwise provides:

(a) In a community apartment project and condominium project, and in those planned developments with common area owned in common by the owners of the separate interests, there are appurtenant to each separate interest nonexclusive rights of ingress, egress, and support, if necessary, through the common area. The common area is subject to these rights.

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

**Comment.** With respect to a commercial or industrial common interest development, Section 6652 continues Section 1361 without change, except as indicated below.

The following nonsubstantive change was made:

- The references to “common areas” are singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6536 (“community apartment project”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6564 (“separate interest”), 6566 (“stock cooperative”).

#### § 6654 (REVISED). Access to separate interest property

6654. Except as otherwise provided in law, an order of the court, or an order pursuant to a final and binding arbitration decision, an association may not deny a

1 member or occupant physical access to the member's or occupant's separate  
2 interest, either by restricting access through the common area to the separate  
3 interest, or by restricting access solely to the separate interest.

4 **Comment.** With respect to a commercial or industrial common interest development, Section  
5 6654 continues Section 1361.5 without change, except as indicated below.

6 The following nonsubstantive changes were made:

- 7 • The phrase "his or her" has been replaced with "the member's or occupant's."
- 8 • References to the "owner's" separate interest have been revised to omit the word  
9 "owner's." This will help to avoid any implication that the reference does not also apply  
10 to an "occupant" of a separate interest.
- 11 • The defined term "member" is used in place of "owner" throughout. See Section 6554  
12 ("member").
- 13 • The references to "common areas" is singularized.

14 For further information, see Section 6500 Comment.

15 See also Sections 6528 ("association"), 6532 ("common area"), 6564 ("separate interest").

16 **Note.** Although it is clear that Section 1361.5 is intended to protect both owners and  
17 occupants of separate interests, that section twice refers to the "owner's separate interest,"  
18 without any reference to an occupant. That could create the impression that the Legislature  
19 intended to draw some sort of distinction between owners and occupants, which the staff does not  
20 believe to be the case. Proposed Section 6654 would adjust the language of Section 1361.5 to  
21 avoid that implication. Note also that the defined term "member" is used in place of "owner"  
22 throughout.

## 23 Article 2. Restrictions on Transfers

### 24 § 6656 (REVISED). Partition of condominium project

25 6656. (a) Except as provided in this section, the common area in a condominium  
26 project shall remain undivided, and there shall be no judicial partition thereof.  
27 Nothing in this section shall be deemed to prohibit partition of a cotenancy in a  
28 condominium.

29 (b) The owner of a separate interest in a condominium project may maintain a  
30 partition action as to the entire project as if the owners of all of the separate  
31 interests in the project were tenants in common in the entire project in the same  
32 proportion as their interests in the common area. The court shall order partition  
33 under this subdivision only by sale of the entire condominium project and only  
34 upon a showing of one of the following:

35 (1) More than three years before the filing of the action, the condominium  
36 project was damaged or destroyed, so that a material part was rendered unfit for its  
37 prior use, and the condominium project has not been rebuilt or repaired  
38 substantially to its state prior to the damage or destruction.

39 (2) Three-fourths or more of the project is destroyed or substantially damaged  
40 and owners of separate interests holding in the aggregate more than a 50-percent  
41 interest in the common area oppose repair or restoration of the project.

1 (3) The project has been in existence more than 50 years, is obsolete and  
2 uneconomic, and owners of separate interests holding in the aggregate more than a  
3 50-percent interest in the common area oppose repair or restoration of the project.

4 (4) Any conditions in the declaration for sale under the circumstances described  
5 in this subdivision have been met.

6 **Comment.** With respect to a commercial or industrial common interest development, Section  
7 6656 continues Section 1359 without change, except as indicated below.

8 The following nonsubstantive changes were made:

- 9 • References to “common areas” are singularized.
- 10 • Subdivision (b)(4) is rephrased to avoid use of “such.”

11 For further information, see Section 6500 Comment.

12 See also Sections 6532 (“common area”), 6542 (“condominium project”), 6546  
13 (“declaration”), 6564 (“separate interest”).

14 **Note.** Proposed Section 6656(b)(4) would rephrase Section 1359(b)(4) to avoid use of the  
15 word “such,” which is strongly disfavored in statutory drafting. The Commission invites  
16 comment on whether the rephrasing would cause any substantive change in the meaning of the  
17 provision.

18 **§ 6658 (REVISED). Lien for work performed in condominium project**

19 6658. (a) In a condominium project, no labor performed or services or materials  
20 furnished with the consent of, or at the request of, an owner in the condominium  
21 project or the owners’ agent or contractor shall be the basis for the filing of a lien  
22 against any other property of any other owner in the condominium project unless  
23 that other owner has expressly consented to or requested the performance of the  
24 labor or furnishing of the materials or services. However, express consent shall be  
25 deemed to have been given by the owner of any condominium in the case of  
26 emergency repairs thereto.

27 (b) Labor performed or services or materials furnished for the common area, if  
28 duly authorized by the association, shall be deemed to be performed or furnished  
29 with the express consent of each condominium owner.

30 (c) The owner of any condominium may remove that owner’s condominium  
31 from a lien against two or more condominiums or any part thereof by payment to  
32 the holder of the lien of the fraction of the total sum secured by the lien that is  
33 attributable to the owner’s condominium.

34 **Comment.** With respect to a commercial or industrial common interest development, Section  
35 6658 continues Section 1369 without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • Subdivisions are added.
- 38 • The phrase “his or her” is replaced with references to the “owner” throughout.
- 39 • A reference to “common areas” is singularized.
- 40 • The word “which” is replaced with “that” in subdivision (c).

41 For further information, see Section 6500 Comment.

42 See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium  
43 project”).

Article 3. Transfer of Separate Interest

§ 6660 (UNCHANGED). Community apartment project

6660. 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.

**Comment.** With respect to a commercial or industrial common interest development, Section 6660 continues Section 1358(a) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6536 (“community apartment project”), 6564 (“separate interest”).

**Note.** The Commission invites comment on whether an exclusively commercial or industrial common interest development may be organized as a community apartment project, or whether this provision is unnecessary.

§ 6662 (REVISED). Condominium project

6662. In a condominium project the common area is not subject to partition, except as provided in Section 6656. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner’s entire estate also includes the owner’s membership interest in the association.

**Comment.** With respect to a commercial or industrial common interest development, Section 6662 continues Section 1358(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- References to “common areas” are singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium project”), 6564 (“separate interest”).

§ 6664 (REVISED). Planned development

6664. In a planned development, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area, if any exists. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner’s entire estate also includes the owner’s membership interest in the association.

**Comment.** With respect to a commercial or industrial common interest development, Section 6664 continues Section 1358(c) without change, except as indicated below.

The following nonsubstantive change was made:

- A reference to “common areas” is singularized.

For further information, see Section 6500 Comment.

1 See also Sections 6528 (“association”), 6532 (“common area”), 6562 (“planned  
2 development”), 6564 (“separate interest”).


3 **§ 6666 (UNCHANGED). Stock cooperative**

4 6666. In a stock cooperative, any conveyance, judicial sale, or other voluntary or  
5 involuntary transfer of the separate interest includes the ownership interest in the  
6 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary  
7 or involuntary transfer of the owner’s entire estate also includes the owner’s  
8 membership interest in the association.

9 **Comment.** With respect to a commercial or industrial common interest development, Section  
10 6666 continues Section 1358(d) without change.

11 For further information, see Section 6500 Comment.

12 See also Sections 6528 (“association”), 6564 (“separate interest”), 6566 (“stock cooperative”).

13  **Note.** The Commission invites comment on whether an exclusively commercial or industrial  
14 common interest development may be organized as a stock cooperative, or whether this provision  
15 is unnecessary.

16 **§ 6668 (REVISED). Transfer of exclusive use common area**

17 6668. Nothing in this article prohibits the transfer of exclusive use areas,  
18 independent of any other interest in a common interest subdivision, if  
19 authorization to separately transfer exclusive use areas is expressly stated in the  
20 declaration and the transfer occurs in accordance with the terms of the declaration.

21 **Comment.** With respect to a commercial or industrial common interest development, Section  
22 6668 continues the next to last paragraph of Section 1358 without change, except as indicated  
23 below.

24 The following nonsubstantive change was made:

- 25 • The term “section” is replaced with “article.”

26 For further information, see Section 6500 Comment.

27 See also Section 6546 (“declaration”).

28 **§ 6670 (REVISED). Severability of interests**

29 6670. Any restrictions upon the severability of the component interests in real  
30 property which are contained in the declaration shall not be deemed conditions  
31 repugnant to the interest created within the meaning of Section 711. However,  
32 these restrictions shall not extend beyond the period in which the right to partition  
33 a project is suspended under Section 6656.

34 **Comment.** With respect to a commercial or industrial common interest development, Section  
35 6670 continues the last paragraph of Section 1358 without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • A superfluous reference to the “Civil Code” is omitted.
- 38 • The cross-reference is updated to reflect the new location of the referenced provision.

39 For further information, see Section 6500 Comment.

40 See also Section 6546 (“declaration”).

1 CHAPTER 4. PROPERTY USE AND MAINTENANCE

2 Article 1. Use of Separate Interest

3 § 6700 (NEW). Application of article

4 6700. This article includes provisions that limit the authority of an association or  
5 the governing documents to regulate the use of a member’s separate interest.  
6 Nothing in this article is intended to affect the application of any other provision  
7 that limits the authority of an association to regulate the use of a member’s  
8 separate interest, including, but not limited to, the following provisions:

9 (a) Sections 712 and 713, relating to the display of signs.


10 (b) Sections 714 and 714.1, relating to solar energy systems.

11 (c) Section 714.5, relating to structures that are constructed offsite and moved to  
12 the property in sections or modules.

13 (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the  
14 Government Code, relating to racial restrictions.

15 **Comment.** Section 6700 is new. It provides a non-exclusive list of provisions outside of this  
16 act that limit the authority of an association to regulate separate interest property use.

17 See also Sections 6528 (“association”), 6552 (“governing documents”), 6554 (“member”),  
18 6564 (“separate interest”).

19  **Note.** Proposed Section 6700 is new. It introduces the article and lists other provisions that  
20 protect separate interest use rights.

21 § 6702 (REVISED). Display of U.S. flag

22 6702. (a) Except as required for the protection of the public health or safety, no  
23 declaration or other governing document shall limit or prohibit, or be construed to  
24 limit or prohibit, the display of the flag of the United States by a member on or in  
25 the member’s separate interest or within the member’s exclusive use common  
26 area.

27 (b) For purposes of this section, “display of the flag of the United States” means  
28 a flag of the United States made of fabric, cloth, or paper displayed from a staff or  
29 pole or in a window, and does not mean a depiction or emblem of the flag of the  
30 United States made of lights, paint, roofing, siding, paving materials, flora, or  
31 balloons, or any other similar building, landscaping, or decorative component.

32 (c) In any action to enforce this section, the prevailing party shall be awarded  
33 reasonable attorney’s fees and costs.

34 **Comment.** With respect to a commercial or industrial common interest development, Section  
35 6702 continues Section 1353.5 without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • A superfluous cross-reference to governing definitions is omitted.
- 38 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

39 For further information, see Section 6500 Comment.

40 See also Sections 6532 (“common area”), 6546 (“declaration”), 6550 (“exclusive use common  
41 area”), 6552 (“governing documents”), 6564 (“separate interest”).

1    **§ 6704 (REVISED). Noncommercial sign**

2       6704. (a) The governing documents may not prohibit posting or displaying of  
3 noncommercial signs, posters, flags, or banners on or in a member’s separate  
4 interest, except as required for the protection of public health or safety or if the  
5 posting or display would violate a local, state, or federal law.

6       (b) For purposes of this section, a noncommercial sign, poster, flag, or banner  
7 may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or  
8 displayed from the yard, window, door, balcony, or outside wall of the separate  
9 interest, but may not be made of lights, roofing, siding, paving materials, flora, or  
10 balloons, or any other similar building, landscaping, or decorative component, or  
11 include the painting of architectural surfaces.

12       (c) An association may prohibit noncommercial signs and posters that are more  
13 than nine square feet in size and noncommercial flags or banners that are more  
14 than 15 square feet in size.

15       **Comment.** With respect to a commercial or industrial common interest development, Section  
16 6704 continues Section 1353.6 without change, except as indicated below.

17       The following nonsubstantive changes were made:

- 18       • The redundant phrase “including the operating rules” is not continued.
- 19       • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- 20       • In subdivision (c), the numeral “9” was replaced with “nine” for stylistic reasons.

21       For further information, see Section 6500 Comment.

22       See also Sections 6528 (“association”), 6552 (“governing documents”), 6564 (“separate  
23 interest”).

24    **§ 6706 (REVISED). Pets**

25       6706. (a) No governing documents shall prohibit the owner of a separate interest  
26 within a common interest development from keeping at least one pet within the  
27 common interest development, subject to reasonable rules and regulations of the  
28 association. This section may not be construed to affect any other rights provided  
29 by law to an owner of a separate interest to keep a pet within the development.

30       (b) For purposes of this section, “pet” means any domesticated bird, cat, dog,  
31 aquatic animal kept within an aquarium, or other animal as agreed to between the  
32 association and the owner.

33       (c) If the association implements a rule or regulation restricting the number of  
34 pets an owner may keep, the new rule or regulation shall not apply to prohibit an  
35 owner from continuing to keep any pet that the owner currently keeps in the  
36 owner’s separate interest if the pet otherwise conforms with the previous rules or  
37 regulations relating to pets.

38       (d) For the purposes of this section, “governing documents” shall include, but  
39 are not limited to, the conditions, covenants, and restrictions of the common  
40 interest development, and the bylaws, rules, and regulations of the association.

41       (e) This section shall become operative on January 1, 2001, and shall only apply  
42 to governing documents entered into, amended, or otherwise modified on or after  
43 that date.

1       **Comment.** With respect to a commercial or industrial common interest development, Section  
2 6704 continues Section 1360.5 without change, except as indicated below.

3       The following nonsubstantive changes were made:

- 4       • A reference to “homeowner” has been replaced with “owner” in subdivision (b).
- 5       • The words “his or her” have been replaced with “the owner’s” in subdivision (c).

6       For further information, see Section 6500 Comment.

7       See also Sections 6528 (“association”), 6534 (“common interest development”), 6552  
8 (“governing documents”), 6564 (“separate interest”).

9       **§ 6708 (REVISED). Television antenna or satellite dish**

10       6708. (a) Any covenant, condition, or restriction contained in any deed, contract,  
11 security instrument, or other instrument affecting the transfer or sale of, or any  
12 interest in, a common interest development that effectively prohibits or restricts  
13 the installation or use of a video or television antenna, including a satellite dish, or  
14 that effectively prohibits or restricts the attachment of that antenna to a structure  
15 within that development where the antenna is not visible from any street or  
16 common area, except as otherwise prohibited or restricted by law, is void and  
17 unenforceable as to its application to the installation or use of a video or television  
18 antenna that has a diameter or diagonal measurement of 36 inches or less.

19       (b) This section shall not apply to any covenant, condition, or restriction, as  
20 described in subdivision (a), that imposes reasonable restrictions on the  
21 installation or use of a video or television antenna, including a satellite dish, that  
22 has a diameter or diagonal measurement of 36 inches or less. For purposes of this  
23 section, “reasonable restrictions” means those restrictions that do not significantly  
24 increase the cost of the video or television antenna system, including all related  
25 equipment, or significantly decrease its efficiency or performance and include all  
26 of the following:

27       (1) Requirements for application and notice to the association prior to the  
28 installation.

29       (2) Requirement of a member to obtain the approval of the association for the  
30 installation of a video or television antenna that has a diameter or diagonal  
31 measurement of 36 inches or less on a separate interest owned by another.

32       (3) Provision for the maintenance, repair, or replacement of roofs or other  
33 building components.

34       (4) Requirements for installers of a video or television antenna to indemnify or  
35 reimburse the association or its members for loss or damage caused by the  
36 installation, maintenance, or use of a video or television antenna that has a  
37 diameter or diagonal measurement of 36 inches or less.

38       (c) Whenever approval is required for the installation or use of a video or  
39 television antenna, including a satellite dish, the application for approval shall be  
40 processed by the appropriate approving entity for the common interest  
41 development in the same manner as an application for approval of an architectural  
42 modification to the property, and the issuance of a decision on the application shall  
43 not be willfully delayed.



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

3 **Comment.** With respect to a commercial or industrial common interest development, Section  
4 6708 continues Section 1376 without change, except as indicated below.

5 The following nonsubstantive change was made:

- 6 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

7 For further information, see Section 6500 Comment.

8 See also 47 C.F.R. § 1.4000.

9 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest  
10 development”), 6564 (“separate interest”).

11 **Note:** In prior comments, it has been suggested that existing Section 1376 is largely  
12 preempted by the FCC regulation cited in the Comment above and should not be continued. See  
13 Memorandum 2008-43, p. 43. The staff requests public comment on the merits of that suggestion.

14 **§ 6710 (REVISED). Marketing restriction**

15 6710. (a) Any provision of a governing document that arbitrarily or  
16 unreasonably restricts an owner’s ability to market the owner’s interest in a  
17 common interest development is void.

18 (b) No association may adopt, enforce, or otherwise impose any governing  
19 document that does either of the following:

20 (1) Imposes an assessment or fee in connection with the marketing of an  
21 owner’s interest in an amount that exceeds the association’s actual or direct costs.

22 (2) Establishes an exclusive relationship with a real estate broker through which  
23 the sale or marketing of interests in the development is required to occur. The  
24 limitation set forth in this paragraph does not apply to the sale or marketing of  
25 separate interests owned by the association or to the sale or marketing of common  
26 area by the association.

27 (c) For purposes of this section, “market” and “marketing” mean listing,  
28 advertising, or obtaining or providing access to show the owner’s interest in the  
29 development.

30 (d) This section does not apply to rules or regulations made pursuant to Section  
31 712 or 713 regarding real estate signs.

32 **Comment.** With respect to a commercial or industrial common interest development, Section  
33 6710 continues Section 1368.1 without change, except as indicated below.

34 The following substantive changes were made:

- 35 • The introductory clause is revised to make clear that a void provision does not void the  
36 entire governing document that contains it.
- 37 • The phrase “rule or regulation” is replaced with “governing document.” This broadens  
38 the application of the section so that it governs any provision in the governing documents  
39 and not just an operating rule.

40 The following nonsubstantive changes were made:

- 41 • The phrase “his or her” is replaced with “the owner’s” in subdivision (a).
- 42 • A reference to “common areas” is singularized.
- 43 • The superfluous words “of an association” are omitted.
- 44 • A reference to a statutory limitation set forth in Section 1366.1, a provision that is not  
45 continued in this act, is deleted.

1 For further information, see Section 6500 Comment.

2 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest  
3 development”), 6552 (“governing documents”), 6564 (“separate interest”).

4 **Note.** Proposed Section 6710 would apply to any governing document, and not just to a “rule  
5 or regulation” (which is unclear and may only encompass an operating rule).

6 **§ 6712 (REVISED). Low water-using plants**

7 6712. (a) Notwithstanding any other law, a provision of the governing  
8 documents shall be void and unenforceable if it does any of the following:

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

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

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

15 (B) Any regulation or restriction on the use of water adopted pursuant to Section  
16 353 or 375 of the Water Code.

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

20 **Comment.** With respect to a commercial or industrial common interest development, Section  
21 6712 continues Section 1353.8 without change, except as indicated below.

22 The following nonsubstantive change was made:

- 23 • Surplus language is not continued (i.e., the phrases “of any,” “of a common interest  
24 development,” and “and regulations”). The term “governing documents” includes all  
25 governing documents of a common interest development. See Section 6552 (“governing  
26 documents”).

27 For further information, see Section 6500 Comment.

28 See also Sections 6528 (“association”), 6552 (“governing documents”).

29 **Article 2. Modification of Separate Interest**

30 **§ 6714 (REVISED). Improvements to separate interest**

31 6714. (a) Subject to the governing documents and applicable law, a member  
32 may do the following:

33 (1) Make any improvement or alteration within the boundaries of the member’s  
34 separate interest that does not impair the structural integrity or mechanical systems  
35 or lessen the support of any portions of the common interest development.

36 (2) Modify the member’s separate interest, at the member’s expense, to facilitate  
37 access for persons who are blind, visually handicapped, deaf, or physically  
38 disabled, or to alter conditions which could be hazardous to these persons. These  
39 modifications may also include modifications of the route from the public way to  
40 the door of the separate interest for the purposes of this paragraph if the separate

1 interest is on the ground floor or already accessible by an existing ramp or  
2 elevator. The right granted by this paragraph is subject to the following conditions:

3 (A) The modifications shall be consistent with applicable building code  
4 requirements.

5 (B) The modifications shall be consistent with the intent of otherwise applicable  
6 provisions of the governing documents pertaining to safety or aesthetics.

7 (C) Modifications external to the dwelling shall not prevent reasonable passage  
8 by other residents, and shall be removed by the member when the separate interest  
9 is no longer occupied by persons requiring those modifications who are blind,  
10 visually handicapped, deaf, or physically disabled.

11 (D) Any member who intends to modify a separate interest pursuant to this  
12 paragraph shall submit plans and specifications to the association for review to  
13 determine whether the modifications will comply with the provisions of this  
14 paragraph. The association shall not deny approval of the proposed modifications  
15 under this paragraph without good cause.

16 (b) Any change in the exterior appearance of a separate interest shall be in  
17 accordance with the governing documents and applicable provisions of law.

18 **Comment.** With respect to a commercial or industrial common interest development, Section  
19 6714 continues Section 1360 without change, except as indicated below.

20 The following substantive change was made:

- 21 • The scope of the provision is broadened to apply to any separate interest, and not just a  
22 unit in a condominium project.

23 The following nonsubstantive changes were made:

- 24 • The phrase “his or her” is not continued in subdivision (a)(2)(D).
- 25 • The defined term “member” is used in place of “owner” throughout. See Section 6554  
26 (“member” defined).

27 For further information, see Section 6500 Comment.

28 See also Sections 6528 (“association”), 6534 (“common interest development”), 6552  
29 (“governing documents”), 6564 (“separate interest”).

30 **Note.** Proposed Section 6714 would broaden the scope of Section 1360 to include all CIDs,  
31 and not just condominiums. References to “units” are replaced with references to “separate  
32 interests.” References to condominium associations are changed to refer to associations generally.

### 33 Article 3. Maintenance

#### 34 § 6716 (REVISED). Maintenance responsibility generally

35 6716. (a) Unless otherwise provided in the declaration of a common interest  
36 development, the association is responsible for repairing, replacing, or maintaining  
37 the common area, other than exclusive use common area, and the owner of each  
38 separate interest is responsible for maintaining that separate interest and any  
39 exclusive use common area appurtenant to the separate interest.

1 (b) The costs of temporary relocation during the repair and maintenance of the  
2 areas within the responsibility of the association shall be borne by the owner of the  
3 separate interest affected.

4 **Comment.** With respect to a commercial or industrial common interest development,  
5 subdivision (a) of Section 6716 continues Section 1364(a) without change, except as indicated  
6 below.

7 The following nonsubstantive change was made:

- 8 • References to “common areas” are singularized.

9 With respect to a commercial or industrial common interest development, subdivision (b)  
10 continues Section 1364(c) without change.

11 For further information, see Section 6500 Comment.

12 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest  
13 development”), 6546 (“declaration”), 6550 (“exclusive use common area”), 6564 (“separate  
14 interest”).

15 **§ 6718 (REVISED). Wood-destroying pests or organisms**

16 6718. (a) In a community apartment project, condominium project, or stock  
17 cooperative, unless otherwise provided in the declaration, the association is  
18 responsible for the repair and maintenance of the common area occasioned by the  
19 presence of wood-destroying pests or organisms.

20 (b) In a planned development, unless a different maintenance scheme is  
21 provided in the declaration, each owner of a separate interest is responsible for the  
22 repair and maintenance of that separate interest as may be occasioned by the  
23 presence of wood-destroying pests or organisms. Upon approval of the majority of  
24 all members of the association, pursuant to Section 6522, that responsibility may  
25 be delegated to the association, which shall be entitled to recover the cost thereof  
26 as a special assessment.

27 **Comment.** With respect to a commercial or industrial common interest development,  
28 subdivision (a) of Section 6718 continues Section 1364(b)(1) without change, except as indicated  
29 below.

30 The following nonsubstantive change was made:

- 31 • A superfluous cross-reference to governing definitions has not been continued.

32 With respect to a commercial or industrial common interest development, subdivision (b)  
33 continues Section 1364(b)(2) without change, except as indicated below.

34 The following nonsubstantive changes were made:

- 35 • A superfluous cross-reference to a governing definition has not been continued.
- 36 • A cross-reference to Section 6522 is added.
- 37 • The last sentence is revised to avoid use of the word “such.”

38 For further information, see Section 6500 Comment.

39 See also Sections 6528 (“association”), 6532 (“common area”), 6536 (“community apartment  
40 project”), 6542 (“condominium project”), 6546 (“declaration”), 6554 (“member”), 6562  
41 (“planned development”), 6564 (“separate interest”), 6566 (“stock cooperative”).

42 **Note.** The last sentence of Section 1364(b)(2) has been restated, in proposed Section 6718(b),  
43 to avoid use of the word “such.” Standard legislative drafting practice is to avoid the use of  
44 “such” as a shorthand reference for a previously described thing.

1 **§ 6720 (REVISED). Temporary removal of occupant to perform treatment of wood-**  
2 **destroying pests**

3 6720. (a) The association may cause the temporary, summary removal of any  
4 occupant of a common interest development for such periods and at such times as  
5 may be necessary for prompt, effective treatment of wood-destroying pests or  
6 organisms.

7 (b) The association shall give notice of the need to temporarily vacate a separate  
8 interest to the occupants and to the owners, not less than 15 days nor more than 30  
9 days prior to the date of the temporary relocation. The notice shall state the reason  
10 for the temporary relocation, the date and time of the beginning of treatment, the  
11 anticipated date and time of termination of treatment, and that the occupants will  
12 be responsible for their own accommodations during the temporary relocation.

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

14 (1) Personal delivery of a copy of the notice to the occupants, and if an occupant  
15 is not the owner, individual delivery pursuant to Section 6514, of a copy of the  
16 notice to the owner.

17 (2) Individual delivery pursuant to Section 6514 to the occupant at the address  
18 of the separate interest, and if the occupant is not the owner, individual delivery  
19 pursuant to Section 6514, of a copy of the notice to the owner.

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

23 **Comment.** With respect to a commercial or industrial common interest development, Section  
24 6720 continues Section 1364(d)-(e) without change, except as indicated below.

25 The following substantive change was made:


- 26 • The provision is revised to incorporate the “individual delivery” notice procedure.

27 The following nonsubstantive change was made:

- 28 • Subdivision (c) is revised to improve its clarity.

29 For further information, see Section 6500 Comment.

30 See also Sections 6528 (“association”), 6534 (“common interest development”), 6564  
31 (“separate interest”).

32  **Note.** Proposed Section 6720(c) is revised to improve its clarity and to incorporate the  
33 “individual delivery” notice procedure.

34 **§ 6722 (REVISED). Exclusive use communication wiring**

35 6722. Notwithstanding the provisions of the declaration, a member is entitled to  
36 reasonable access to the common area for the purpose of maintaining the internal  
37 and external telephone wiring made part of the exclusive use common area of the  
38 member’s separate interest pursuant to subdivision (c) of Section 6550. The access  
39 shall be subject to the consent of the association, whose approval shall not be  
40 unreasonably withheld, and which may include the association’s approval of  
41 telephone wiring upon the exterior of the common area, and other conditions as  
42 the association determines reasonable.

1 **Comment.** With respect to a commercial or industrial common interest development,  
2 subdivision (a) of Section 6722 continues Section 1364(f) without change, except as indicated  
3 below.

4 The following nonsubstantive changes were made:

- 5 • A cross-reference is updated to reflect the new location of the referenced provision.
- 6 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- 7 • References to “common areas” are singularized.

8 For further information, see Section 6500 Comment.

9 See also Sections 6528 (“association”), 6532 (“common area”), 6546 (“declaration”), 6550  
10 (“exclusive use common area”), 6564 (“separate interest”).

## 11 CHAPTER 5. ASSOCIATION GOVERNANCE

### 12 Article 1. Association Existence and Powers

#### 13 § 6750 (REVISED). Association

14 6750. A common interest development shall be managed by an association that  
15 may be incorporated or unincorporated. The association may be referred to as an  
16 owners’ association or a community association.

17 **Comment.** With respect to a commercial or industrial common interest development, Section  
18 6750 continues Section 1363(a) without change, except as indicated below.

19 The following nonsubstantive changes were made:

- 20 • Use of the term “owners’ association” to describe the association is expressly authorized.

21 For further information, see Section 6500 Comment.

22 See also Sections 6528 (“association”), 6534 (“common interest development”).

#### 23 § 6752 (REVISED). Association powers

24 6752. (a) Unless the governing documents provide otherwise, and regardless of  
25 whether the association is incorporated or unincorporated, the association may  
26 exercise the powers granted to a nonprofit mutual benefit corporation, as  
27 enumerated in Section 7140 of the Corporations Code, except that an  
28 unincorporated association may not adopt or use a corporate seal or issue  
29 membership certificates in accordance with Section 7313 of the Corporations  
30 Code.

31 (b) The association, whether incorporated or unincorporated, may exercise the  
32 powers granted to an association in this act.

33 **Comment.** With respect to a commercial or industrial common interest development, Section  
34 6752 continues former Section 1363(c) without change, except as indicated below.

35 The following nonsubstantive changes were made:

- 36 • Subdivisions are added.
- 37 • The term “title” is replaced with “act.”

38 For further information, see Section 6500 Comment.

39 See also Sections 6528 (“association”), 6552 (“governing documents”).

Article 2. Record Keeping

§ 6756 (NEW). Mailing-related requests

6756. To be effective, any of the following requests shall be delivered in writing to the association, pursuant to Section 6512:

(a) A request to change the member's information in the association membership list.

(b) A request to add or remove a second address for delivery of documents to the member pursuant to Section 6814.

(c) A request for individual delivery of general notices to the member, pursuant to subdivision (b) of Section 6516, or a request to cancel a prior request for individual delivery of general notices.

**Comment.** Section 6756 is new. It requires that the specified requests be written and delivered to the association pursuant to Section 6512.

See also Sections 6528 ("association"), 6554 ("member").

**Note.** Proposed Section 6756 would require that certain mailing-related requests be submitted in writing, by the method specified for delivery of notices to the association..

Article 3. Conflict of Interest

§ 6758 (REVISED). Interested director

6758. (a) Notwithstanding any other law, and regardless of whether an association is incorporated or unincorporated, the provisions of Sections 7223 and 7224 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the board or a committee of the board.

(b) A director or member of a committee shall not vote on any of the following matters:

(1) Discipline of the director or committee member.

(2) An assessment against the director or committee member for damage to the common area or facilities.

(3) A request, by the director or committee member, for a payment plan for overdue assessments.

(4) A decision whether to foreclose on a lien on the separate interest of the director or committee member.

(5) Review of a proposed physical change to the separate interest of the director or committee member.

(6) A grant of exclusive use common area to the director or committee member.

(c) Nothing in this section limits any other provision of law or the governing documents that governs a decision in which a director may have an interest.

**Comment.** With respect to a commercial or industrial common interest development, subdivision (a) of Section 6758 continues the substance of Section 1365.6, except as indicated below.

The following nonsubstantive change was made:

- The reference to Corporations Code Section 310, which governs the General Corporation Law, has been replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent rules for nonprofit mutual benefit corporations.

Subdivisions (b) and (c) are new. The “discipline” referenced in subdivision (b)(1) may include discipline for a violation of the governing documents, this act, or a fiduciary duty.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6530 (“board”), 6532 (“common area”), 6548 (“director”), 6550 (“exclusive use common area”), 6552 (“governing documents”), 6564 (“separate interest”).

**Notes.** (1) Proposed Section 6758(a) would correct an apparently erroneous reference to Corporations Code Section 310, which governs for-profit corporations. The reference would be replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent rules for nonprofit mutual benefit corporations.

(2) Subdivision (b) is added to provide simplified guidance to association board members on impermissible conflicts.

(3) Subdivision (c) makes clear that the section is not intended as a complete codification of the law governing director conflicts of interest.

#### Article 4. Government Assistance

##### § 6760 (REVISED). Director training course

6760. To the extent existing funds are available, the Department of Consumer Affairs and the Department of Real Estate shall develop an online education course for the board regarding the role, duties, laws, and responsibilities of directors and prospective directors, and the nonjudicial foreclosure process.

**Comment.** With respect to a commercial or industrial common interest development, Section 6760 continues the substance of Section 1363.001, except as indicated below.

The following nonsubstantive changes were made:

- The term “board of directors” has been replaced with the defined term “board.” See Section 6530 (“board”).
- The defined term “director” is used in place of “board member.” See Section 6548 (“director”).
- “On-line” was replaced with “online” to reflect modern usage.

For further information, see Section 6500 Comment.

##### § 6762 (REVISED). State registry

6762. (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 Commercial and Industrial Common Interest Development Act.

(2) The name of the association.



1 (3) The street address of the association's onsite office, or, if none, of the  
2 responsible officer or managing agent of the association.

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

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

8 (6) The county, and if in an incorporated area, the city in which the development  
9 is physically located. If the boundaries of the development are physically located  
10 in more than one county, each of the counties in which it is located.

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

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

15 (9) The type of common interest development, as defined in Section 6534,  
16 managed by the association.

17 (10) The number of separate interests, as defined in Section 6564, in the  
18 development.

19 (b) The association shall submit the information required by this section as  
20 follows:

21 (1) By incorporated associations, within 90 days after the filing of its original  
22 articles of incorporation, and thereafter at the time the association files its biennial  
23 statement of principal business activity with the Secretary of State pursuant to  
24 Section 8210 of the Corporations Code.

25 (2) By unincorporated associations, in July of 2003, and in that same month  
26 biennially thereafter. Upon changing its status to that of a corporation, the  
27 association shall comply with the filing deadlines in paragraph (1).

28 (c) The association shall notify the Secretary of State of any change in the street  
29 address of the association's onsite office or of the responsible officer or managing  
30 agent of the association in the form and for a fee prescribed by the Secretary of  
31 State, within 60 days of the change.

32 (d) The penalty for an incorporated association's noncompliance with the initial  
33 or biennial filing requirements of this section shall be suspension of the  
34 association's rights, privileges, and powers as a corporation and monetary  
35 penalties, to the same extent and in the same manner as suspension and monetary  
36 penalties imposed pursuant to Section 8810 of the Corporations Code.

37 (e) The Secretary of State shall make the information submitted pursuant to  
38 paragraph (4) of subdivision (a) available only for governmental purposes and  
39 only to Members of the Legislature and the Business, Transportation and Housing  
40 Agency, upon written request. All other information submitted pursuant to this  
41 section shall be subject to public inspection pursuant to the California Public  
42 Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title

1 1 of the Government Code. The information submitted pursuant to this section  
2 shall be made available for governmental or public inspection.

3 **Comment.** With respect to a commercial or industrial common interest development, Section  
4 6762 continues Section 1363.6 without change, except as indicated below.

5 The following substantive change was made:

- 6 • A reference to this act is substituted for a reference to the Davis-Stirling Common  
7 Interest Development Act.

8 The following nonsubstantive changes were made:

- 9 • Cross-references are updated to reflect the new location of the referenced provisions.
- 10 • The redundant phrase “of the association” is omitted in subdivision (a)(4).
- 11 • Superfluous references to definition sections are not continued.
- 12 • Obsolete transitional dates are omitted in subdivisions (d) and (e).

13 For further information, see Section 6500 Comment.

14 See also Sections 6528 (“association”), 6534 (“common interest development”), 6564  
15 (“separate interest”).

## 16 CHAPTER 6. ASSESSMENTS AND ASSESSMENT COLLECTION

### 17 Article 1. Establishment and Imposition of Assessments

#### 18 § 6800 (REVISED). Levy of assessment

19 6800. The association shall levy regular and special assessments sufficient to  
20 perform its obligations under the governing documents and this act.

21 **Comment.** With respect to a commercial or industrial common interest development, Section  
22 6800 continues the first sentence of Section 1366(a) without change, except as indicated below.

23 The following nonsubstantive changes were made:

- 24 • The term “title” is changed to “act.”
- 25 • A superfluous reference to the remainder of Section 1366 is deleted.

26 For further information, see Section 6500 Comment.

27 See also Sections 6528 (“association”), 6552 (“governing documents”).

#### 28 § 6804 (REVISED). Exemption from execution

29 6804. (a) Regular assessments imposed or collected to perform the obligations  
30 of an association under the governing documents or this act shall be exempt from  
31 execution by a judgment creditor of the association only to the extent necessary  
32 for the association to perform essential services, such as paying for utilities and  
33 insurance. In determining the appropriateness of an exemption, a court shall  
34 ensure that only essential services are protected under this subdivision.

35 (b) This exemption shall not apply to any consensual pledges, liens, or  
36 encumbrances that have been approved by a majority of a quorum of members,  
37 pursuant to Section 6524, at a member meeting or election, or to any state tax lien,  
38 or to any lien for labor or materials supplied to the common area.

39 **Comment.** With respect to a commercial or industrial common interest development, Section  
40 6804 continues Section 1366(c) without change, except as indicated below.

1 The following nonsubstantive changes were made:

- 2 • Subdivisions are added.
- 3 • A reference to approval of a majority of members casting a vote at a meeting at which a
- 4 quorum is established has been replaced with a reference to the standard provision on
- 5 approval by a majority of a quorum of members (Section 4070).
- 6 • Quorum-related language from former Section 1366(b)-(c) is not continued.
- 7 • A reference to “title” is changed to “act.”

8 For further information, see Section 6500 Comment.

9 See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing

10 documents”), 6554 (“member”).

11 **Note.** Both Section 1366(a) and (b) contain the following sentence: “For the purposes of this

12 section, ‘quorum’ means more than 50 percent of the owners of an association.” Although those

13 provisions purport to apply to the “section” as a whole, the fact that the sentence is repeated in

14 subdivisions (a) and (b) suggests that the intention may have been to limit the application of the

15 sentence to just those subdivisions. If so, then the special quorum rule would not apply to the

16 reference in Section 1366(c) to “any consensual pledges, liens, or encumbrances that have been

17 approved by the owners of an association, *constituting a quorum*, casting a majority of the votes

18 at a meeting or election of the association....” (Emphasis added.) Proposed Section 6804 is

19 drafted on the basis of that interpretation, and does not include the special quorum rule.

## 20 Article 2. Assessment Payment and Delinquency

### 21 § 6808 (REVISED). Assessment debt and delinquency

22 6808. (a) A regular or special assessment and any late charges, reasonable fees

23 and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as

24 determined in accordance with subdivision (b), shall be a debt of the owner of the

25 separate interest at the time the assessment or other sums are levied.

26 (b) Associations are hereby exempted from interest-rate limitations imposed by

27 Article XV of the California Constitution, subject to the limitations of this section.

28 **Comment.** With respect to a commercial or industrial common interest development,

29 subdivision (a) of Section 6808 continues the first sentence of Section 1367.1(a) without change,

30 except as indicated below.

31 The following nonsubstantive change was made:

- 32 • A cross-reference is updated to reflect the new location of the referenced provision.

33 With respect to a commercial or industrial common interest development, subdivision (b)

34 continues Section 1366(f) without change.

35 For further information, see Section 6500 Comment.

36 See also Sections 6528 (“association”), 6564 (“separate interest”).

### 37 § 6810 (REVISED). Payments

38 6810. (a) Any payments made by the owner of a separate interest toward

39 assessments shall first be applied to the assessments owed, and, only after the

40 assessments owed are paid in full shall the payments be applied to the fees and

41 costs of collection, attorney’s fees, late charges, or interest.

1 (b) When an owner makes a payment, the owner may request a receipt and the  
2 association shall provide it. The receipt shall indicate the date of payment and the  
3 person who received it.

4 (c) The association shall provide a mailing address for overnight payment of  
5 assessments.

6 **Comment.** With respect to a commercial or industrial common interest development, Section  
7 6810 continues the substance of Section 1367.1(b), except as indicated below.

8 The following nonsubstantive changes were made:

- 9 • A superfluous reference to assessment debt “set forth, as required in subdivision (a)” is  
10 deleted to make the meaning of the provision clearer.
- 11 • Subdivisions are added.

12 For further information, see Section 6500 Comment.

13 See also Sections 6528 (“association”), 6564 (“separate interest”).

14 **Note.** Existing Section 1367.1(b) refers to payments made toward “the debt set forth, as  
15 required in subdivision (a)...” The purpose of that language is unclear and it is potentially  
16 problematic. It could be understood as limiting the right established in Section 1367.1(b) to debts  
17 that have been properly noticed, pursuant to Section 1367.1(a). In other words, if the association  
18 makes a technical mistake in describing the debt, the member’s right to pay off the principal first  
19 might not apply. The staff sees no policy reason for such a result. The limiting language would  
20 not be continued in proposed Section 6810.

21 **§ 6812 (REVISED). Pre-lien notice**

22 6812. At least 30 days prior to recording a lien upon the separate interest of the  
23 owner of record to collect a debt that is past due under Section 6808, the  
24 association shall notify the owner of record in writing by certified mail of the  
25 following:

26 (a) A general description of the collection and lien enforcement procedures of  
27 the association and the method of calculation of the amount, a statement that the  
28 owner of the separate interest has the right to inspect the association records  
29 pursuant to Section 8333 of the Corporations Code, and the following statement in  
30 14-point boldface type, if printed, or in capital letters, if typed:

31 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN  
32 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS,  
33 IT MAY BE SOLD WITHOUT COURT ACTION.”

34 (b) An itemized statement of the charges owed by the owner, including items on  
35 the statement which indicate the amount of any delinquent assessments, the fees  
36 and reasonable costs of collection, reasonable attorney’s fees, any late charges,  
37 and interest, if any.

38 (c) A statement that the owner shall not be liable to pay the charges, interest, and  
39 costs of collection, if it is determined the assessment was paid on time to the  
40 association.

41 **Comment.** With respect to a commercial or industrial common interest development, Section  
42 6812 continues the second sentence of Section 1367.1(a), and paragraphs (1) to (3) of that  
43 provision, inclusive, without change, except as indicated below.

1 The following nonsubstantive change was made:

- 2 • A cross-reference is updated to reflect the new location of the referenced provision.

3 For further information, see Section 6500 Comment.

4 See also Sections 6528 (“association”), 6564 (“separate interest”).

5 **§ 6814 (UNCHANGED). Notice of delinquent assessment**

6 6814. (a) The amount of the assessment, plus any costs of collection, late  
7 charges, and interest assessed in accordance with subdivision (b) of Section 6808,  
8 shall be a lien on the owner’s separate interest in the common interest  
9 development from and after the time the association causes to be recorded with the  
10 county recorder of the county in which the separate interest is located, a notice of  
11 delinquent assessment, which shall state the amount of the assessment and other  
12 sums imposed in accordance with subdivision (b) of Section 6808, a legal  
13 description of the owner’s separate interest in the common interest development  
14 against which the assessment and other sums are levied, and the name of the  
15 record owner of the separate interest in the common interest development against  
16 which the lien is imposed.

17 (b) The itemized statement of the charges owed by the owner described in  
18 subdivision (b) of Section 6812 shall be recorded together with the notice of  
19 delinquent assessment.

20 (c) In order for the lien to be enforced by nonjudicial foreclosure as provided in  
21 Sections 6820 and 6822, the notice of delinquent assessment shall state the name  
22 and address of the trustee authorized by the association to enforce the lien by sale.

23 (d) The notice of delinquent assessment shall be signed by the person designated  
24 in the declaration or by the association for that purpose, or if no one is designated,  
25 by the president of the association.

26 (e) A copy of the recorded notice of delinquent assessment shall be mailed by  
27 certified mail to every person whose name is shown as an owner of the separate  
28 interest in the association’s records, and the notice shall be mailed no later than 10  
29 calendar days after recordation.

30 (f) Upon receipt of a written request by an owner, delivered pursuant to Section  
31 6512, identifying a secondary address for purposes of collection notices, the  
32 association shall send additional copies of any notices required by this article or by  
33 Section 6822 to the secondary address provided. The association shall notify  
34 owners of their right to submit secondary addresses to the association. The owner  
35 may identify or change a secondary address at any time.

36 **Comment.** With respect to a commercial or industrial common interest development,  
37 subdivisions (a)-(e) of Section 6814 continue the first five sentences of Section 1367.1(d) without  
38 change, except as indicated below.

39 The following nonsubstantive change was made:

- 40 • Cross-references are updated to reflect the new location of the referenced provisions.

41 With respect to a commercial or industrial common interest development, subdivision (f)  
42 continues Section 1367.1(k) without change, except as indicated below.

43 The following substantive change was made:

- The provision is revised to incorporate a standardized procedure for delivery of a document to an association. See Section 6512.

The following nonsubstantive changes were made:

- A cross-reference is added to reflect the new location of a referenced provision.
- Superfluous language relating to the identifying or changing of a secondary address during the collection process is deleted. Under subdivision (f), the association's obligation to send notices to a secondary address as requested by a member in all cases turns on the receipt of the request by the association.
- A requirement that a specified notification to owners be included in the annual budget has been deleted.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6534 ("common interest development"), 6546 ("declaration"), 6560 ("person"), 6564 ("separate interest").

**§ 6816 (REVISED). Lien priority**

6816. A lien created pursuant to Section 6814 shall be prior to all other liens recorded subsequent to the notice of delinquent assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

**Comment.** With respect to a commercial or industrial common interest development, Section 6816 continues Section 1367.1(f) without change, except as indicated below.

The following nonsubstantive changes were made:

- The phrase "notice of assessment" is replaced with the more specific "notice of delinquent assessment."
- A cross-reference is updated to reflect the new location of the referenced provision.

For further information, see Section 6500 Comment.

See also Section 6546 ("declaration").

**Note.** Section 1367.1(f) refers to the "notice of assessment." It appears that the intention was to refer to the "notice of delinquent assessment" specified in Section 1367.1(d). In order to avoid any ambiguity, proposed Section 6816 uses the more specific term.

**§ 6818 (UNCHANGED). Lien release**

6818. (a) Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied.

(b) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

1 **Comment.** With respect to a commercial or industrial common interest development,  
2 subdivision (a) of Section 6818 continues the sixth sentence of Section 1367.1(d) without change.

3 With respect to a commercial or industrial common interest development, subdivision (b)  
4 continues Section 1367.1(i) without change.

5 For further information, see Section 6500 Comment.

6 See also Sections 6528 (“association”), 6564 (“separate interest”).

7 **§ 6819 (REVISED). Procedural noncompliance**

8 6819. An association that fails to comply with the procedures set forth in this  
9 section shall, prior to recording a lien, recommence the required notice process.  
10 Any costs associated with recommencing the notice process shall be borne by the  
11 association and not by the owner of a separate interest.

12 **Comment.** With respect to a commercial or industrial common interest development, Section  
13 6819 continues former Section 1367.1(l) without change, except as indicated below.

14 The following nonsubstantive change was made:

- 15 • A reference to “this section” is changed to “this article.”

16 For further information, see Section 6500 Comment.

17 See also Sections 6528 (“association”), 6564 (“separate interest”).

18 **Article 3. Assessment Collection**

19 **§ 6820 (REVISED). Collection generally**

20 6820. (a) Except as otherwise provided in this article, after the expiration of 30  
21 days following the recording of a lien created pursuant to Section 6814, the lien  
22 may be enforced in any manner permitted by law, including sale by the court, sale  
23 by the trustee designated in the notice of delinquent assessment, or sale by a  
24 trustee substituted pursuant to Section 2934a.

25 (b) Nothing in Article 2 (commencing with Section 6808) or in subdivision (a)  
26 of Section 726 of the Code of Civil Procedure prohibits actions against the owner  
27 of a separate interest to recover sums for which a lien is created pursuant to Article  
28 2 (commencing with Section 6808) or prohibits an association from taking a deed  
29 in lieu of foreclosure.

30 **Comment.** With respect to a commercial or industrial common interest development,  
31 subdivision (a) of Section 6820 continues the substance of the second sentence of Section  
32 1367.1(g), except as indicated below.

33 The following nonsubstantive changes were made:

- 34 • The introductory clause has been broadened to recognize the application of all restrictions  
35 on collection that are provided in this article. See, e.g., Section 6826 (limitation on  
36 assignment).
- 37 • Cross-references are updated to reflect the new location of the referenced provisions.

38 With respect to a commercial or industrial common interest development, subdivision (b)  
39 continues Section 1367.1(h) without change, except as indicated below.

40 The following nonsubstantive change was made:

- 41 • Cross-references are updated to reflect the new location of the referenced provisions.

42 For further information, see Section 6500 Comment.

43 See also Sections 6528 (“association”), 6564 (“separate interest”).

1 **§ 6822 (REVISED). Foreclosure**

2 6822. (a) Any sale by the trustee shall be conducted in accordance with Sections  
3 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages  
4 and deeds of trust.

5 (b) In addition to the requirements of Section 2924, the association shall serve a  
6 notice of default on the person named as the owner of the separate interest in the  
7 association's records or, if that person has designated a legal representative  
8 pursuant to this subdivision, on that legal representative. Service shall be in  
9 accordance with the manner of service of summons in Article 3 (commencing with  
10 Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.  
11 An owner may designate a legal representative in a writing that is mailed to the  
12 association in a manner that indicates that the association has received it.

13 (c) The fees of a trustee may not exceed the amounts prescribed in Sections  
14 2924c and 2924d, plus the cost of service for the notice of default pursuant to  
15 subdivision (b).

16 **Comment.** With respect to a commercial or industrial common interest development,  
17 subdivision (a) of Section 6822 continues the third sentence of Section 1367.1(g) without change.

18 With respect to a commercial or industrial common interest development, subdivision (b)  
19 continues the substance of Section 1367.1(j).

20 With respect to a commercial or industrial common interest development, subdivision (c)  
21 continues the fourth sentence and paragraph (1) of Section 1367.1(g), without change.

22 For further information, see Section 6500 Comment.

23 See also Sections 6528 ("association"), 6564 ("separate interest").

24 **§ 6824 (REVISED). Limitations on authority to foreclose liens for monetary penalties and**  
25 **damage to the common area**

26 6824. (a) A monetary charge imposed by the association as a means of  
27 reimbursing the association for costs incurred by the association in the repair of  
28 damage to common area and facilities caused by a member or the member's guest  
29 or tenant may become a lien against the member's separate interest enforceable by  
30 the sale of the interest under Sections 2924, 2924b, and 2924c, provided the  
31 authority to impose a lien is set forth in the governing documents. It is the intent of  
32 the Legislature not to contravene Section 2792.26 of Title 10 of the California  
33 Code of Regulations, as that section appeared on January 1, 1996, for associations  
34 of subdivisions that are being sold under authority of a subdivision public report,  
35 pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business  
36 and Professions Code.

37 (b) A monetary penalty imposed by the association as a disciplinary measure for  
38 failure of a member to comply with the governing documents, except for the late  
39 payments, may not be characterized nor treated in the governing documents as an  
40 assessment that may become a lien against the member's separate interest  
41 enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

42 **Comment.** With respect to a commercial or industrial common interest development,  
43 subdivision (a) of Section 6824 continues the seventh and eighth sentences of Section 1367.1(d)  
44 without change, except as indicated below.



1 The following nonsubstantive change was made:

- 2 • A reference to “common areas” is singularized.

3 With respect to a commercial or industrial common interest development, subdivision (b)  
4 continues Section 1367.1(e) without change, except as indicated below.

5 The following nonsubstantive changes were made:

- 6 • The introductory clause “except as indicated in subdivision (d)” is not continued.
- 7 • The undefined term “governing instruments” is replaced with the defined term  
8 “governing documents.”
- 9 • The undefined term “subdivision separate interest” is replaced with the defined term  
10 “separate interest.”

11 For further information, see Section 6500 Comment.

12 See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing  
13 documents”), 6554 (“member”), 6564 (“separate interest”).

14 **Notes.** (1) Proposed Section 6824(b) would omit the introductory clause of Section  
15 1367.1(e): “Except as indicated in subdivision (d)...” The staff sees nothing in Section 1367.1(d)  
16 that would operate as an exception to the rule stated in Section 1367.1(e).

17 (2) Proposed Section 6824(b) would substitute the defined term “governing documents” for the  
18 undefined term “governing instruments.”

19 (3) Proposed Section 6824(b) would substitute the defined term “separate interest” for the  
20 undefined term “subdivision separate interest.”

21 **§ 6826 (REVISED). Assignment or pledge**

22 6826. (a) An association may not voluntarily assign or pledge the association’s  
23 right to collect payments or assessments, or to enforce or foreclose a lien to a third  
24 party, except when the assignment or pledge is made to a financial institution or  
25 lender chartered or licensed under federal or state law, when acting within the  
26 scope of that charter or license, as security for a loan obtained by the association.

27 (b) Nothing in subdivision (a) restricts the right or ability of an association to  
28 assign any unpaid obligations of a former member to a third party for purposes of  
29 collection.

30 **Comment.** With respect to a commercial or industrial common interest development, Section  
31 6826 continues the first sentence of Section 1367.1(g) without change, except as indicated below.

32 The following nonsubstantive changes were made:

- 33 • The provision is divided into subdivisions.
- 34 • An introductory clause is added in subdivision (b) to make the relationship between the  
35 two provisions clearer.

36 For further information, see Section 6500 Comment.

37 See also Sections 6528 (“association”), 6554 (“member”).

38 **Note.** Proposed Section 6826 would break the first sentence of Section 1367.1(g) into two  
39 subdivisions and add an introductory clause in the second provision, to better define their  
40 relationship. (In existing law the two provisions are joined by a semi-colon and the ambiguous  
41 conjunction “however.”).

42 **§ 6828 (NEW). Application of article**

43 6828. (a) Except as otherwise provided, this article applies to a lien created on or  
44 after January 1, 2014.

1 (b) A lien created before January 1, 2014, is governed by the law in existence at  
2 the time the lien was created.

3 **Comment.** Section 6828 is new. A lien created on or after January 1, 1986, and before January  
4 1, 2003, is governed by Section 1367. A lien created on or after January 1, 2003 and before the  
5 operative date of the act that added this section, is governed by Section 1367.1 and Section  
6 1367.4.

7 **Note.** Under existing law, Section 1367 governs liens recorded on or after January 1, 1986,  
8 but before January 1, 2003. Liens that are recorded on or after January 1, 2003, are governed by  
9 Section 1367.1 (except that inconsistent provisions of Section 1367.4 govern debts for  
10 assessments that arise on or after January 1, 2006). However, as this proposed legislation would  
11 make a portion of Section 1367.1 and the entirety of Section 1367.4 inapplicable to an  
12 exclusively commercial or industrial CID, for those CIDs the relevant date in this provision  
13 would be the operative date of this legislation.

## 14 CHAPTER 7. INSURANCE AND LIABILITY

### 15 § 6840 (REVISED). Limitation of member liability

16 6840. (a) It is the intent of the Legislature to offer civil liability protection to  
17 owners of the separate interests in a common interest development that have  
18 common area owned in tenancy-in-common if the association carries a certain  
19 level of prescribed insurance that covers a cause of action in tort.

20 (b) Any cause of action in tort against any owner of a separate interest arising  
21 solely by reason of an ownership interest as a tenant in common in the common  
22 area of a common interest development shall be brought only against the  
23 association and not against the individual owners of the separate interests, if both  
24 of the insurance requirements in paragraphs (1) and (2) are met:

25 (1) The association maintained and has in effect for this cause of action, one or  
26 more policies of insurance that include coverage for general liability of the  
27 association.

28 (2) The coverage described in paragraph (1) is in the following minimum  
29 amounts:

30 (A) At least two million dollars (\$2,000,000) if the common interest  
31 development consists of 100 or fewer separate interests.

32 (B) At least three million dollars (\$3,000,000) if the common interest  
33 development consists of more than 100 separate interests.

34 **Comment.** With respect to a commercial or industrial common interest development, Section  
35 6840 continues Section 1365.9 without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • A superfluous cross-reference to a governing definition is not continued.
- 38 • A reference to “common areas” is singularized.
- 39 • Subdivision (b)(1) is revised to replace “which” with “that.”

40 For further information, see Section 6500 Comment.

41 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest  
42 development”), 6564 (“separate interest”).

1 CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

2 Article 1. Disciplinary Action

3 **§ 6850 (REVISED). Schedule of monetary penalties**

4 6850. (a) If an association adopts or has adopted a policy imposing any  
5 monetary penalty, including any fee, on any association member for a violation of  
6 the governing documents, including any monetary penalty relating to the activities  
7 of a guest or tenant of the member, the board shall adopt and distribute to each  
8 member, by individual notice, a schedule of the monetary penalties that may be  
9 assessed for those violations, which shall be in accordance with authorization for  
10 member discipline contained in the governing documents.

11 (b) A monetary penalty assessed against a member for a violation of the  
12 governing documents shall not exceed the monetary penalty stated in the schedule  
13 of monetary penalties that was most recently distributed to that member.

14 (c) An association shall provide a copy of the most recently distributed schedule  
15 of monetary penalties to any member on request.

16 **Comment.** With respect to a commercial or industrial common interest development,  
17 subdivision (a) of Section 6850 continues the first sentence of Section 1363(g) without change,  
18 except as indicated below.

19 The following substantive changes were made:

- 20 • A reference to delivery by personal delivery or first class mail has been changed to  
21 incorporate the “individual notice” procedure.
- 22 • The term “invitee” was replaced with “tenant,” to make clear that the provision applies to  
23 tenants.

24 The following nonsubstantive changes were made:

- 25 • A reference to the “rules of the association” is superfluous and is not continued. The term  
26 “governing documents” encompasses rules. See Section 6552.
- 27 • The term “board of directors” has been replaced with the defined term “board.” See  
28 Section 6530 (“board”).

29 Subdivision (b) and (c) are new.

30 For further information, see Section 6500 Comment.

31 See also Sections 6528 (“association”), 6552 (“governing documents”), 6553 (“individual  
32 notice”), 6554 (“member”).

33 **Notes.** (1) Subdivision (b) of proposed Section 6850 would provide that a monetary penalty  
34 assessed against a member for a violation of the governing documents may not exceed the penalty  
35 stated in whatever schedule of penalties was most recently distributed to that member.

36 (2) Subdivision (c) would require an association to provide a copy of the most recently  
37 distributed schedule of monetary penalties to any member that requested a copy.

38 **§ 6854 (REVISED). No effect on authority of board**

39 6854. Nothing in Section 6850 shall be construed to create, expand, or reduce  
40 the authority of the board to impose monetary penalties on a member for a  
41 violation of the governing documents.

1 **Comment.** With respect to a commercial or industrial common interest development, Section  
2 6854 continues the substance of Section 1363(j) without substantive change, except as indicated  
3 below.

4 The following nonsubstantive changes were made:

- 5 • The term “board of directors of the association” has been replaced with the defined term  
6 “board. See Section 6530 (“board”).
- 7 • The phrase “or rules of the association” has not been continued.
- 8 • The phrase “an association member” was replaced with the defined term “member.” See  
9 Section 6554 (“member”).
- 10 • The reference to Section 6850 is narrower than the reference to “this section” in Section  
11 1363(j), which encompassed the entirety of former Section 1363.

12 For further information, see Section 6500 Comment.

13 See also Section 6552 (“governing documents” includes the operating rules of the association).

14 **Note.** Existing Section 1363(j) refers to the entirety of Section 1363. Proposed Section 6854  
15 would only refer to the provision of Section 1363 relating to member discipline that is continued  
16 in this act.

## 17 Article 4. Civil Actions

### 18 § 6856 (UNCHANGED). Enforcement of governing documents

19 6856. (a) The covenants and restrictions in the declaration shall be enforceable  
20 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind  
21 all owners of separate interests in the development. Unless the declaration states  
22 otherwise, these servitudes may be enforced by any owner of a separate interest or  
23 by the association, or by both.

24 (b) A governing document other than the declaration may be enforced by the  
25 association against an owner of a separate interest or by an owner of a separate  
26 interest against the association.

27 (c) In an action to enforce the governing documents, the prevailing party shall be  
28 awarded reasonable attorney’s fees and costs.

29 **Comment.** With respect to a commercial or industrial common interest development, Section  
30 6856 continues Section 1354 without change.

31 For further information, see Section 6500 Comment.

32 See also Sections 6528 (“association”), 6546 (“declaration”), 6552 (“governing documents”),  
33 6564 (“separate interest”).

### 34 § 6858 (REVISED). Standing

35 6858. An association has standing to institute, defend, settle, or intervene in  
36 litigation, arbitration, mediation, or administrative proceedings in its own name as  
37 the real party in interest and without joining with it the members, in matters  
38 pertaining to the following:

39 (a) Enforcement of the governing documents.

40 (b) Damage to the common area.

41 (c) Damage to a separate interest that the association is obligated to maintain or  
42 repair.

1 (d) Damage to a separate interest that arises out of, or is integrally related to,  
2 damage to the common area or a separate interest that the association is obligated  
3 to maintain or repair.

4 **Comment.** With respect to a commercial or industrial common interest development, Section  
5 6858 continues Section 1368.3 without change, except as indicated below.

6 The following nonsubstantive changes were made:

- 7 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- 8 • The superfluous phrase “established to manage a common interest development” is  
9 omitted.

10 For further information, see Section 6500 Comment.

11 See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing  
12 documents”), 6564 (“separate interest”).

13 **§ 6860 (UNCHANGED). Comparative fault**

14 6860. (a) In an action maintained by an association pursuant to subdivision (b),  
15 (c), or (d) of Section 6858, the amount of damages recovered by the association  
16 shall be reduced by the amount of damages allocated to the association or its  
17 managing agents in direct proportion to their percentage of fault based upon  
18 principles of comparative fault. The comparative fault of the association or its  
19 managing agents may be raised by way of defense, but shall not be the basis for a  
20 cross-action or separate action against the association or its managing agents for  
21 contribution or implied indemnity, where the only damage was sustained by the  
22 association or its members. It is the intent of the Legislature in enacting this  
23 subdivision to require that comparative fault be pleaded as an affirmative defense,  
24 rather than a separate cause of action, where the only damage was sustained by the  
25 association or its members.

26 (b) In an action involving damages described in subdivision (b), (c), or (d) of  
27 Section 6858, the defendant or cross-defendant may allege and prove the  
28 comparative fault of the association or its managing agents as a setoff to the  
29 liability of the defendant or cross-defendant even if the association is not a party to  
30 the litigation or is no longer a party whether by reason of settlement, dismissal, or  
31 otherwise.

32 (c) Subdivisions (a) and (b) apply to actions commenced on or after January 1,  
33 1993.

34 (d) Nothing in this section affects a person’s liability under Section 1431, or the  
35 liability of the association or its managing agent for an act or omission that causes  
36 damages to another.

37 **Comment.** With respect to a commercial or industrial common interest development, Section  
38 6860 continues Section 1368.4 without change.

39 For further information, see Section 6500 Comment.

40 See also Sections 6528 (“association”), 6554 (“member”), 6560 (“person”).

CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

§ 6870 (REVISED). Actions for damages

6870. (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 owners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed.

(5) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted.

(c) Service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through the processes set forth in this section. This 180-day period may be extended for one additional period, not to exceed 180 days, only upon the mutual agreement of the association, the respondent, and any parties not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any extensions beyond the first extension shall require the agreement of all participating parties. Unless extended, the dispute resolution process prescribed by this section shall be deemed completed. All extensions shall continue the tolling period described in subdivision (b).

(d) Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to meet and confer with the board. Unless the respondent and the association

1 otherwise agree, there shall be not more than one meeting, which shall take place  
2 no later than 10 days from the date of the respondent's written request, at a  
3 mutually agreeable time and place. The meeting may be conducted in executive  
4 session, excluding the association's members. The discussions at the meeting are  
5 privileged communications and are not admissible in evidence in any civil action,  
6 unless the association and the respondent consent in writing to their admission.

7 (e) Upon receipt of the notice, the respondent shall, within 60 days, comply with  
8 the following:

9 (1) The respondent shall provide the association with access to, for inspection  
10 and copying of, all plans and specifications, subcontracts, and other construction  
11 files for the project that are reasonably calculated to lead to the discovery of  
12 admissible evidence regarding the defects claimed. The association shall provide  
13 the respondent with access to, for inspection and copying of, all files reasonably  
14 calculated to lead to the discovery of admissible evidence regarding the defects  
15 claimed, including all reserve studies, maintenance records and any survey  
16 questionnaires, or results of testing to determine the nature and extent of defects.  
17 To the extent any of the above documents are withheld based on privilege, a  
18 privilege log shall be prepared and submitted to all other parties. All other  
19 potentially responsible parties shall have the same rights as the respondent  
20 regarding the production of documents upon receipt of written notice of the claim,  
21 and shall produce all relevant documents within 60 days of receipt of the notice of  
22 the claim.

23 (2) The respondent shall provide written notice by certified mail to all  
24 subcontractors, design professionals, their insurers, and the insurers of any  
25 additional insured whose identities are known to the respondent or readily  
26 ascertainable by review of the project files or other similar sources and whose  
27 potential responsibility appears on the face of the notice. This notice to  
28 subcontractors, design professionals, and insurers shall include a copy of the  
29 Notice of Commencement of Legal Proceedings, and shall specify the date and  
30 manner by which the parties shall meet and confer to select a dispute resolution  
31 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its  
32 obligation to participate in the meet and confer or serve a written acknowledgment  
33 of receipt regarding this notice, advise the recipient that it may seek the assistance  
34 of an attorney, and advise the recipient that it should contact its insurer, if any.  
35 Any subcontractor or design professional, or insurer for that subcontractor, design  
36 professional, or additional insured, who receives written notice from the  
37 respondent regarding the meet and confer shall, prior to the meet and confer, serve  
38 on the respondent a written acknowledgment of receipt. That subcontractor or  
39 design professional shall, within 10 days of service of the written acknowledgment  
40 of receipt, provide to the association and the respondent a Statement of Insurance  
41 that includes both of the following:

42 (A) The names, addresses, and contact persons, if known, of all insurance  
43 carriers, whether primary or excess and regardless of whether a deductible or self-

1 insured retention applies, whose policies were in effect from the commencement  
2 of construction of the subject project to the present and which potentially cover the  
3 subject claims.

4 (B) The applicable policy numbers for each policy of insurance provided.

5 (3) Any subcontractor or design professional, or insurer for that subcontractor,  
6 design professional, or additional insured, who so chooses, may, at any time, make  
7 a written request to the dispute resolution facilitator for designation as a peripheral  
8 party. That request shall be served contemporaneously on the association and the  
9 respondent. If no objection to that designation is received within 15 days, or upon  
10 rejection of that objection, the dispute resolution facilitator shall designate that  
11 subcontractor or design professional as a peripheral party, and shall thereafter seek  
12 to limit the attendance of that subcontractor or design professional only to those  
13 dispute resolution sessions deemed peripheral party sessions or to those sessions  
14 during which the dispute resolution facilitator believes settlement as to peripheral  
15 parties may be finalized. Nothing in this subdivision shall preclude a party who  
16 has been designated a peripheral party from being reclassified as a nonperipheral  
17 party, nor shall this subdivision preclude a party designated as a nonperipheral  
18 party from being reclassified as a peripheral party after notice to all parties and an  
19 opportunity to object. For purposes of this subdivision, a peripheral party is a party  
20 having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

21 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of  
22 subdivision (e), the association, respondent, subcontractors, design professionals,  
23 and their insurers who have been sent a notice as described in paragraph (2) of  
24 subdivision (e) shall meet and confer in an effort to select a dispute resolution  
25 facilitator to preside over the mandatory dispute resolution process prescribed by  
26 this section. Any subcontractor or design professional who has been given timely  
27 notice of this meeting but who does not participate, waives any challenge he or she  
28 may have as to the selection of the dispute resolution facilitator. The role of the  
29 dispute resolution facilitator is to attempt to resolve the conflict in a fair manner.  
30 The dispute resolution facilitator shall be sufficiently knowledgeable in the subject  
31 matter and be able to devote sufficient time to the case. The dispute resolution  
32 facilitator shall not be required to reside in or have an office in the county in which  
33 the project is located. The dispute resolution facilitator and the participating  
34 parties shall agree to a date, time, and location to hold a case management meeting  
35 of all parties and the dispute resolution facilitator, to discuss the claims being  
36 asserted and the scheduling of events under this section. The case management  
37 meeting with the dispute resolution facilitator shall be held within 100 days of  
38 service of the Notice of Commencement of Legal Proceedings at a location in the  
39 county where the project is located. Written notice of the case management  
40 meeting with the dispute resolution facilitator shall be sent by the respondent to  
41 the association, subcontractors and design professionals, and their insurers who are  
42 known to the respondent to be on notice of the claim, no later than 10 days prior to  
43 the case management meeting, and shall specify its date, time, and location. The



1 dispute resolution facilitator in consultation with the respondent shall maintain a  
2 contact list of the participating parties.

3 (2) No later than 10 days prior to the case management meeting, the dispute  
4 resolution facilitator shall disclose to the parties all matters that could cause a  
5 person aware of the facts to reasonably entertain a doubt that the proposed dispute  
6 resolution facilitator would be able to resolve the conflict in a fair manner. The  
7 facilitator's disclosure shall include the existence of any ground specified in  
8 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any  
9 attorney-client relationship the facilitator has or had with any party or lawyer for a  
10 party to the dispute resolution process, and any professional or significant personal  
11 relationship the facilitator or his or her spouse or minor child living in the  
12 household has or had with any party to the dispute resolution process. The  
13 disclosure shall also be provided to any subsequently noticed subcontractor or  
14 design professional within 10 days of the notice.

15 (3) A dispute resolution facilitator shall be disqualified by the court if he or she  
16 fails to comply with this subdivision and any party to the dispute resolution  
17 process serves a notice of disqualification prior to the case management meeting.  
18 If the dispute resolution facilitator complies with this subdivision, he or she shall  
19 be disqualified by the court on the basis of the disclosure if any party to the  
20 dispute resolution process serves a notice of disqualification prior to the case  
21 management meeting.

22 (4) If the parties cannot mutually agree to a dispute resolution facilitator, then  
23 each party shall submit a list of three dispute resolution facilitators. Each party  
24 may then strike one nominee from the other parties' list, and petition the court,  
25 pursuant to the procedure described in subdivisions (n) and (o), for final selection  
26 of the dispute resolution facilitator. The court may issue an order for final  
27 selection of the dispute resolution facilitator pursuant to this paragraph.

28 (5) Any subcontractor or design professional who receives notice of the  
29 association's claim without having previously received timely notice of the meet  
30 and confer to select the dispute resolution facilitator shall be notified by the  
31 respondent regarding the name, address, and telephone number of the dispute  
32 resolution facilitator. Any such subcontractor or design professional may serve  
33 upon the parties and the dispute resolution facilitator a written objection to the  
34 dispute resolution facilitator within 15 days of receiving notice of the claim.  
35 Within seven days after service of this objection, the subcontractor or design  
36 professional may petition the superior court to replace the dispute resolution  
37 facilitator. The court may replace the dispute resolution facilitator only upon a  
38 showing of good cause, liberally construed. Failure to satisfy the deadlines set  
39 forth in this subdivision shall constitute a waiver of the right to challenge the  
40 dispute resolution facilitator.

41 (6) The costs of the dispute resolution facilitator shall be apportioned in the  
42 following manner: one-third to be paid by the association; one-third to be paid by  
43 the respondent; and one-third to be paid by the subcontractors and design

1 professionals, as allocated among them by the dispute resolution facilitator. The  
2 costs of the dispute resolution facilitator shall be recoverable by the prevailing  
3 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil  
4 Procedure, provided however that any nonsettling party may, prior to the filing of  
5 the complaint, petition the facilitator to reallocate the costs of the dispute  
6 resolution facilitator as they apply to any nonsettling party. The determination of  
7 the dispute resolution facilitator with respect to the allocation of these costs shall  
8 be binding in any subsequent litigation. The dispute resolution facilitator shall take  
9 into account all relevant factors and equities between all parties in the dispute  
10 resolution process when reallocating costs.

11 (7) In the event the dispute resolution facilitator is replaced at any time, the case  
12 management statement created pursuant to subdivision (h) shall remain in full  
13 force and effect.

14 (8) The dispute resolution facilitator shall be empowered to enforce all  
15 provisions of this section.

16 (g) (1) No later than the case management meeting, the parties shall begin to  
17 generate a data compilation showing the following information regarding the  
18 alleged defects at issue:

19 (A) The scope of the work performed by each potentially responsible  
20 subcontractor.

21 (B) The tract or phase number in which each subcontractor provided goods or  
22 services, or both.

23 (C) The units, either by address, unit number, or lot number, at which each  
24 subcontractor provided goods or services, or both.

25 (2) This data compilation shall be updated as needed to reflect additional  
26 information. Each party attending the case management meeting, and any  
27 subsequent meeting pursuant to this section, shall provide all information available  
28 to that party relevant to this data compilation.

29 (h) At the case management meeting, the parties shall, with the assistance of the  
30 dispute resolution facilitator, reach agreement on a case management statement,  
31 which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive,  
32 except that the parties may dispense with one or more of these elements if they  
33 agree that it is appropriate to do so. The case management statement shall provide  
34 that the following elements shall take place in the following order:

35 (1) Establishment of a document depository, located in the county where the  
36 project is located, for deposit of documents, defect lists, demands, and other  
37 information provided for under this section. All documents exchanged by the  
38 parties and all documents created pursuant to this subdivision shall be deposited in  
39 the document depository, which shall be available to all parties throughout the  
40 prefiling dispute resolution process and in any subsequent litigation. When any  
41 document is deposited in the document depository, the party depositing the  
42 document shall provide written notice identifying the document to all other parties.

1 The costs of maintaining the document depository shall be apportioned among the  
2 parties in the same manner as the costs of the dispute resolution facilitator.

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

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

17 (4) Invasive testing conducted by the association, if the association deems  
18 appropriate. All parties may observe and photograph any testing conducted by the  
19 association pursuant to this paragraph, but may not take samples or direct testing  
20 unless, by mutual agreement, costs of testing are shared by the parties.

21 (5) Provision by the association of a comprehensive demand which provides  
22 sufficient detail for the parties to engage in meaningful dispute resolution as  
23 contemplated under this section.

24 (6) Invasive testing conducted by the respondent, subcontractors, and design  
25 professionals, if they deem appropriate.

26 (7) Allowance for modification of the demand by the association if new issues  
27 arise during the testing conducted by the respondent, subcontractor, or design  
28 professionals.

29 (8) Facilitated dispute resolution of the claim, with all parties, including  
30 peripheral parties, as appropriate, and insurers, if any, present and having  
31 settlement authority. The dispute resolution facilitators shall endeavor to set  
32 specific times for the attendance of specific parties at dispute resolution sessions.  
33 If the dispute resolution facilitator does not set specific times for the attendance of  
34 parties at dispute resolution sessions, the dispute resolution facilitator shall permit  
35 those parties to participate in dispute resolution sessions by telephone.

36 (i) In addition to the foregoing elements of the case management statement  
37 described in subdivision (h), upon mutual agreement of the parties, the dispute  
38 resolution facilitator may include any or all of the following elements in a case  
39 management statement: the exchange of consultant or expert photographs; expert  
40 presentations; expert meetings; or any other mechanism deemed appropriate by the  
41 parties in the interest of resolving the dispute.

42 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the  
43 time the case management statement is established, set deadlines for the

1 occurrence of each event set forth in the case management statement, taking into  
2 account such factors as the size and complexity of the case, and the requirement of  
3 this section that this dispute resolution process not exceed 180 days absent  
4 agreement of the parties to an extension of time.

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

7 (i) A request to meet with the board to discuss a written settlement offer.

8 (ii) A written settlement offer, and a concise explanation of the reasons for the  
9 terms of the offer.

10 (iii) A statement that the respondent has access to sufficient funds to satisfy the  
11 conditions of the settlement offer.

12 (iv) A summary of the results of testing conducted for the purposes of  
13 determining the nature and extent of defects, if this testing has been conducted,  
14 unless the association provided the respondent with actual test results.

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

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

21 (D) If the board rejects a settlement offer presented at the meeting held pursuant  
22 to this subdivision, the board shall hold a meeting open to each member of the  
23 association. The meeting shall be held no less than 15 days before the association  
24 commences an action for damages against the respondent.

25 (E) No less than 15 days before this meeting is held, a written notice shall be  
26 sent to each member of the association specifying all of the following:

27 (i) That a meeting will take place to discuss problems that may lead to the filing  
28 of a civil action, and the time and place of this meeting.

29 (ii) The options that are available to address the problems, including the filing of  
30 a civil action and a statement of the various alternatives that are reasonably  
31 foreseeable by the association to pay for those options and whether these payments  
32 are expected to be made from the use of reserve account funds or the imposition of  
33 regular or special assessments, or emergency assessment increases.

34 (iii) The complete text of any written settlement offer, and a concise explanation  
35 of the specific reasons for the terms of the offer submitted to the board at the  
36 meeting held pursuant to subdivision (d) that was received from the respondent.

37 (F) The respondent shall pay all expenses attributable to sending the settlement  
38 offer to all members of the association. The respondent shall also pay the expense  
39 of holding the meeting, not to exceed three dollars (\$3) per association member.

40 (G) The discussions at the meeting and the contents of the notice and the items  
41 required to be specified in the notice pursuant to paragraph (E) are privileged  
42 communications and are not admissible in evidence in any civil action, unless the  
43 association consents to their admission.

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

3 (I) All defect lists and demands, communications, negotiations, and settlement  
4 offers made in the course of the prelitigation dispute resolution process provided  
5 by this section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive,  
6 of the Evidence Code and all applicable decisional law. This inadmissibility shall  
7 not be extended to any other documents or communications which would not  
8 otherwise be deemed inadmissible.

9 (m) Any subcontractor or design professional may, at any time, petition the  
10 dispute resolution facilitator to release that party from the dispute resolution  
11 process upon a showing that the subcontractor or design professional is not  
12 potentially responsible for the defect claims at issue. The petition shall be served  
13 contemporaneously on all other parties, who shall have 15 days from the date of  
14 service to object. If a subcontractor or design professional is released, and it later  
15 appears to the dispute resolution facilitator that it may be a responsible party in  
16 light of the current defect list or demand, the respondent shall renote the party as  
17 provided by paragraph (2) of subdivision (e), provide a copy of the current defect  
18 list or demand, and direct the party to attend a dispute resolution session at a stated  
19 time and location. A party who subsequently appears after having been released by  
20 the dispute resolution facilitator shall not be prejudiced by its absence from the  
21 dispute resolution process as the result of having been previously released by the  
22 dispute resolution facilitator.

23 (n) Any party may, at any time, petition the superior court in the county where  
24 the project is located, upon a showing of good cause, and the court may issue an  
25 order, for any of the following, or for appointment of a referee to resolve a dispute  
26 regarding any of the following:

27 (1) To take a deposition of any party to the process, or subpoena a third party for  
28 deposition or production of documents, which is necessary to further prelitigation  
29 resolution of the dispute.

30 (2) To resolve any disputes concerning inspection, testing, production of  
31 documents, or exchange of information provided for under this section.

32 (3) To resolve any disagreements relative to the timing or contents of the case  
33 management statement.

34 (4) To authorize internal extensions of timeframes set forth in the case  
35 management statement.

36 (5) To seek a determination that a settlement is a good faith settlement pursuant  
37 to Section 877.6 of the Code of Civil Procedure and all related authorities. The  
38 page limitations and meet and confer requirements specified in this section shall  
39 not apply to these motions, which may be made on shortened notice. Instead, these  
40 motions shall be subject to other applicable state law, rules of court, and local  
41 rules. A determination made by the court pursuant to this motion shall have the  
42 same force and effect as the determination of a postfiling application or motion for  
43 good faith settlement.

1 (6) To ensure compliance, on shortened notice, with the obligation to provide a  
2 Statement of Insurance pursuant to paragraph (2) of subdivision (e).

3 (7) For any other relief appropriate to the enforcement of the provisions of this  
4 section, including the ordering of parties, and insurers, if any, to the dispute  
5 resolution process with settlement authority.

6 (o)(1) A petition filed pursuant to subdivision (n) shall be filed in the superior  
7 court in the county in which the project is located. The court shall hear and decide  
8 the petition within 10 days after filing. The petitioning party shall serve the  
9 petition on all parties, including the date, time, and location of the hearing no later  
10 than five business days prior to the hearing. Any responsive papers shall be filed  
11 and served no later than three business days prior to the hearing. Any petition or  
12 response filed under this section shall be no more than three pages in length.

13 (2) All parties shall meet with the dispute resolution facilitator, if one has been  
14 appointed and confer in person or by the telephone prior to the filing of that  
15 petition to attempt to resolve the matter without requiring court intervention.

16 (p) As used in this section:

17 (1) “Association” shall have the same meaning as defined in Section 6528.

18 (2) “Builder” means the declarant, as defined in Section 6544.

19 (3) “Common interest development” shall have the same meaning as in Section  
20 6534, except that it shall not include developments or projects with less than 20  
21 units.

22 (q) The alternative dispute resolution process and procedures described in this  
23 section shall have no application or legal effect other than as described in this  
24 section.

25 (r) This section shall become operative on July 1, 2002, however it shall not  
26 apply to any pending suit or claim for which notice has previously been given.

27 (s) This section shall become inoperative on July 1, 2017, and, as of January 1,  
28 2018, is repealed, unless a later added statute, that becomes operative on or before  
29 January 1, 2018, deletes or extends the dates on which it becomes inoperative and  
30 is repealed.

31 **Comment.** With respect to a commercial or industrial common interest development, Section  
32 6870 continues Section 1375 without change, except as indicated below.

33 The following substantive change was made:

- 34 • A reference in Section 1375(d) to a meeting subject to Section 1363.05(b) has been  
35 replaced with the relevant substance of Section 1363.05(b). Section 1363.05 is not  
36 continued in this act.

37 The following nonsubstantive changes were made:

- 38 • Cross-references are updated to reflect the new location of the referenced provisions.  
39 • A reference to “homeowner” in paragraph (4) of subdivision (b) has been changed to  
40 “owner.”  
41 • The terms “board of directors” and “board of directors of the association” have been  
42 replaced throughout with the defined term “board.” See Section 6530 (“board”).  
43 • Subdivision (e)(2) is revised to delete references to former Section 1375.05, which was  
44 repealed by its own terms on January 1, 2011.

- 1 • Subdivision (f)(3) is revised to correct erroneous references to “this paragraph.” The
- 2 revised provision refers to “this subdivision.”
- 3 • Subdivision (l) is revised to delete a reference to former Section 1375.05, which was
- 4 repealed by its own terms on January 1, 2011.

5 For further information, see Section 6500 Comment.

6 See also Sections 6528 (“association”), 6534 (“common interest development”), 6554

7 (“member”), 6560 (“person”).

8 **Note.** Proposed Section 6870(d) would replace a provision requiring that a referenced

9 meeting be “subject to subdivision (b) of Section 1363.05” with a provision substantively

10 describing the manner in which the referenced meeting is to be conducted. Section 1363.05(b) is

11 not continued in this act. The Commission invites comment on whether this change would

12 materially affect the operation of any provision of this section.

13 **§ 6874 (UNCHANGED). Notice of resolution**

14 6874. (a) As soon as is reasonably practicable after the association and the

15 builder have entered into a settlement agreement or the matter has otherwise been

16 resolved regarding alleged defects in the common areas, alleged defects in the

17 separate interests that the association is obligated to maintain or repair, or alleged

18 defects in the separate interests that arise out of, or are integrally related to, defects

19 in the common areas or separate interests that the association is obligated to

20 maintain or repair, where the defects giving rise to the dispute have not been

21 corrected, the association shall, in writing, inform only the members of the

22 association whose names appear on the records of the association that the matter

23 has been resolved, by settlement agreement or other means, and disclose all of the

24 following:

25 (1) A general description of the defects that the association reasonably believes,

26 as of the date of the disclosure, will be corrected or replaced.

27 (2) A good faith estimate, as of the date of the disclosure, of when the

28 association believes that the defects identified in paragraph (1) will be corrected or

29 replaced. The association may state that the estimate may be modified.

30 (3) The status of the claims for defects in the design or construction of the

31 common interest development that were not identified in paragraph (1) whether

32 expressed in a preliminary list of defects sent to each member of the association or

33 otherwise claimed and disclosed to the members of the association.

34 (b) Nothing in this section shall preclude an association from amending the

35 disclosures required pursuant to subdivision (a), and any amendments shall

36 supersede any prior conflicting information disclosed to the members of the

37 association and shall retain any privilege attached to the original disclosures.

38 (c) Disclosure of the information required pursuant to subdivision (a) or

39 authorized by subdivision (b) shall not waive any privilege attached to the

40 information.

41 (d) For the purposes of the disclosures required pursuant to this section, the term

42 “defects” shall be defined to include any damage resulting from defects.

43 **Comment.** With respect to a commercial or industrial common interest development, Section

44 6874 continues Section 1375.1 without change.

1 For further information, see Section 6500 Comment.

2 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest  
3 development”), 6554 (“member”), 6564 (“separate interest”).

4 **§ 6876 (REVISED). Notice of civil action**

5 6876. (a) Not later than 30 days prior to the filing of any civil action by the  
6 association against the declarant or other developer of a common interest  
7 development for alleged damage to the common areas, alleged damage to the  
8 separate interests that the association is obligated to maintain or repair, or alleged  
9 damage to the separate interests that arises out of, or is integrally related to,  
10 damage to the common areas or separate interests that the association is obligated  
11 to maintain or repair, the board shall provide a written notice to each member of  
12 the association who appears on the records of the association when the notice is  
13 provided. This notice shall specify all of the following:

14 (1) That a meeting will take place to discuss problems that may lead to the filing  
15 of a civil action.

16 (2) The options, including civil actions, that are available to address the  
17 problems.

18 (3) The time and place of this meeting.

19 (b) Notwithstanding subdivision (a), if the association has reason to believe that  
20 the applicable statute of limitations will expire before the association files the civil  
21 action, the association may give the notice, as described above, within 30 days  
22 after the filing of the action.

23 **Comment.** With respect to a commercial or industrial common interest development, Section  
24 6876 continues Section 1368.5 without change, except as indicated below.

25 The following nonsubstantive change was made:

- 26 • The term “board of directors of the association” has been replaced with the defined term  
27 “board.” See Section 6530 (“board”).

28 For further information, see Section 6500 Comment.

29 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest  
30 development”), 6544 (“declarant”), 6554 (“member”), 6564 (“separate interest”).

31 **Uncodified (added). Operative date**

32 This act becomes operative on January 1, 2014.



## CONFORMING REVISIONS

### BUSINESS AND PROFESSIONS CODE

1 **Bus. & Prof. Code § 10153.2 (amended). Course requirements for real estate broker license**  
2 SEC. \_\_\_\_ . Section 10153.2 of the Business and Professions Code is amended to  
3 read:

4 10153.2. (a) An applicant to take the examination for an original real estate  
5 broker license shall also submit evidence, satisfactory to the commissioner, of  
6 successful completion, at an accredited institution, of:

7 (1) A three-semester unit course, or the quarter equivalent thereof, in each of the  
8 following:

9 (A) Real estate practice.

10 (B) Legal aspects of real estate.

11 (C) Real estate appraisal.

12 (D) Real estate financing.

13 (E) Real estate economics or accounting.

14 (2) A three-semester unit course, or the quarter equivalent thereof, in three of the  
15 following:

16 (A) Advanced legal aspects of real estate.

17 (B) Advanced real estate finance.

18 (C) Advanced real estate appraisal.

19 (D) Business law.

20 (E) Escrows.

21 (F) Real estate principles.

22 (G) Property management.

23 (H) Real estate office administration.

24 (I) Mortgage loan brokering and lending.

25 (J) Computer applications in real estate.

26 (K) On and after July 1, 2004, California law that relates to common interest  
27 developments, including, but not limited to, topics addressed in the Davis-Stirling  
28 Common Interest Development Act (Title 6 (commencing with Section 1350) of  
29 Part 4 of Division 2 of the Civil Code) and in the Commercial and Industrial  
30 Common Interest Development Act (Part 5.5 (commencing with Section 6500) of  
31 Division 4 of the Civil Code).

32 (b) The commissioner shall waive the requirements of this section for an  
33 applicant who is a member of the State Bar of California and shall waive the  
34 requirements for which an applicant has successfully completed an equivalent  
35 course of study as determined under Section 10153.5.

36 (c) The commissioner shall extend credit under this section for any course  
37 completed to satisfy requirements of Section 10153.3 or 10153.4.

1 **Comment.** Section 10153.2 is amended to add a cross-reference to Part 5.5 (commencing with  
2 Section 6500) of Division 4 of the Civil Code, reflecting the enactment of the Commercial and  
3 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

4 **Bus. & Prof. Code § 11003 (amended). “Planned development”**

5 SEC. \_\_\_\_\_. Section 11003 of the Business and Professions Code is amended to  
6 read:

7 11003. “Planned development” has the same meaning as specified in  
8 subdivision (k) of Section 1351 or in Section 6562 of the Civil Code.

9 **Comment.** Section 11003 is amended to add a cross-reference to Civil Code Section 6562,  
10 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
11 (Civ. Code §§ 6500-6876).

12 **Bus. & Prof. Code § 11003.2 (amended). “Stock cooperative”**

13 SEC. \_\_\_\_\_. Section 11003.2 of the Business and Professions Code is amended to  
14 read:

15 11003.2. “Stock cooperative” has the same meaning as specified in subdivision  
16 (m) of Section 1351 or in Section 6566 of the Civil Code, except that, as used in  
17 this chapter, a “stock cooperative” does not include a limited-equity housing  
18 cooperative.

19 **Comment.** Section 11003.2 is amended to add a cross-reference to Civil Code Section 6566,  
20 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
21 (Civ. Code §§ 6500-6876).

22 **Note.** The Commission invites comment on whether an exclusively commercial or industrial  
23 common interest development may be organized as a stock cooperative, arguably making this  
24 conforming revision unnecessary.

25 **Bus. & Prof. Code § 11004 (amended). “Community apartment project”**

26 SEC. \_\_\_\_\_. Section 11004 of the Business and Professions Code is amended to  
27 read:

28 11004. “Community apartment project” has the same meaning as specified in  
29 subdivision (d) of Section 1351 or in Section 6536 of the Civil Code.

30 **Comment.** Section 11004 is amended to add a cross-reference to Civil Code Section 6536,  
31 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
32 (Civ. Code §§ 6500-6876).

33 **Note.** The Commission invites comment on whether an exclusively commercial or industrial  
34 common interest development may be organized as a community apartment project, arguably  
35 making this conforming revision unnecessary.

36 **Bus. & Prof. Code § 11004.5 (amended). Further definition of “subdivided lands” and  
37 “subdivision”**

38 SEC. \_\_\_\_\_. Section 11004.5 of the Business and Professions Code is amended to  
39 read:

40 11004.5. In addition to any provisions of Section 11000, the reference in this  
41 code to “subdivided lands” and “subdivision” shall include all of the following:

1 (a) Any planned development, as defined in Section 11003, containing five or  
2 more lots.

3 (b) Any community apartment project, as defined by Section 11004, containing  
4 five or more apartments.

5 (c) Any condominium project containing five or more condominiums, as defined  
6 in Section 783 of the Civil Code.

7 (d) Any stock cooperative as defined in Section 11003.2, including any legal or  
8 beneficial interests therein, having or intended to have five or more shareholders.

9 (e) Any limited-equity housing cooperative, as defined in Section 11003.4.

10 (f) In addition, the following interests shall be subject to this chapter and the  
11 regulations of the commissioner adopted pursuant thereto:

12 (1) Any accompanying memberships or other rights or privileges created in, or  
13 in connection with, any of the forms of development referred to in subdivision (a),  
14 (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments,  
15 declarations of restrictions, articles of incorporation, bylaws, or contracts  
16 applicable thereto.

17 (2) Any interests or memberships in any owners' association as defined in  
18 Section 1351 or 6528 of the Civil Code, created in connection with any of the  
19 forms of the development referred to in subdivision (a), (b), (c), (d), or (e).

20 (g) Notwithstanding this section, time-share plans, exchange programs,  
21 incidental benefits, and short-term product subject to Chapter 2 (commencing with  
22 Section 11210) are not "subdivisions" or "subdivided lands" subject to this  
23 chapter.

24 **Comment.** Section 11004.5 is amended to add a cross-reference to Civil Code Section 6528,  
25 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
26 (Civ. Code §§ 6500-6876).

27 **Bus. & Prof. Code § 23426.5 (amended). Tennis club**

28 SEC. \_\_\_\_\_. Section 23426.5 of the Business and Professions Code is amended to  
29 read:

30 23426.5. (a) For purposes of this article, "club" also means any tennis club that  
31 maintains not less than four regulation tennis courts, together with the necessary  
32 facilities and clubhouse, has members paying regular monthly dues, has been in  
33 existence for not less than 45 years, and is not associated with a common interest  
34 development as defined in Section 1351 or 6534 of the Civil Code, a community  
35 apartment project as defined in Section 11004 of this code, a project consisting of  
36 condominiums as defined in Section 783 of the Civil Code, or a mobilehome park  
37 as defined in Section 18214 of the Health and Safety Code.

38 (b) It shall be unlawful for any club licensed pursuant to this section to make  
39 any discrimination, distinction, or restriction against any person on account of age  
40 or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the  
41 Civil Code.

1       **Comment.** Section 23426.5 is amended to add a cross-reference to Civil Code Section 6534,  
2 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
3 (Civ. Code §§ 6500-6876).

4       **Bus. & Prof. Code § 23428.20 (amended). Further definition of “club”**

5       SEC. \_\_\_\_\_. Section 23428.20 of the Business and Professions Code is amended  
6 to read:

7       23428.20. (a) For the purposes of this article, “club” also means any bona fide  
8 nonprofit corporation that has been in existence for not less than nine years, has  
9 more than 8,500 memberships issued and outstanding to owners of condominiums  
10 and owners of memberships in stock cooperatives, and owns, leases, operates, or  
11 maintains recreational facilities for its members.

12       (b) For the purposes of this article, “club” also means any bona fide nonprofit  
13 corporation that was formed as a condominium homeowners’ association, has at  
14 least 250 members, has served daily meals to its members and guests for a period  
15 of not less than 12 years, owns or leases, operates, and maintains a clubroom or  
16 rooms for its membership, has an annual fee of not less than nine hundred dollars  
17 (\$900) per year per member, and has as a condition of membership that one  
18 member of each household be at least 54 years old.

19       (c) Section 23399 and the numerical limitation of Section 23430 shall not apply  
20 to a club defined in this section.

21       (d) No license shall be issued pursuant to this section to any club that withholds  
22 membership or denies facilities or services to any person on account of any basis  
23 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those  
24 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)  
25 of subdivision (p) of Section 12955, and Section 12955.2 of the Government  
26 Code.

27       (e) Notwithstanding subdivision (d), with respect to familial status, subdivision  
28 (d) shall not be construed to apply to housing for older persons, as defined in  
29 Section 12955.9 of the Government Code. With respect to familial status, nothing  
30 in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
31 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.  
32 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil  
33 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code  
34 shall apply to subdivision (d).

35       **Comment.** Section 23428.20 is amended to add a cross-reference to Civil Code Section 6714,  
36 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
37 (Civ. Code §§ 6500-6876).

CIVIL CODE

38       **Civ. Code § 714 (amended). Unenforceability of restrictions on use of solar energy system**

39       SEC. \_\_\_\_\_. Section 714 of the Civil Code is amended to read:

1 714. (a) Any covenant, restriction, or condition contained in any deed, contract,  
2 security instrument, or other instrument affecting the transfer or sale of, or any  
3 interest in, real property, and any provision of a governing document, as defined in  
4 subdivision (j) of Section 1351 or in Section 6552, that effectively prohibits or  
5 restricts the installation or use of a solar energy system is void and unenforceable.

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

13 (c)(1) A solar energy system shall meet applicable health and safety standards  
14 and requirements imposed by state and local permitting authorities.

15 (2) A solar energy system for heating water shall be certified by the Solar Rating  
16 Certification Corporation (SRCC) or other nationally recognized certification  
17 agencies. SRCC is a nonprofit third party supported by the United States  
18 Department of Energy. The certification shall be for the entire solar energy system  
19 and installation.

20 (3) A solar energy system for producing electricity shall also meet all applicable  
21 safety and performance standards established by the National Electrical Code, the  
22 Institute of Electrical and Electronics Engineers, and accredited testing  
23 laboratories such as Underwriters Laboratories and, where applicable, rules of the  
24 Public Utilities Commission regarding safety and reliability.

25 (d) For the purposes of this section:

26 (1)(A) For solar domestic water heating systems or solar swimming pool heating  
27 systems that comply with state and federal law, “significantly” means an amount  
28 exceeding 20 percent of the cost of the system or decreasing the efficiency of the  
29 solar energy system by an amount exceeding 20 percent, as originally specified  
30 and proposed.

31 (B) For photovoltaic systems that comply with state and federal law,  
32 “significantly” means an amount not to exceed two thousand dollars (\$2,000) over  
33 the system cost as originally specified and proposed, or a decrease in system  
34 efficiency of an amount exceeding 20 percent as originally specified and proposed.

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

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

1 (2) For an approving entity that is a ~~homeowners'~~ an association, as defined in  
2 subdivision (a) of Section 1351 or in Section 6528, and that is not a public entity,  
3 both of the following shall apply:

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

5 (B) If an application is not denied in writing within 60 days from the date of  
6 receipt of the application, the application shall be deemed approved, unless that  
7 delay is the result of a reasonable request for additional information.

8 (f) Any entity, other than a public entity, that willfully violates this section shall  
9 be liable to the applicant or other party for actual damages occasioned thereby, and  
10 shall pay a civil penalty to the applicant or other party in an amount not to exceed  
11 one thousand dollars (\$1,000).

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

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

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

20 **Comment.** Subdivision (a) of Section 714 is amended to add a cross-reference to Section 6552,  
21 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
22 (Civ. Code §§ 6500-6876).

23 Paragraph (2) of subdivision (e) is amended to add a cross-reference to Section 6528, and to  
24 make a conforming terminological change, for the same reason.

25 **Note.** The Commission invites comment on whether Section 714 applies to an exclusively  
26 commercial or industrial common interest development, notwithstanding the use in Section  
27 714(e)(2) of the undefined term "homeowners' association."

28 **Civ. Code § 714.1 (amended). Permissible restrictions by common interest development**  
29 **association**

30 SEC. \_\_\_\_\_. Section 714.1 of the Civil Code is amended to read:

31 714.1. Notwithstanding Section 714, any association, as defined in Section 1351  
32 or 6528, may impose reasonable provisions which:

33 (a) Restrict the installation of solar energy systems installed in common areas, as  
34 defined in Section 1351 or 6532, to those systems approved by the association.

35 (b) Require the owner of a separate interest, as defined in Section 1351 or 6564,  
36 to obtain the approval of the association for the installation of a solar energy  
37 system in a separate interest owned by another.

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

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

1       **Comment.** Section 714.1 is amended to add cross-references to Sections 6528, 6532, and  
2 6534, reflecting the enactment of the Commercial and Industrial Common Interest Development  
3 Act (Civ. Code §§ 6500-6876).

4       **Civ. Code § 782 (amended). Discriminatory provision in deed of real property**

5       SEC. \_\_\_\_\_. Section 782 of the Civil Code is amended to read:

6       782. (a) Any provision in any deed of real property in California, whether  
7 executed before or after the effective date of this section, that purports to restrict  
8 the right of any persons to sell, lease, rent, use or occupy the property to persons  
9 having any characteristic listed in subdivision (a) or (d) of Section 12955 of the  
10 Government Code, as those bases are defined in Sections 12926, 12926.1,  
11 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section  
12 12955.2 of the Government Code, by providing for payment of a penalty,  
13 forfeiture, reverter, or otherwise, is void.

14       (b) Notwithstanding subdivision (a), with respect to familial status, subdivision  
15 (a) shall not be construed to apply to housing for older persons, as defined in  
16 Section 12955.9 of the Government Code. With respect to familial status, nothing  
17 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
18 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section  
19 51, ~~and Section~~ Sections 1351 and 6714 of this code, and subdivisions (n), (o), and  
20 (p) of Section 12955 of the Government Code shall apply to subdivision (a).

21       **Comment.** Section 782 is amended to add a cross-reference to Section 6714, reflecting the  
22 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§  
23 6500-6876).

24       **Civ. Code § 782.5 (amended). Revision of instrument to omit provision that restricts rights**  
25       **based on race or color**

26       SEC. \_\_\_\_\_. Section 782.5 of the Civil Code is amended to read:

27       782.5. (a) Any deed or other written instrument that relates to title to real  
28 property, or any written covenant, condition, or restriction annexed or made a part  
29 of, by reference or otherwise, any ~~such~~ deed or instrument that relates to title to  
30 real property, that which contains any provision that purports to forbid, restrict, or  
31 condition the right of any person or persons to sell, buy, lease, rent, use, or occupy  
32 the property on account of any basis listed in subdivision (a) or (d) of Section  
33 12955 of the Government Code, as those bases are defined in Sections 12926,  
34 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,  
35 and Section 12955.2 of the Government Code, with respect to any person or  
36 persons, shall be deemed to be revised to omit that provision.

37       (b) Notwithstanding subdivision (a), with respect to familial status, subdivision  
38 (a) shall not be construed to apply to housing for older persons, as defined in  
39 Section 12955.9 of the Government Code. With respect to familial status, nothing  
40 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
41 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section

1 ~~51, and Section~~ Sections 1351 and 6714 of this code, and subdivisions (n), (o), and  
2 (p) of Section 12955 of the Government Code shall apply to subdivision (a).

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

5 **Comment.** Subdivision (a) of Section 782.5 is amended to make stylistic revisions, reflecting  
6 the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code  
7 §§ 6500-6876).

8 Subdivision (b) is amended to add a cross-reference to Section 6714, for the same reason.

9 **Civ. Code § 783 (amended). “Condominium”**

10 SEC. \_\_\_\_\_. Section 783 of the Civil Code is amended to read:

11 783. A condominium is an estate in real property described in subdivision (f) of  
12 Section 1351 or in Section 6542. A condominium may, with respect to the  
13 duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate,  
14 (2) an estate for life, (3) an estate for years, such as a leasehold or a subleasehold,  
15 or (4) any combination of the foregoing.

16 **Comment.** Section 783 is amended to add a cross-reference to Section 6542, reflecting the  
17 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§  
18 6500-6876).

19 **Civ. Code § 783.1 (amended). Separate and correlative interests as interests in real property**

20 SEC. \_\_\_\_\_. Section 783.1 of the Civil Code is amended to read:

21 783.1. In a stock cooperative, as defined in subdivision (m) of Section 1351 or  
22 in Section 6566, both the separate interest, as defined in paragraph (4) of  
23 subdivision (l) of Section 1351 or in paragraph (4) of subdivision (a) of Section  
24 6564, and the correlative interest in the stock cooperative corporation, however  
25 designated, are interests in real property.

26 **Comment.** Section 783.1 is amended to add cross-references to Sections 6564(a)(4) and 6566,  
27 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
28 (Civ. Code §§ 6500-6876).

29 **Civ. Code § 1098 (amended). Transfer fee defined**

30 SEC. \_\_\_\_\_. Section 1098 of the Civil Code is amended to read:

31 1098. A “transfer fee” is any fee payment requirement imposed within a  
32 covenant, restriction, or condition contained in any deed, contract, security  
33 instrument, or other document affecting the transfer or sale of, or any interest in,  
34 real property that requires a fee be paid upon transfer of the real property. A  
35 transfer fee does not include any of the following:

36 (a) Fees or taxes imposed by a governmental entity.

37 (b) Fees pursuant to mechanics’ liens.

38 (c) Fees pursuant to court-ordered transfers, payments, or judgments.

39 (d) Fees pursuant to property agreements in connection with a legal separation  
40 or dissolution of marriage.



1 (e) Fees, charges, or payments in connection with the administration of estates  
2 or trusts pursuant to Division 7 (commencing with Section 7000), Division 8  
3 (commencing with Section 13000), or Division 9 (commencing with Section  
4 15000) of the Probate Code.

5 (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as  
6 these entities are described in subdivision (c) of Section 10232 of the Business and  
7 Professions Code.

8 (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling  
9 Common Interest Development Act (Title 6 (commencing with Section 1350) of  
10 Part 4 of Division 2) or by the Commercial and Industrial Common Interest  
11 Development Act (Part 5.5 (commencing with Section 6500) of Division 4).

12 (h) Fees, charges, or payments for failing to comply with, or for transferring the  
13 real property prior to satisfying, an obligation to construct residential  
14 improvements on the real property.

15 (i) Any fee reflected in a document recorded against the property on or before  
16 December 31, 2007, that is separate from any covenants, conditions, and  
17 restrictions, and that substantially complies with subdivision (a) of Section 1098.5  
18 by providing a prospective transferee notice of the following:

19 (1) Payment of a transfer fee is required.

20 (2) The amount or method of calculation of the fee.

21 (3) The date or circumstances under which the transfer fee payment requirement  
22 expires, if any.

23 (4) The entity to which the fee will be paid.

24 (5) The general purposes for which the fee will be used.

25 **Comment.** Subdivision (g) of Section 1098 is amended to add a cross-reference to Part 5.5  
26 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and  
27 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

28 **Civ. Code § 1133 (amended). Sale or lease of subdivision lot subject to blanket encumbrance**

29 SEC. \_\_\_\_\_. Section 1133 of the Civil Code is amended to read:

30 1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket  
31 encumbrance, as defined in Section 11013 of the Business and Professions Code,  
32 but is exempt from a requirement of compliance with Section 11013.2 of the  
33 Business and Professions Code, the subdivider, his or her agent, or representative,  
34 shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor  
35 cause it to be sold, or leased for a term exceeding five years, until the prospective  
36 purchaser or lessee of the lot, parcel, or unit has been furnished with and has  
37 signed a true copy of the following notice:

38 (b) "Subdivision," as used in subdivision (a), means improved or unimproved  
39 land that is divided or proposed to be divided for the purpose of sale, lease, or  
40 financing, whether immediate or future, into two or more lots, parcels, or units and  
41 includes a condominium project, as defined in subdivision (f) of Section 1351 or  
42 in Section 6542, a community apartment project, as defined in subdivision (d) of

1 Section 1351 or in Section 6536, a stock cooperative, as defined in subdivision  
2 (m) of Section 1351 or in Section 6566, and a limited equity housing cooperative,  
3 as defined in subdivision (m) of Section 1351.

4 (c) The failure of the buyer or lessee to sign the notice shall not invalidate any  
5 grant, conveyance, lease, or encumbrance.

6 (d) Any person or entity who willfully violates the provisions of this section  
7 shall be liable to the purchaser of a lot or unit which is subject to the provisions of  
8 this section, for actual damages, and in addition thereto, shall be guilty of a public  
9 offense punishable by a fine in an amount not to exceed five hundred dollars  
10 (\$500). In an action to enforce ~~such~~ the liability or fine, the prevailing party shall  
11 be awarded reasonable attorney's fees.

12 **Comment.** Subdivision (b) of Section 1133 is amended to add cross-references to Sections  
13 6536, 6542, and 6566, reflecting the enactment of the Commercial and Industrial Common  
14 Interest Development Act (Civ. Code §§ 6500-6876).

15 Subdivision (d) is amended to make a stylistic revision.

16 **Note.** The Commission invites comment on whether an exclusively commercial or industrial  
17 common interest development may be organized as a community apartment project or a stock  
18 cooperative, arguably making a portion of this conforming revision unnecessary.

19 **Civ. Code § 1633.3 (amended). Transactions governed by title**

20 SEC. \_\_\_\_\_. Section 1633.3 of the Civil Code is amended to read:

21 1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title  
22 applies to electronic records and electronic signatures relating to a transaction.

23 (b) This title does not apply to transactions subject to the following laws:

24 (1) A law governing the creation and execution of wills, codicils, or  
25 testamentary trusts.

26 (2) Division 1 (commencing with Section 1101) of the Uniform Commercial  
27 Code, except Sections 1107 and 1206.

28 (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section  
29 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9  
30 (commencing with Section 9101), and 11 (commencing with Section 11101) of the  
31 Uniform Commercial Code.

32 (4) A law that requires that specifically identifiable text or disclosures in a  
33 record or a portion of a record be separately signed, including initialed, from the  
34 record. However, this paragraph does not apply to Section 1677 or 1678 of this  
35 code or Section 1298 of the Code of Civil Procedure.

36 (c) This title does not apply to any specific transaction described in Section  
37 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14,  
38 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or  
39 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of  
40 Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of,  
41 Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of,  
42 Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b,

1 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with  
2 Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or  
3 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with  
4 Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or~~ Section 3071.5 of, or Part  
5 5.5 (commencing with Section 6500) of Division 4 of, the Civil Code, subdivision  
6 (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15,  
7 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section  
8 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7,  
9 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4,  
10 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or  
11 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code.  
12 An electronic record may not be substituted for any notice that is required to be  
13 sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this  
14 subdivision shall be construed to prohibit the recordation of any document with a  
15 county recorder by electronic means.

16 (d) This title applies to an electronic record or electronic signature otherwise  
17 excluded from the application of this title under subdivision (b) when used for a  
18 transaction subject to a law other than those specified in subdivision (b).

19 (e) A transaction subject to this title is also subject to other applicable  
20 substantive law.

21 (f) The exclusion of a transaction from the application of this title under  
22 subdivision (b) or (c) shall be construed only to exclude the transaction from the  
23 application of this title, but shall not be construed to prohibit the transaction from  
24 being conducted by electronic means if the transaction may be conducted by  
25 electronic means under any other applicable law.

26 **Comment.** Subdivision (c) of Section 1633.3 is amended to add a cross-reference to Part 5.5  
27 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and  
28 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

29 **Civ. Code § 2924b (amended). Request for copy of notice of default or sale**

30 SEC. \_\_\_\_\_. Section 2924b of the Civil Code is amended to read:

31 2924b. (a) Any person desiring a copy of any notice of default and of any notice  
32 of sale under any deed of trust or mortgage with power of sale upon real property  
33 or an estate for years therein, as to which deed of trust or mortgage the power of  
34 sale cannot be exercised until these notices are given for the time and in the  
35 manner provided in Section 2924 may, at any time subsequent to recordation of  
36 the deed of trust or mortgage and prior to recordation of notice of default  
37 thereunder, cause to be filed for record in the office of the recorder of any county  
38 in which any part or parcel of the real property is situated, a duly acknowledged  
39 request for a copy of the notice of default and of sale. This request shall be signed  
40 and acknowledged by the person making the request, specifying the name and  
41 address of the person to whom the notice is to be mailed, shall identify the deed of  
42 trust or mortgage by stating the names of the parties thereto, the date of

1 recordation thereof, and the book and page where the deed of trust or mortgage is  
2 recorded or the recorder's number, and shall be in substantially the following  
3 form:  
4

5 **Note.** A table has been omitted to conserve resources.

6  
7 Upon the filing for record of the request, the recorder shall index in the general  
8 index of grantors the names of the trustors (or mortgagor) recited therein and the  
9 names of persons requesting copies.

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

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

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

27 (3) As used in paragraphs (1) and (2), the "last known address" of each trustor or  
28 mortgagor means the last business or residence physical address actually known  
29 by the mortgagee, beneficiary, trustee, or other person authorized to record the  
30 notice of default. For the purposes of this subdivision, an address is "actually  
31 known" if it is contained in the original deed of trust or mortgage, or in any  
32 subsequent written notification of a change of physical address from the trustor or  
33 mortgagor pursuant to the deed of trust or mortgage. For the purposes of this  
34 subdivision, "physical address" does not include an e-mail or any form of  
35 electronic address for a trustor or mortgagor. The beneficiary shall inform the  
36 trustee of the trustor's last address actually known by the beneficiary. However,  
37 the trustee shall incur no liability for failing to send any notice to the last address  
38 unless the trustee has actual knowledge of it.

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

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

3 (1) Within one month following recordation of the notice of default, deposit or  
4 cause to be deposited in the United States mail an envelope, sent by registered or  
5 certified mail with postage prepaid, containing a copy of the notice with the  
6 recording date shown thereon, addressed to each person set forth in paragraph (2),  
7 provided that the estate or interest of any person entitled to receive notice under  
8 this subdivision is acquired by an instrument sufficient to impart constructive  
9 notice of the estate or interest in the land or portion thereof that is subject to the  
10 deed of trust or mortgage being foreclosed, and provided the instrument is  
11 recorded in the office of the county recorder so as to impart that constructive  
12 notice prior to the recording date of the notice of default and provided the  
13 instrument as so recorded sets forth a mailing address that the county recorder  
14 shall use, as instructed within the instrument, for the return of the instrument after  
15 recording, and which address shall be the address used for the purposes of mailing  
16 notices herein.

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

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

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

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

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

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

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

39 (3) At least 20 days before the date of sale, deposit or cause to be deposited in  
40 the United States mail an envelope, sent by registered or certified mail with  
41 postage prepaid, containing a copy of the notice of the time and place of sale  
42 addressed to each person to whom a copy of the notice of default is to be mailed as  
43 provided in paragraphs (1) and (2), and addressed to the office of any state taxing

1 agency, Sacramento, California, that has recorded, subsequent to the deed of trust  
2 or mortgage being foreclosed, a notice of tax lien prior to the recording date of the  
3 notice of default against the real property to which the notice of default applies.

4 (4) Provide a copy of the notice of sale to the Internal Revenue Service, in  
5 accordance with Section 7425 of the Internal Revenue Code and any applicable  
6 federal regulation, if a “Notice of Federal Tax Lien under Internal Revenue Laws”  
7 has been recorded, subsequent to the deed of trust or mortgage being foreclosed,  
8 against the real property to which the notice of sale applies. The failure to provide  
9 the Internal Revenue Service with a copy of the notice of sale pursuant to this  
10 paragraph shall be sufficient cause to rescind the trustee’s sale and invalidate the  
11 trustee’s deed, at the option of either the successful bidder at the trustee’s sale or  
12 the trustee, and in either case with the consent of the beneficiary. Any option to  
13 rescind the trustee’s sale pursuant to this paragraph shall be exercised prior to any  
14 transfer of the property by the successful bidder to a bona fide purchaser for value.  
15 A rescision of the trustee’s sale pursuant to this paragraph may be recorded in a  
16 notice of rescision pursuant to Section 1058.5.

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

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

42 (e) Any person required to mail a copy of a notice of default or notice of sale to  
43 each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or

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

12 (f)(1) Notwithstanding subdivision (a), with respect to separate interests  
13 governed by an association, as defined in subdivision (a) of Section 1351 or in  
14 Section 6528, the association may cause to be filed in the office of the recorder in  
15 the county in which the separate interests are situated a request that a mortgagee,  
16 trustee, or other person authorized to record a notice of default regarding any of  
17 those separate interests mail to the association a copy of any trustee's deed upon  
18 sale concerning a separate interest. The request shall include a legal description or  
19 the assessor's parcel number of all the separate interests. A request recorded  
20 pursuant to this subdivision shall include the name and address of the association  
21 and a statement that it is ~~a homeowners'~~ an association as defined in subdivision  
22 (a) of Section 1351 or in Section 6528. Subsequent requests of an association shall  
23 supersede prior requests. A request pursuant to this subdivision shall be recorded  
24 before the filing of a notice of default. The mortgagee, trustee, or other authorized  
25 person shall mail the requested information to the association within 15 business  
26 days following the date the trustee's deed is recorded. Failure to mail the request,  
27 pursuant to this subdivision, shall not affect the title to real property.

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

33 (h) "Business day," as used in this section, has the meaning specified in Section  
34 9.

35 **Comment.** Subdivision (f) of Section 2924b is amended to add a cross-reference to Section  
36 6528, and to make a conforming terminological change, reflecting the enactment of the  
37 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

38 **Note.** The Commission invites comment on whether Section 2924b applies to a commercial  
39 or industrial common interest development, notwithstanding the use in Section 2924b(f) of the  
40 undefined term "homeowners' association."

41 **Civ. Code § 2955.1 (amended). Disclosures regarding earthquake insurance requirements**

42 SEC. \_\_\_\_\_. Section 2955.1 of the Civil Code is amended to read:

1 2955.1. (a) Any lender originating a loan secured by the borrower’s separate  
2 interest in a condominium project, as defined in subdivision (f) of Section 1351 or  
3 in Section 6542, which requires earthquake insurance or imposes a fee or any  
4 other condition in lieu thereof pursuant to an underwriting requirement imposed  
5 by an institutional third-party purchaser shall disclose all of the following to the  
6 potential borrower:

7 (1) That the lender or the institutional third party in question requires earthquake  
8 insurance or imposes a fee or any other condition in lieu thereof pursuant to an  
9 underwriting requirement imposed by an institutional third party purchaser.

10 (2) That not all lenders or institutional third parties require earthquake insurance  
11 or impose a fee or any other condition in lieu thereof pursuant to an underwriting  
12 requirement imposed by an institutional third party purchaser.

13 (3) Earthquake insurance may be required on the entire condominium project.

14 (4) That lenders or institutional third parties may also require that a  
15 condominium project maintain, or demonstrate an ability to maintain, financial  
16 reserves in the amount of the earthquake insurance deductible.

17 (b) For the purposes of this section, “institutional third party” means the Federal  
18 Home Loan Mortgage Corporation, the Federal National Mortgage Association,  
19 the Government National Mortgage Association, and other substantially similar  
20 institutions, whether public or private.

21 (c) The disclosure required by this section shall be made in writing by the lender  
22 as soon as reasonably practicable.

23 **Comment.** Section 2955.1 is amended to add a cross-reference to Section 6542, reflecting the  
24 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§  
25 6500-6876).

## CODE OF CIVIL PROCEDURE

26 **Code Civ. Proc. § 86, as it reads in 2010 Cal. Stat. ch. 697, § 21 (amended). Specific cases**  
27 **and proceedings that are limited civil cases**

28 SEC. \_\_\_\_\_. Section 86 of the Code of Civil Procedure, as it reads in Section 21 of  
29 Chapter 697 of the Statutes of 2010, is amended to read:

30 86. (a) The following civil cases and proceedings are limited civil cases:

31 (1) A case at law in which the demand, exclusive of interest, or the value of the  
32 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.  
33 This paragraph does not apply to a case that involves the legality of any tax,  
34 impost, assessment, toll, or municipal fine, except an action to enforce payment of  
35 delinquent unsecured personal property taxes if the legality of the tax is not  
36 contested by the defendant.

37 (2) An action for dissolution of partnership where the total assets of the  
38 partnership do not exceed twenty-five thousand dollars (\$25,000); an action of  
39 interpleader where the amount of money or the value of the property involved  
40 does not exceed twenty-five thousand dollars (\$25,000).



1 (3) An action to cancel or rescind a contract when the relief is sought in  
2 connection with an action to recover money not exceeding twenty-five thousand  
3 dollars (\$25,000) or property of a value not exceeding twenty-five thousand  
4 dollars (\$25,000), paid or delivered under, or in consideration of, the contract;  
5 an action to revise a contract where the relief is sought in an action upon the contract  
6 if the action otherwise is a limited civil case.

7 (4) A proceeding in forcible entry or forcible or unlawful detainer where the  
8 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or  
9 less.

10 (5) An action to enforce and foreclose a lien on personal property where the  
11 amount of the lien is twenty-five thousand dollars (\$25,000) or less.

12 (6) An action to enforce and foreclose, or a petition to release, a lien arising  
13 under the provisions of Chapter 4 (commencing with Section 8400) of Title 2 of  
14 Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment  
15 lien on a common interest development as defined in Section 1351 or 6534 of the  
16 Civil Code, where the amount of the liens is twenty-five thousand dollars  
17 (\$25,000) or less. However, if an action to enforce the lien affects property that is  
18 also affected by a similar pending action that is not a limited civil case, or if the  
19 total amount of liens sought to be foreclosed against the same property aggregates  
20 an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a  
21 limited civil case.

22 (7) An action for declaratory relief when brought pursuant to either of the  
23 following:

24 (A) By way of cross-complaint as to a right of indemnity with respect to the  
25 relief demanded in the complaint or a cross-complaint in an action or proceeding  
26 that is otherwise a limited civil case.

27 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and  
28 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of  
29 Division 3 of the Business and Professions Code, where the amount in controversy  
30 is twenty-five thousand dollars (\$25,000) or less.

31 (8) An action to issue a temporary restraining order or preliminary injunction; to  
32 take an account, where necessary to preserve the property or rights of any party to  
33 a limited civil case; to make any order or perform any act, pursuant to Title 9  
34 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a  
35 limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil  
36 case; to determine title to personal property seized in a limited civil case.

37 (9) An action under Article 3 (commencing with Section 708.210) of Chapter 6  
38 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal  
39 property or to enforce the liability of the debtor of a judgment debtor where the  
40 interest claimed adversely is of a value not exceeding twenty-five thousand dollars  
41 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars  
42 (\$25,000).

43 (10) An arbitration-related petition filed pursuant to either of the following:

1 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,  
2 except for uninsured motorist arbitration proceedings in accordance with Section  
3 11580.2 of the Insurance Code, if the petition is filed before the arbitration award  
4 becomes final and the matter to be resolved by arbitration is a limited civil case  
5 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed  
6 after the arbitration award becomes final and the amount of the award and all other  
7 rulings, pronouncements, and decisions made in the award are within paragraphs  
8 (1) to (9), inclusive, of subdivision (a).

9 (B) To confirm, correct, or vacate a fee arbitration award between an attorney  
10 and client that is binding or has become binding, pursuant to Article 13  
11 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and  
12 Professions Code, where the arbitration award is twenty-five thousand dollars  
13 (\$25,000) or less.

14 (b) The following cases in equity are limited civil cases:

15 (1) A case to try title to personal property when the amount involved is not more  
16 than twenty-five thousand dollars (\$25,000).

17 (2) A case when equity is pleaded as a defensive matter in any case that is  
18 otherwise a limited civil case.

19 (3) A case to vacate a judgment or order of the court obtained in a limited civil  
20 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

21 **Comment.** Paragraph (6) of subdivision (a) of Section 86 is amended to add a cross-reference  
22 to Civil Code Section 6534, reflecting the enactment of the Commercial and Industrial Common  
23 Interest Development Act (Civ. Code §§ 6500-6876).

24 **Code Civ. Proc. § 116.540 (amended). Participation by individuals other than plaintiff and**  
25 **defendant**

26 SEC. \_\_\_\_\_. Section 116.540 of the Code of Civil Procedure is amended to read:

27 116.540. (a) Except as permitted by this section, no individual other than the  
28 plaintiff and the defendant may take part in the conduct or defense of a small  
29 claims action.

30 (b) Except as additionally provided in subdivision (i), a corporation may appear  
31 and participate in a small claims action only through a regular employee, or a duly  
32 appointed or elected officer or director, who is employed, appointed, or elected for  
33 purposes other than solely representing the corporation in small claims court.

34 (c) A party who is not a corporation or a natural person may appear and  
35 participate in a small claims action only through a regular employee, or a duly  
36 appointed or elected officer or director, or in the case of a partnership, a partner,  
37 engaged for purposes other than solely representing the party in small claims  
38 court.

39 (d) If a party is an individual doing business as a sole proprietorship, the party  
40 may appear and participate in a small claims action by a representative and  
41 without personally appearing if both of the following conditions are met:

1 (1) The claim can be proved or disputed by evidence of an account that  
2 constitutes a business record as defined in Section 1271 of the Evidence Code, and  
3 there is no other issue of fact in the case.

4 (2) The representative is a regular employee of the party for purposes other than  
5 solely representing the party in small claims actions and is qualified to testify to  
6 the identity and mode of preparation of the business record.

7 (e) A plaintiff is not required to personally appear, and may submit declarations  
8 to serve as evidence supporting his or her claim or allow another individual to  
9 appear and participate on his or her behalf, if (1) the plaintiff is serving on active  
10 duty in the United States Armed Forces outside this state, (2) the plaintiff was  
11 assigned to his or her duty station after his or her claim arose, (3) the assignment is  
12 for more than six months, (4) the representative is serving without compensation,  
13 and (5) the representative has appeared in small claims actions on behalf of others  
14 no more than four times during the calendar year. The defendant may file a claim  
15 in the same action in an amount not to exceed the jurisdictional limits stated in  
16 Sections 116.220, 116.221, and 116.231.

17 (f) A party incarcerated in a county jail, a Department of Corrections and  
18 Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to  
19 personally appear, and may submit declarations to serve as evidence supporting  
20 his or her claim, or may authorize another individual to appear and participate on  
21 his or her behalf if that individual is serving without compensation and has  
22 appeared in small claims actions on behalf of others no more than four times  
23 during the calendar year.

24 (g) A defendant who is a nonresident owner of real property may defend against  
25 a claim relating to that property without personally appearing by (1) submitting  
26 written declarations to serve as evidence supporting his or her defense, (2)  
27 allowing another individual to appear and participate on his or her behalf if that  
28 individual is serving without compensation and has appeared in small claims  
29 actions on behalf of others no more than four times during the calendar year, or (3)  
30 taking the action described in both (1) and (2).

31 (h) A party who is an owner of rental real property may appear and participate in  
32 a small claims action through a property agent under contract with the owner to  
33 manage the rental of that property, if (1) the owner has retained the property agent  
34 principally to manage the rental of that property and not principally to represent  
35 the owner in small claims court, and (2) the claim relates to the rental property.

36 (i) A party that is an association created to manage a common interest  
37 development, as defined in Section 1351, or in Sections 6528 and 6534, of the  
38 Civil Code, may appear and participate in a small claims action through an agent,  
39 a management company representative, or bookkeeper who appears on behalf of  
40 that association.

41 (j) At the hearing of a small claims action, the court shall require any individual  
42 who is appearing as a representative of a party under subdivisions (b) to (i),  
43 inclusive, to file a declaration stating (1) that the individual is authorized to appear

1 for the party, and (2) the basis for that authorization. If the representative is  
2 appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state  
3 that the individual is not employed solely to represent the party in small claims  
4 court. If the representative is appearing under subdivision (e), (f), or (g), the  
5 declaration also shall state that the representative is serving without compensation,  
6 and has appeared in small claims actions on behalf of others no more than four  
7 times during the calendar year.

8 (k) A husband or wife who sues or who is sued with his or her spouse may  
9 appear and participate on behalf of his or her spouse if (1) the claim is a joint  
10 claim, (2) the represented spouse has given his or her consent, and (3) the court  
11 determines that the interests of justice would be served.

12 (l) If the court determines that a party cannot properly present his or her claim or  
13 defense and needs assistance, the court may in its discretion allow another  
14 individual to assist that party.

15 (m) Nothing in this section shall operate or be construed to authorize an attorney  
16 to participate in a small claims action except as expressly provided in Section  
17 116.530.

18 **Comment.** Subdivision (i) of Section 116.540 is amended to add cross-references to Civil  
19 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial  
20 Common Interest Development Act (Civ. Code §§ 6500-6876).

## GOVERNMENT CODE

### 21 **Gov't Code § 12191 (amended). Miscellaneous business entity filing fees**

22 SEC. \_\_\_\_\_. Section 12191 of the Government Code is amended to read:

23 12191. The miscellaneous business entity filing fees are the following:

24 (a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations  
25 Code:

26 (1) Filing the statement and designation upon the qualification of a foreign  
27 association pursuant to Section 2105 of the Corporations Code: One hundred  
28 dollars (\$100).

29 (2) Filing an amended statement and designation by a foreign association  
30 pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

31 (3) Filing a certificate showing the surrender of the right of a foreign association  
32 to transact intrastate business pursuant to Section 2112 of the Corporations Code:  
33 No fee.

34 (b) Unincorporated Associations:

35 (1) Filing a statement in accordance with Section 24003 of the Corporations  
36 Code as to principal place of office or place for sending notices or designating  
37 agent for service: Twenty-five dollars (\$25).

38 (2) Insignia Registrations: Ten dollars (\$10).

39 (c) Community Associations and Common Interest Developments:

1 (1) Filing a statement by a community association in accordance with Section  
2 1363.6 or 6762 of the Civil Code to register the common interest development that  
3 it manages: An amount not to exceed thirty dollars (\$30).

4 (2) Filing an amended statement by a community association in accordance with  
5 Section 1363.6 or 6762 of the Civil Code: No fee.

6 **Comment.** Section 12191 is amended to add cross-references to Civil Code Section 6762,  
7 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
8 (Civ. Code §§ 6500-6876).

9 **Gov't Code § 12956.1 (amended). Restrictive covenant based on discriminatory grounds**

10 SEC. \_\_\_\_ . Section 12956.1 of the Government Code is amended to read:

11 12956.1. (a) As used in this section, “association,” “governing documents,” and  
12 “declaration” have the same meanings as set forth in Section 1351, or in Sections  
13 6528, 6546, and 6552, of the Civil Code.

14 (b)(1) A county recorder, title insurance company, escrow company, real estate  
15 broker, real estate agent, or association that provides a copy of a declaration,  
16 governing document, or deed to any person shall place a cover page or stamp on  
17 the first page of the previously recorded document or documents stating, in at least  
18 14-point boldface type, the following:

19 “If this document contains any restriction based on race, color, religion, sex,  
20 sexual orientation, familial status, marital status, disability, national origin, source  
21 of income as defined in subdivision (p) of Section 12955, or ancestry, that  
22 restriction violates state and federal fair housing laws and is void, and may be  
23 removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions  
24 under state and federal law on the age of occupants in senior housing or housing  
25 for older persons shall not be construed as restrictions based on familial status.”

26 (2) The requirements set forth in paragraph (1) shall not apply to documents  
27 being submitted for recordation to a county recorder.

28 (c) Any person who records a document for the express purpose of adding a  
29 racially restrictive covenant is guilty of a misdemeanor. The county recorder shall  
30 not incur any liability for recording the document. Notwithstanding any other  
31 provision of law, a prosecution for a violation of this subdivision shall commence  
32 within three years after the discovery of the recording of the document.

33 **Comment.** Section 12956.1 is amended to add cross-references to Civil Code Sections 6528,  
34 6546, and 6552, reflecting the enactment of the Commercial and Industrial Common Interest  
35 Development Act (Civ. Code §§ 6500-6876).

36 **Gov't Code § 12956.2 (amended). Restrictive Covenant Modification**

37 SEC. \_\_\_\_ . Section 12956.2 of the Government Code is amended to read:

38 12956.2. (a) A person who holds an ownership interest of record in property that  
39 he or she believes is the subject of an unlawfully restrictive covenant in violation  
40 of subdivision (l) of Section 12955 may record a document titled Restrictive  
41 Covenant Modification. The county recorder may choose to waive the fee  
42 prescribed for recording and indexing instruments pursuant to Section 27361 in

1 the case of the modification document provided for in this section. The  
2 modification document shall include a complete copy of the original document  
3 containing the unlawfully restrictive language with the unlawfully restrictive  
4 language stricken.

5 (b) Before recording the modification document, the county recorder shall  
6 submit the modification document and the original document to the county  
7 counsel who shall determine whether the original document contains an unlawful  
8 restriction based on race, color, religion, sex, sexual orientation, familial status,  
9 marital status, disability, national origin, source of income as defined in  
10 subdivision (p) of Section 12955, or ancestry. The county counsel shall return the  
11 documents and inform the county recorder of its determination. The county  
12 recorder shall refuse to record the modification document if the county counsel  
13 finds that the original document does not contain an unlawful restriction as  
14 specified in this paragraph.

15 (c) The modification document shall be indexed in the same manner as the  
16 original document being modified. It shall contain a recording reference to the  
17 original document in the form of a book and page or instrument number, and date  
18 of the recording.

19 (d) Subject to covenants, conditions, and restrictions that were recorded after the  
20 recording of the original document that contains the unlawfully restrictive  
21 language and subject to covenants, conditions, and restrictions that will be  
22 recorded after the Restrictive Covenant Modification, the restrictions in the  
23 Restrictive Covenant Modification, once recorded, are the only restrictions having  
24 effect on the property. The effective date of the terms and conditions of the  
25 modification document shall be the same as the effective date of the original  
26 document.

27 (e) The county recorder shall make available to the public Restrictive Covenant  
28 Modification forms.

29 (f) If the holder of an ownership interest of record in property causes to be  
30 recorded a modified document pursuant to this section that contains modifications  
31 not authorized by this section, the county recorder shall not incur liability for  
32 recording the document. The liability that may result from the unauthorized  
33 recordation is the sole responsibility of the holder of the ownership interest of  
34 record who caused the modified recordation.

35 (g) This section does not apply to persons holding an ownership interest in  
36 property that is part of a common interest development as defined in subdivision  
37 (c) of Section 1351 or in Section 6534 of the Civil Code if the board of directors  
38 of that common interest development is subject to the requirements of subdivision  
39 (b) of Section 1352.5 or of Section 6606 of the Civil Code.

40 **Comment.** Subdivision (g) of Section 12956.2 is amended to add cross-references to Civil  
41 Code Sections 6534 and 6606, reflecting the enactment of the Commercial and Industrial  
42 Common Interest Development Act (Civ. Code §§ 6500-6876).

1 **Gov't Code § 53341.5 (amended). Lot, parcel, or unit of subdivision subject to special tax**

2 SEC. \_\_\_\_\_. Section 53341.5 of the Government Code is amended to read:

3 53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax  
4 levied pursuant to this chapter, the subdivider, his or her agent, or representative,  
5 shall not sell, or lease for a term exceeding five years, or permit a prospective  
6 purchaser or lessor to sign a contract of purchase or a deposit receipt or any  
7 substantially equivalent document in the event of a lease with respect to the lot,  
8 parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until  
9 the prospective purchaser or lessee of the lot, parcel, or unit has been furnished  
10 with and has signed a written notice as provided in this section. The notice shall  
11 contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-  
12 point type, and shall be in substantially the following form. The form may be  
13 modified as needed to clearly and accurately describe the tax structure and other  
14 characteristics of districts created before January 1, 1993, or to clearly and  
15 accurately consolidate information about the tax structure and other characteristics  
16 of two or more districts that levy or are authorized to levy special taxes with  
17 respect to the lot, parcel, or unit:

18 (b) "Subdivision," as used in subdivision (a), means improved or unimproved  
19 land that is divided or proposed to be divided for the purpose of sale, lease, or  
20 financing, whether immediate or future, into two or more lots, parcels, or units and  
21 includes a condominium project, as defined by ~~Section 1350~~ subdivision (f) of  
22 Section 1351 or by Section 6542 of the Civil Code, a community apartment  
23 project, a stock cooperative, and a limited-equity housing cooperative, as defined  
24 in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and  
25 Professions Code.

26 (c) The buyer shall have three days after delivery in person or five days after  
27 delivery by deposit in the mail of any notice required by this section, to terminate  
28 his or her agreement by delivery of written notice of that termination to the owner,  
29 subdivider, or agent.

30 (d) The failure to furnish the notice to the buyer or lessee, and failure of the  
31 buyer or lessee to sign the notice of a special tax, shall not invalidate any grant,  
32 conveyance, lease, or encumbrance.

33 (e) Any person or entity who willfully violates the provisions of this section  
34 shall be liable to the purchaser of a lot or unit that is subject to the provisions of  
35 this section, for actual damages, and in addition thereto, shall be guilty of a public  
36 offense punishable by a fine in an amount not to exceed five hundred dollars  
37 (\$500). In an action to enforce a liability or fine, the prevailing party shall be  
38 awarded reasonable attorney's fees.

39 **Comment.** Subdivision (b) of Section 53341.5 is amended to add a cross-reference to Civil  
40 Code Section 6542, reflecting the enactment of the Commercial and Industrial Common Interest  
41 Development Act (Civ. Code §§ 6500-6876), and to correct a technical error.

1 **Note.** The existing cross-reference in Section 53341.5(b) to Civil Code Section 1350 appears  
2 to be in error. Section 53341.5 refers to the definition of “condominium project,” which is defined  
3 in Section 1351(f), not Section 1350. The proposed amendment would correct that error.

4 **Gov’t Code § 65008 (amended). Invalidity of discriminatory act**

5 SEC. \_\_\_\_\_. Section 65008 of the Government Code is amended to read:

6 65008. (a) Any action pursuant to this title by any city, county, city and county,  
7 or other local governmental agency in this state is null and void if it denies to any  
8 individual or group of individuals the enjoyment of residence, landownership,  
9 tenancy, or any other land use in this state because of any of the following reasons:

10 (1)(A) The lawful occupation, age, or any characteristic of the individual or  
11 group of individuals listed in subdivision (a) or (d) of Section 12955, as those  
12 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)  
13 of subdivision (p) of Section 12955 and Section 12955.2.

14 (B) Notwithstanding subparagraph (A), with respect to familial status,  
15 subparagraph (A) shall not be construed to apply to housing for older persons, as  
16 defined in Section 12955.9. With respect to familial status, nothing in  
17 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
18 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.  
19 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil  
20 Code, and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply  
21 to subparagraph (A).

22 (2) The method of financing of any residential development of the individual or  
23 group of individuals.

24 (3) The intended occupancy of any residential development by persons or  
25 families of very low, low, moderate, or middle income.

26 (b)(1) No city, county, city and county, or other local governmental agency  
27 shall, in the enactment or administration of ordinances pursuant to any law,  
28 including this title, prohibit or discriminate against any residential development or  
29 emergency shelter for any of the following reasons:

30 (A) Because of the method of financing.

31 (B)(i) Because of the lawful occupation, age, or any characteristic listed in  
32 subdivision (a) or (d) of Section 12955, as those characteristics are defined in  
33 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of  
34 Section 12955, and Section 12955.2 of the owners or intended occupants of the  
35 residential development or emergency shelter.

36 (ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not  
37 be construed to apply to housing for older persons, as defined in Section 12955.9.  
38 With respect to familial status, nothing in clause (i) shall be construed to affect  
39 Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to  
40 housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections  
41 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section  
42 12955 of this code shall apply to clause (i).



1 (C) Because the development or shelter is intended for occupancy by persons  
2 and families of very low, low, or moderate income, as defined in Section 50093 of  
3 the Health and Safety Code, or persons and families of middle income.

4 (D) Because the development consists of a multifamily residential project that is  
5 consistent with both the jurisdiction's zoning ordinance and general plan as they  
6 existed on the date the application was deemed complete, except that a project  
7 shall not be deemed to be inconsistent with the zoning designation for the site if  
8 that zoning designation is inconsistent with the general plan only because the  
9 project site has not been rezoned to conform with a more recently adopted general  
10 plan.

11 (2) The discrimination prohibited by this subdivision includes the denial or  
12 conditioning of a residential development or shelter because of, in whole or in  
13 part, either of the following:

14 (A) The method of financing.

15 (B) The occupancy of the development by persons protected by this subdivision,  
16 including, but not limited to, persons and families of very low, low, or moderate  
17 income.

18 (3) A city, county, city and county, or other local government agency may not,  
19 pursuant to subdivision (d) of Section 65589.5, disapprove a housing development  
20 project or condition approval of a housing development project in a manner that  
21 renders the project infeasible if the basis for the disapproval or conditional  
22 approval includes any of the reasons prohibited in paragraph (1) or (2).

23 (c) For the purposes of this section, "persons and families of middle income"  
24 means persons and families whose income does not exceed 150 percent of the  
25 median income for the county in which the persons or families reside.

26 (d)(1) No city, county, city and county, or other local governmental agency may  
27 impose different requirements on a residential development or emergency shelter  
28 that is subsidized, financed, insured, or otherwise assisted by the federal or state  
29 government or by a local public entity, as defined in Section 50079 of the Health  
30 and Safety Code, than those imposed on nonassisted developments, except as  
31 provided in subdivision (e). The discrimination prohibited by this subdivision  
32 includes the denial or conditioning of a residential development or emergency  
33 shelter based in whole or in part on the fact that the development is subsidized,  
34 financed, insured, or otherwise assisted as described in this paragraph.

35 (2)(A) No city, county, city and county, or other local governmental agency  
36 may, because of the lawful occupation age, or any characteristic of the intended  
37 occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics  
38 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of  
39 subdivision (p) of Section 12955, and Section 12955.2 or because the development  
40 is intended for occupancy by persons and families of very low, low, moderate, or  
41 middle income, impose different requirements on these residential developments  
42 than those imposed on developments generally, except as provided in subdivision  
43 (e).

1 (B) Notwithstanding subparagraph (A), with respect to familial status,  
2 subparagraph (A) shall not be construed to apply to housing for older persons, as  
3 defined in Section 12955.9. With respect to familial status, nothing in  
4 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
5 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.  
6 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil  
7 Code, and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply  
8 to subparagraph (A).

9 (e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title  
10 do not prohibit either of the following:

11 (1) The County of Riverside from enacting and enforcing zoning to provide  
12 housing for older persons, in accordance with state or federal law, if that zoning  
13 was enacted prior to January 1, 1995.

14 (2) Any city, county, or city and county from extending preferential treatment to  
15 residential developments or emergency shelters assisted by the federal or state  
16 government or by a local public entity, as defined in Section 50079 of the Health  
17 and Safety Code, or other residential developments or emergency shelters intended  
18 for occupancy by persons and families of low and moderate income, as defined in  
19 Section 50093 of the Health and Safety Code, or persons and families of middle  
20 income, or agricultural employees, as defined in subdivision (b) of Section 1140.4  
21 of the Labor Code, and their families. This preferential treatment may include, but  
22 need not be limited to, reduction or waiver of fees or changes in architectural  
23 requirements, site development and property line requirements, building setback  
24 requirements, or vehicle parking requirements that reduce development costs of  
25 these developments.

26 (f) “Residential development,” as used in this section, means a single-family  
27 residence or a multifamily residence, including manufactured homes, as defined in  
28 Section 18007 of the Health and Safety Code.

29 (g) This section shall apply to chartered cities.

30 (h) The Legislature finds and declares that discriminatory practices that inhibit  
31 the development of housing for persons and families of very low, low, moderate,  
32 and middle income, or emergency shelters for the homeless, are a matter of  
33 statewide concern.

34 **Comment.** Section 65008 is amended to add cross-references to Civil Code Section 6714,  
35 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
36 (Civ. Code §§ 6500-6876).

37 **Gov’t Code § 66411 (amended). Local control of common interest developments and**  
38 **subdivision design and improvement**

39 SEC. \_\_\_\_\_. Section 66411 of the Government Code is amended to read:

40 66411. Regulation and control of the design and improvement of subdivisions  
41 are vested in the legislative bodies of local agencies. Each local agency shall, by  
42 ordinance, regulate and control the initial design and improvement of common

1 interest developments as defined in Section 1351 or 6534 of the Civil Code and  
2 subdivisions for which this division requires a tentative and final or parcel map. In  
3 the development, adoption, revision, and application of ~~such~~ this type of  
4 ordinance, the local agency shall comply with the provisions of Section 65913.2.  
5 The ordinance shall specifically provide for proper grading and erosion control,  
6 including the prevention of sedimentation or damage to offsite property. Each  
7 local agency may by ordinance regulate and control other subdivisions, provided  
8 that the regulations are not more restrictive than the regulations for those  
9 subdivisions for which a tentative and final or parcel map are required by this  
10 division, and provided further that the regulations shall not be applied to short-  
11 term leases (terminable by either party on not more than 30 days' notice in  
12 writing) of a portion of the operating right-of-way of a railroad corporation as  
13 defined by Section 230 of the Public Utilities Code unless a showing is made in  
14 individual cases, under substantial evidence, that public policy necessitates the  
15 application of the regulations to those short-term leases in individual cases.

16 **Comment.** Section 66411 is amended to add a cross-reference to Civil Code Section 6534,  
17 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
18 (Civ. Code §§ 6500-6876), and to make a stylistic revision.

19 **Gov't Code § 66412 (amended). Application of Subdivision Map Act**

20 66412. This division shall be inapplicable to any of the following:

21 (a) The financing or leasing of apartments, offices, stores, or similar space  
22 within apartment buildings, industrial buildings, commercial buildings,  
23 mobilehome parks, or trailer parks.

24 (b) Mineral, oil, or gas leases.

25 (c) Land dedicated for cemetery purposes under the Health and Safety Code.

26 (d) A lot line adjustment between four or fewer existing adjoining parcels,  
27 where the land taken from one parcel is added to an adjoining parcel, and where a  
28 greater number of parcels than originally existed is not thereby created, if the lot  
29 line adjustment is approved by the local agency, or advisory agency. A local  
30 agency or advisory agency shall limit its review and approval to a determination of  
31 whether or not the parcels resulting from the lot line adjustment will conform to  
32 the local general plan, any applicable specific plan, any applicable coastal plan,  
33 and zoning and building ordinances. An advisory agency or local agency shall not  
34 impose conditions or exactions on its approval of a lot line adjustment except to  
35 conform to the local general plan, any applicable specific plan, any applicable  
36 coastal plan, and zoning and building ordinances, to require the prepayment of real  
37 property taxes prior to the approval of the lot line adjustment, or to facilitate the  
38 relocation of existing utilities, infrastructure, or easements. No tentative map,  
39 parcel map, or final map shall be required as a condition to the approval of a lot  
40 line adjustment. The lot line adjustment shall be reflected in a deed, which shall be  
41 recorded. No record of survey shall be required for a lot line adjustment unless  
42 required by Section 8762 of the Business and Professions Code. A local agency

1 shall approve or disapprove a lot line adjustment pursuant to the Permit  
2 Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

3 (e) Boundary line or exchange agreements to which the State Lands  
4 Commission or a local agency holding a trust grant of tide and submerged lands is  
5 a party.

6 (f) Any separate assessment under Section 2188.7 of the Revenue and Taxation  
7 Code.

8 (g) The conversion of a community apartment project, as defined in Section  
9 1351 or 6536 of the Civil Code, to a condominium, as defined in Section 783 of  
10 the Civil Code, but only if all of the following requirements are met:

11 (1) The property was subdivided before January 1, 1982, as evidenced by a  
12 recorded deed creating the community apartment project.

13 (2) Subject to compliance with subdivision (e) of Section 1351, or with Sections  
14 6626 and 6628, of the Civil Code, all conveyances and other documents necessary  
15 to effectuate the conversion shall be executed by the required number of owners in  
16 the project as specified in the bylaws or other organizational documents. If the  
17 bylaws or other organizational documents do not expressly specify the number of  
18 owners necessary to execute the conveyances and other documents, a majority of  
19 owners in the project shall be required to execute the conveyances or other  
20 documents. Conveyances and other documents executed under the foregoing  
21 provisions shall be binding upon and affect the interests of all parties in the  
22 project.

23 (3) If subdivision, as defined in Section 66424, of the property occurred after  
24 January 1, 1964, both of the following requirements are met:

25 (A) A final or parcel map of that subdivision was approved by the local agency  
26 and recorded, with all of the conditions of that map remaining in effect after the  
27 conversion.

28 (B) No more than 49 percent of the units in the project were owned by any one  
29 person as defined in Section 17, including an incorporator or director of the  
30 community apartment project, on January 1, 1982.

31 (4) The local agency certifies that the above requirements were satisfied if the  
32 local agency, by ordinance, provides for that certification.

33 (h) The conversion of a stock cooperative, as defined in Section 1351 or 6566 of  
34 the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but  
35 only if all of the following requirements are met:

36 (1) The property was subdivided before January 1, 1982, as evidenced by a  
37 recorded deed creating the stock cooperative, an assignment of lease, or issuance  
38 of shares to a stockholder.

39 (2) A person renting a unit in a cooperative shall be entitled at the time of  
40 conversion to all tenant rights in state or local law, including, but not limited to,  
41 rights respecting first refusal, notice, and displacement and relocation benefits.

42 (3) Subject to compliance with subdivision (e) of Section 1351, or with Sections  
43 6626 and 6628, of the Civil Code, all conveyances and other documents necessary

1 to effectuate the conversion shall be executed by the required number of owners in  
2 the cooperative as specified in the bylaws or other organizational documents. If  
3 the bylaws or other organizational documents do not expressly specify the number  
4 of owners necessary to execute the conveyances and other documents, a majority  
5 of owners in the cooperative shall be required to execute the conveyances or other  
6 documents. Conveyances and other documents executed under the foregoing  
7 provisions shall be binding upon and affect the interests of all parties in the  
8 cooperative.

9 (4) If subdivision, as defined in Section 66424, of the property occurred after  
10 January 1, 1980, both of the following requirements are met:

11 (A) A final or parcel map of that subdivision was approved by the local agency  
12 and recorded, with all of the conditions of that map remaining in effect after the  
13 conversion.

14 (B) No more than 49 percent of the shares in the project were owned by any one  
15 person as defined in Section 17, including an incorporator or director of the  
16 cooperative, on January 1, 1982.

17 (5) The local agency certifies that the above requirements were satisfied if the  
18 local agency, by ordinance, provides for that certification.

19 (i) The leasing of, or the granting of an easement to, a parcel of land, or any  
20 portion or portions thereof, in conjunction with the financing, erection, and sale or  
21 lease of a windpowered electrical generation device on the land, if the project is  
22 subject to discretionary action by the advisory agency or legislative body.

23 (j) The leasing or licensing of a portion of a parcel, or the granting of an  
24 easement, use permit, or similar right on a portion of a parcel, to a telephone  
25 corporation as defined in Section 234 of the Public Utilities Code, exclusively for  
26 the placement and operation of cellular radio transmission facilities, including, but  
27 not limited to, antennae support structures, microwave dishes, structures to house  
28 cellular communications transmission equipment, power sources, and other  
29 equipment incidental to the transmission of cellular communications, if the project  
30 is subject to discretionary action by the advisory agency or legislative body.

31 (k) Leases of agricultural land for agricultural purposes. As used in this  
32 subdivision, “agricultural purposes” means the cultivation of food or fiber, or the  
33 grazing or pasturing of livestock.

34 (l) The leasing of, or the granting of an easement to, a parcel of land, or any  
35 portion or portions thereof, in conjunction with the financing, erection, and sale or  
36 lease of a solar electrical generation device on the land, if the project is subject to  
37 review under other local agency ordinances regulating design and improvement or,  
38 if the project is subject to other discretionary action by the advisory agency or  
39 legislative body.

40 (m) The leasing of, or the granting of an easement to, a parcel of land or any  
41 portion or portions of the land in conjunction with a biogas project that uses, as  
42 part of its operation, agricultural waste or byproducts from the land where the  
43 project is located and reduces overall emissions of greenhouse gases from

1 agricultural operations on the land if the project is subject to review under other  
2 local agency ordinances regulating design and improvement or if the project is  
3 subject to discretionary action by the advisory agency or legislative body.

4 **Comment.** Subdivisions (g) and (h) of Section 66412 are amended to add cross-references to  
5 Civil Code Sections 6536, 6566, 6626, and 6628, reflecting the enactment of the Commercial and  
6 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

7 **Notes.** (1) Section 66412 refers to compliance with Civil Code Section 1351(e). That  
8 provision includes both a definition of “condominium plan” and substantive provisions governing  
9 the creation, amendment, or repeal of a condominium plan. In the proposed law, the definition is  
10 separated from the substantive provisions (consistent with general statutory drafting practice). In  
11 the proposed amendments to Section 66412(g)(2) and (h)(3), the added cross-references refer  
12 only to the provisions of the proposed law that would continue the substantive provisions of  
13 Section 1351(e) (i.e., to proposed Sections 6626 and 6628).

14 (2) The Commission invites comment on whether an exclusively commercial or industrial  
15 common interest development may be organized as either a community apartment project or a  
16 stock cooperative, arguably making a portion of this conforming revision unnecessary.

17 **Gov’t Code § 66424 (amended). Subdivision**

18 SEC. \_\_\_\_\_. Section 66424 of the Government Code is amended to read:

19 66424. “Subdivision” means the division, by any subdivider, of any unit or units  
20 of improved or unimproved land, or any portion thereof, shown on the latest  
21 equalized county assessment roll as a unit or as contiguous units, for the purpose  
22 of sale, lease or financing, whether immediate or future. Property shall be  
23 considered as contiguous units, even if it is separated by roads, streets, utility  
24 easement or railroad rights-of-way. “Subdivision” includes a condominium  
25 project, as defined in subdivision (f) of Section 1351 or in Section 6542 of the  
26 Civil Code, a community apartment project, as defined in subdivision (d) of  
27 Section 1351 or in Section 6536 of the Civil Code, or the conversion of five or  
28 more existing dwelling units to a stock cooperative, as defined in subdivision (m)  
29 of Section 1351 or in Section 6566 of the Civil Code.

30 **Comment.** Section 66424 is amended to add cross-references to Civil Code Sections 6536,  
31 6542, and 6566, reflecting the enactment of the Commercial and Industrial Common Interest  
32 Development Act (Civ. Code §§ 6500-6876).

33 **Note.** The Commission invites comment on whether an exclusively commercial or industrial  
34 common interest development may be organized as either a community apartment project or a  
35 stock cooperative, arguably making a portion of this conforming revision unnecessary.

36 **Gov’t Code § 66427 (amended). Map of condominium, community apartment project, or**  
37 **stock cooperative project**

38 SEC. \_\_\_\_\_. Section 66427 of the Government Code is amended to read:

39 66427. (a) A map of a condominium project, a community apartment project, or  
40 of the conversion of five or more existing dwelling units to a stock cooperative  
41 project need not show the buildings or the manner in which the buildings or the  
42 airspace above the property shown on the map are to be divided, nor shall the  
43 governing body have the right to refuse approval of a parcel, tentative, or final

1 map of the project on account of the design or the location of buildings on the  
2 property shown on the map that are not violative of local ordinances or on account  
3 of the manner in which airspace is to be divided in conveying the condominium.

4 (b) A map need not include a condominium plan or plans, as defined in  
5 subdivision (e) of Section 1351 or in Section 6540 of the Civil Code, and the  
6 governing body may not refuse approval of a parcel, tentative, or final map of the  
7 project on account of the absence of a condominium plan.

8 (c) Fees and lot design requirements shall be computed and imposed with  
9 respect to those maps on the basis of parcels or lots of the surface of the land  
10 shown thereon as included in the project.

11 (d) Nothing herein shall be deemed to limit the power of the legislative body to  
12 regulate the design or location of buildings in a project by or pursuant to local  
13 ordinances.

14 (e) If the governing body has approved a parcel map or final map for the  
15 establishment of condominiums on property pursuant to the requirements of this  
16 division, the separation of a three-dimensional portion or portions of the property  
17 from the remainder of the property or the division of that three-dimensional  
18 portion or portions into condominiums shall not constitute a further subdivision as  
19 defined in Section 66424, provided each of the following conditions has been  
20 satisfied:

21 (1) The total number of condominiums established is not increased above the  
22 number authorized by the local agency in approving the parcel map or final map.

23 (2) A perpetual estate or an estate for years in the remainder of the property is  
24 held by the condominium owners in undivided interests in common, or by an  
25 association as defined in subdivision (a) of Section 1351 or in Section 6528 of the  
26 Civil Code, and the duration of the estate in the remainder of the property is the  
27 same as the duration of the estate in the condominiums.

28 (3) The three-dimensional portion or portions of property are described on a  
29 condominium plan or plans, as defined in subdivision (e) of Section 1351 or in  
30 Section 6540 of the Civil Code.

31 **Comment.** Section 66427 is amended to add cross-references to Civil Code Sections 6528 and  
32 6540, reflecting the enactment of the Commercial and Industrial Common Interest Development  
33 Act (Civ. Code §§ 6500-6876).

34 **Gov't Code § 66452.10 (amended). Stock cooperative or community apartment project**

35 SEC. \_\_\_\_\_. Section 66452.10 of the Government Code is amended to read:

36 66452.10. A stock cooperative, as defined in Section 11003.2 of the Business  
37 and Professions Code, or a community apartment project, as defined in Section  
38 11004 of the Business and Professions Code, shall not be converted to a  
39 condominium, as defined in Section 783 of the Civil Code, unless the required  
40 number of (1) owners and (2) trustees or beneficiaries of each recorded deed of  
41 trust and mortgagees of each recorded mortgage in the cooperative or project, as  
42 specified in the bylaws, or other organizational documents, have voted in favor of

1 the conversion. If the bylaws or other organizational documents do not expressly  
2 specify the number of votes required to approve the conversion, a majority vote of  
3 the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and  
4 mortgagees of each recorded mortgage in the cooperative or project shall be  
5 required. Upon approval of the conversion as set forth above and in compliance  
6 with subdivision (e) of Section 1351, or with Sections 6626 and 6628, of the Civil  
7 Code, all conveyances and other documents necessary to effectuate the conversion  
8 shall be executed by the required number of owners in the cooperative or project  
9 as specified in the bylaws or other organizational documents. If the bylaws or  
10 other organizational documents do not expressly specify the number of owners  
11 necessary to execute the conveyances or other documents, a majority of owners in  
12 the cooperative or project shall be required to execute the conveyances and other  
13 documents. Conveyances and other documents executed under the foregoing  
14 provisions shall be binding upon and affect the interests of all parties in the  
15 cooperative or project. The provisions of Section 66499.31 shall not apply to a  
16 violation of this section.

17 **Comment.** Section 66452.10 is amended to add cross-references to Civil Code Sections 6626  
18 and 6628, reflecting the enactment of the Commercial and Industrial Common Interest  
19 Development Act (Civ. Code §§ 6500-6876).

20 **Notes.** (1) Section 66452.10 refers to compliance with Civil Code Section 1351(e). That  
21 provision includes both a definition of “condominium plan” and substantive provisions governing  
22 the creation, amendment, or repeal of a condominium plan. In the proposed law, the definition is  
23 separated from the substantive provisions (consistent with general statutory drafting practice). In  
24 the proposed amendment to Section 66452.10, the added cross-references refer only to the  
25 provisions of the proposed law that would continue the substantive provisions of Section 1351(e)  
26 (i.e., to proposed Sections 6626 and 6628).

27 (2) The Commission invites comment on whether an exclusively commercial or industrial  
28 common interest development may be organized as either a stock cooperative or a community  
29 apartment project, arguably making a portion of this conforming revision unnecessary.

30 **Gov’t Code § 66475.2 (amended). Local transit facilities**

31 SEC. \_\_\_\_\_. Section 66475.2 of the Government Code is amended to read:

32 66475.2. (a) There may be imposed by local ordinance a requirement of a  
33 dedication or an irrevocable offer of dedication of land within the subdivision for  
34 local transit facilities such as bus turnouts, benches, shelters, landing pads and  
35 similar items that directly benefit the residents of a subdivision. The irrevocable  
36 offers may be terminated as provided in subdivisions (c) and (d) of Section  
37 66477.2.

38 (b) Only the payment of fees in lieu of the dedication of land may be required in  
39 subdivisions that consist of the subdivision of airspace in existing buildings into  
40 condominium projects, stock cooperatives, or community apartment projects, as  
41 those terms are defined in Section 1351, or in Sections 6536, 6542, and 6566, of  
42 the Civil Code.



1 **Comment.** Section 66475.2 is amended to add cross-references to Civil Code Sections 6536,  
2 6542, and 6566, reflecting the enactment of the Commercial and Industrial Common Interest  
3 Development Act (Civ. Code §§ 6500-6876).

4 **Note.** The Commission invites comment on whether Section 66475.2 applies to an  
5 exclusively commercial or industrial common interest development, notwithstanding the  
6 reference to “residents” in Section 66475.2(a).

## HEALTH AND SAFETY CODE

### 7 **Health & Safety Code § 13132.7 (amended). Fire retardant roof covering that meets** 8 **building standards**

9 SEC. \_\_\_\_. Section 13132.7 of the Health and Safety Code is amended to read:

10 13132.7. (a) Within a very high fire hazard severity zone designated by the  
11 Director of Forestry and Fire Protection pursuant to Article 9 (commencing with  
12 Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code  
13 and within a very high hazard severity zone designated by a local agency pursuant  
14 to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5  
15 of the Government Code, the entire roof covering of every existing structure  
16 where more than 50 percent of the total roof area is replaced within any one-year  
17 period, every new structure, and any roof covering applied in the alteration, repair,  
18 or replacement of the roof of every existing structure, shall be a fire retardant roof  
19 covering that is at least class B as defined in the Uniform Building Code, as  
20 adopted and amended by the State Building Standards Commission.

21 (b) In all other areas, the entire roof covering of every existing structure where  
22 more than 50 percent of the total roof area is replaced within any one-year period,  
23 every new structure, and any roof covering applied in the alteration, repair, or  
24 replacement of the roof of every existing structure, shall be a fire retardant roof  
25 covering that is at least class C as defined in the Uniform Building Code, as  
26 adopted and amended by the State Building Standards Commission.

27 (c) Notwithstanding subdivision (b), within state responsibility areas classified  
28 by the State Board of Forestry and Fire Protection pursuant to Article 3  
29 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public  
30 Resources Code, except for those state responsibility areas designated as moderate  
31 fire hazard responsibility zones, the entire roof covering of every existing structure  
32 where more than 50 percent of the total roof area is replaced within any one-year  
33 period, every new structure, and any roof covering applied in the alteration, repair,  
34 or replacement of the roof of every existing structure, shall be a fire retardant roof  
35 covering that is at least class B as defined in the Uniform Building Code, as  
36 adopted and amended by the State Building Standards Commission.

37 (d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard  
38 severity zones designated by the Director of Forestry and Fire Protection pursuant  
39 to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4  
40 of the Public Resources Code or by a local agency pursuant to Chapter 6.8

1 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the  
2 Government Code, the entire roof covering of every existing structure where more  
3 than 50 percent of the total roof area is replaced within any one-year period, every  
4 new structure, and any roof covering applied in the alteration, repair, or  
5 replacement of the roof of every existing structure, shall be a fire retardant roof  
6 covering that is at least class A as defined in the Uniform Building Code, as  
7 adopted and amended by the State Building Standards Commission.

8 (2) Paragraph (1) does not apply to any jurisdiction containing a very high fire  
9 hazard severity zone if the jurisdiction fulfills both of the following requirements:

10 (A) Adopts the model ordinance approved by the State Fire Marshal pursuant to  
11 Section 51189 of the Government Code or an ordinance that substantially  
12 conforms to the model ordinance of the State Fire Marshal.

13 (B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

14 (e) The State Building Standards Commission shall incorporate the requirements  
15 set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to  
16 the California Building Standards Code in accordance with Chapter 4  
17 (commencing with Section 18935) of Part 2.5 of Division 13.

18 (f) Nothing in this section shall limit the authority of a city, county, city and  
19 county, or fire protection district in establishing more restrictive requirements, in  
20 accordance with current law, than those specified in this section.

21 (g) This section shall not affect the validity of an ordinance, adopted prior to the  
22 effective date for the relevant roofing standard specified in subdivisions (a) and  
23 (b), by a city, county, city and county, or fire protection district, unless the  
24 ordinance mandates a standard that is less stringent than the standards set forth in  
25 subdivision (a), in which case the ordinance shall not be valid on or after the  
26 effective date for the relevant roofing standard specified in subdivisions (a) and  
27 (b).

28 (h) Any qualified historical building or structure as defined in Section 18955  
29 may, on a case-by-case basis, utilize alternative roof constructions as provided by  
30 the State Historical Building Code.

31 (i) The installer of the roof covering shall provide certification of the roof  
32 covering classification, as provided by the manufacturer or supplier, to the  
33 building owner and, when requested, to the agency responsible for enforcement of  
34 this part. The installer shall also install the roof covering in accordance with the  
35 manufacturer's listing.

36 (j) No wood roof covering materials shall be sold or applied in this state unless  
37 both of the following conditions are met:


38 (1) The materials have been approved and listed by the State Fire Marshal as  
39 complying with the requirements of this section.

40 (2) The materials have passed at least five years of the 10-year natural  
41 weathering test. The 10-year natural weathering test required by this subdivision  
42 shall be conducted in accordance with standard 15-2 of the 1994 edition of the  
43 Uniform Building Code at a testing facility recognized by the State Fire Marshal.

1 (k) The Insurance Commissioner shall accept the use of fire retardant wood roof  
2 covering material that complies with the requirements of this section, used in the  
3 partial repair or replacement of nonfire retardant wood roof covering material, as  
4 complying with the requirement in Section 2695.9 of Title 10 of the California  
5 Code of Regulations relative to matching replacement items in quality, color, and  
6 size.

7 (l) No common interest development, as defined in Section 1351 or 6534 of the  
8 Civil Code, may require a ~~homeowner~~ an owner to install or repair a roof in a  
9 manner that is in violation of this section. The governing documents, as defined in  
10 Section 1351 or 6552 of the Civil Code, of a common interest development within  
11 a very high fire severity zone shall allow for at least one type of fire retardant roof  
12 covering material that meets the requirements of this section.

13 **Comment.** Subdivision (l) of Section 13132.7 is amended to add cross-references to Civil  
14 Code Sections 6534 and 6552, and to make a conforming terminological change, reflecting the  
15 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§  
16 6500-6876).

17  **Note.** The Commission invites comment on whether Section 13132.7 applies to an  
18 exclusively commercial or industrial common interest development, notwithstanding the use in  
19 Section 13132.7(l) of the undefined term “homeowner.”

20 **Health & Safety Code § 19850 (amended). Filing of building plans**

21 SEC. \_\_\_\_ . Section 19850 of the Health and Safety Code is amended to read:

22 19850. The building department of every city or county shall maintain an  
23 official copy, which may be on microfilm or other type of photographic copy, of  
24 the plans of every building, during the life of the building, for which the  
25 department issued a building permit.

26 “Building department” means the department, bureau, or officer charged with  
27 the enforcement of laws or ordinances regulating the erection, construction, or  
28 alteration of buildings.

29 Except for plans of a common interest development as defined in Section 1351  
30 or 6534 of the Civil Code, plans need not be filed for:

31 (a) Single or multiple dwellings not more than two stories and basement in  
32 height.

33 (b) Garages and other structures appurtenant to buildings described under  
34 subdivision (a).

35 (c) Farm or ranch buildings.

36 (d) Any one-story building where the span between bearing walls does not  
37 exceed 25 feet. The exemption in this subdivision does not, however, apply to a  
38 steel frame or concrete building.

39 **Comment.** Section 19850 is amended to add a cross-reference to Civil Code Section 6534,  
40 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
41 (Civ. Code §§ 6500-6876).

1 **Health & Safety Code § 25400.22 (amended). Lien placed on contaminated property**

2 SEC. \_\_\_\_\_. Section 25400.22 of the Health and Safety Code is amended to read:

3 25400.22. (a) No later than 10 working days after the date when a local health  
4 officer determines that property is contaminated pursuant to subdivision (b) of  
5 Section 25400.20, the local health officer shall do all of the following:

6 (1) Except as provided in paragraph (2), if the property is real property, record  
7 with the county recorder a lien on the property. The lien shall specify all of the  
8 following:

9 (A) The name of the agency on whose behalf the lien is imposed.

10 (B) The date on which the property is determined to be contaminated.

11 (C) The legal description of the real property and the assessor's parcel number.

12 (D) The record owner of the property.

13 (E) The amount of the lien, which shall be the greater of two hundred dollars  
14 (\$200) or the costs incurred by the local health officer in compliance with this  
15 chapter, including, but not limited to, the cost of inspection performed pursuant to  
16 Section 25400.19 and the county recorder's fee.

17 (2)(A) If the property is a mobilehome or manufactured home specified in  
18 paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record  
19 with a restraint on the mobilehome, or manufactured home with the Department of  
20 Housing and Community Development, in the form prescribed by that department,  
21 providing notice of the determination that the property is contaminated.

22 (B) If the property is a recreational vehicle specified in paragraph (2) of  
23 subdivision (t) of Section 25400.11, perfect by filing with the Department of  
24 Motor Vehicles a vehicle license stop on the recreational vehicle in the form  
25 prescribed by that department, providing notice of the determination that the  
26 property is contaminated.

27 (C) If the property is a mobilehome or manufactured home, not subject to  
28 paragraph (2) of subdivision (t) of Section 25400.11, is located on real property,  
29 and is not attached to that real property, the local health officer shall record a lien  
30 for the real property with the county recorder, and the Department of Housing and  
31 Community Development shall amend the permanent record with a restraint for  
32 the mobilehome or manufactured home, in the form and with the contents  
33 prescribed by that department.

34 (3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall  
35 specify all of the following:

36 (A) The name of the agency on whose behalf the lien, restraint, or vehicle  
37 license stop is imposed.

38 (B) The date on which the property is determined to be contaminated.

39 (C) The legal description of the real property and the assessor's parcel number,  
40 and the mailing and street address or space number of the manufactured home,  
41 mobilehome, or recreational vehicle or the vehicle identification number of the  
42 recreational vehicle, if applicable.

1 (D) The registered owner of the mobilehome, manufactured home, or  
2 recreational vehicle, if applicable, or the name of the owner of the real property as  
3 indicated in the official county records.

4 (E) The amount of the lien, if applicable, which shall be the greater of two  
5 hundred dollars (\$200) or the costs incurred by the local health officer in  
6 compliance with this chapter, including, but not limited to, the cost of inspection  
7 performed pursuant to Section 25400.19 and the fee charged by the Department of  
8 Housing and Community Development and the Department of Motor Vehicles  
9 pursuant to paragraph (2) of subdivision (b).

10 (F) Other information required by the county recorder for the lien, the  
11 Department of Housing and Community Development for the restraint, or the  
12 Department of Motor Vehicles for the vehicle license stop.

13 (4) Issue to persons specified in subdivisions (d), (e), and (f) an order  
14 prohibiting the use or occupancy of the contaminated portions of the property.

15 (b)(1) The county recorder's fees for recording and indexing documents  
16 provided for in this section shall be in the amount specified in Article 5  
17 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the  
18 Government Code.

19 (2) The Department of Housing and Community Development and the  
20 Department of Motor Vehicles may charge a fee to cover its administrative costs  
21 for recording and indexing documents provided for in paragraph (2) of subdivision  
22 (a).

23 (c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect,  
24 and priority of a judgment lien. The restraint amending the permanent record  
25 pursuant to subdivision (a) shall be displayed on any manufactured home or  
26 mobilehome title search until the restraint is released. The vehicle license stop  
27 shall remain in effect until it is released.

28 (2) The local health officer shall not authorize the release of a lien, restraint, or  
29 vehicle license stop made pursuant to subdivision (a), until one of the following  
30 occurs:

31 (A) The property owner satisfies the real property lien, or the contamination in  
32 the mobilehome, manufactured home, or recreational vehicle is abated to the  
33 satisfaction of the local health officer consistent with the notice in the restraint, or  
34 vehicle license stop and the local health officer issues a release pursuant to Section  
35 25400.27.

36 (B) For a manufactured home or mobilehome, the local health officer determines  
37 that the unit will be destroyed or permanently salvaged. For the purposes of this  
38 paragraph, the unit shall not be reregistered after this determination is made unless  
39 the local health officer issues a release pursuant to Section 25400.27.

40 (C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in  
41 a foreclosure sale.

1 (d) Except as otherwise specified in this section, an order issued pursuant to this  
2 section shall be served, either personally or by certified mail, return receipt  
3 requested in the following manner:

4 (1) For real property, to all known occupants of the property and to all persons  
5 who have an interest in the property, as contained in the records of the recorder's  
6 office of the county in which the property is located.

7 (2) In the case of a mobilehome or manufactured home, the order shall be served  
8 to the legal owner, as defined in Section 18005.8, each junior lienholder, as  
9 defined in Section 18005.3, and the registered owner, as defined in Section  
10 18009.5.

11 (3) In the case of a recreational vehicle, the order shall be served on the legal  
12 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as  
13 defined in Section 505 of the Vehicle Code.

14 (e) If the whereabouts of the person described in subdivision (d) are unknown  
15 and cannot be ascertained by the local health officer, in the exercise of reasonable  
16 diligence, and the local health officer makes an affidavit to that effect, the local  
17 health officer shall serve the order by personal service or by mailing a copy of the  
18 order by certified mail, postage prepaid, return receipt requested, as follows:

19 (1) The order related to real property shall be served to each person at the  
20 address appearing on the last equalized tax assessment roll of the county where the  
21 property is located, and to all occupants of the affected unit.

22 (2) In the case of a mobilehome or manufactured home, the order shall be served  
23 to the legal owner, as defined in Section 18005.8, each junior lienholder, as  
24 defined in Section 18005.3, and the registered owner, as defined in Section  
25 18009.5, at the address appearing on the permanent record and all occupants of the  
26 affected unit at the mobilehome park space.

27 (3) In the case of a recreational vehicle, the order shall be served on the legal  
28 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as  
29 defined in Section 505 of the Vehicle Code, at the address appearing on the  
30 permanent record and all occupants of the affected vehicle at the mobilehome park  
31 or special occupancy park space.

32 (f)(1) The local health officer shall also mail a copy of the order required by this  
33 section to the address of each person or party having a recorded right, title, estate,  
34 lien, or interest in the property and to the association of a common interest  
35 development, as defined in Section 1351, or in Sections 6528 and 6534, of the  
36 Civil Code.

37 (2) In addition to the requirements of paragraph (1), if the affected property is a  
38 mobilehome, manufactured home, or recreational vehicle, specified in paragraph  
39 (2) of subdivision (t) of Section 25400.11, the order issued by the local health  
40 officer shall also be served, either personally or by certified mail, return receipt  
41 requested, to the owner of the mobilehome park or special occupancy park.

42 (g) The order issued pursuant to this section shall include all of the following  
43 information:

- 1 (1) A description of the property.
- 2 (2) The parcel identification number, address, or space number, if applicable.
- 3 (3) The vehicle identification number, if applicable.
- 4 (4) A description of the local health officer's intended course of action.
- 5 (5) A specification of the penalties for noncompliance with the order.
- 6 (6) A prohibition on the use of all or portions of the property that are
- 7 contaminated.
- 8 (7) A description of the measures the property owner is required to take to
- 9 decontaminate the property.
- 10 (8) An indication of the potential health hazards involved.
- 11 (9) A statement that a property owner who fails to provide a notice or disclosure
- 12 that is required by this chapter is subject to a civil penalty of up to five thousand
- 13 dollars (\$5,000).
- 14 (h) The local health officer shall provide a copy of the order to the local building
- 15 or code enforcement agency or other appropriate agency responsible for the
- 16 enforcement of the State Housing Law (Part 1.5 (commencing with Section
- 17 17910) of Division 13).
- 18 (i) The local health officer shall post the order in a conspicuous place on the
- 19 property within one working day of the date that the order is issued.

20 **Comment.** Subdivision (f) of Section 25400.22 is amended to add cross-references to Civil  
21 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial  
22 Common Interest Development Act (Civ. Code §§ 6500-6876).

23 **Health & Safety Code § 25915.2 (amended). Publication and mailing of notice**

24 SEC. \_\_\_\_. Section 25915.2 of the Health and Safety Code is amended to read:

25 25915.2. (a) Notice provided pursuant to this chapter shall be provided in  
26 writing to each individual employee, and shall be mailed to other owners  
27 designated to receive the notice pursuant to subdivision (a) of Section 25915.5,  
28 within 15 days of the first receipt by the owner of information identifying the  
29 presence or location of asbestos-containing construction materials in the building.  
30 This notice shall be provided annually thereafter. In addition, if new information  
31 regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision  
32 (a) of Section 25915 has been obtained within 90 days after the notice required by  
33 this subdivision is provided or any subsequent 90-day period, then a supplemental  
34 notice shall be provided within 15 days of the close of that 90-day period.

35 (b) Notice provided pursuant to this chapter shall be provided to new employees  
36 within 15 days of commencement of work in the building.

37 (c) Notice provided pursuant to this chapter shall be mailed to any new owner  
38 designated to receive the notice pursuant to subdivision (a) of Section 25915.5  
39 within 15 days of the effective date of the agreement under which a person  
40 becomes a new owner.

41 (d) Subdivisions (a) and (c) shall not be construed to require owners of a  
42 building or part of a building within a residential common interest development to

1 mail written notification to other owners of a building or part of a building within  
2 the residential common interest development, if all the following conditions are  
3 met:

4 (1) The association conspicuously posts, in each building or part of a building  
5 known to contain asbestos-containing materials, a large sign in a prominent  
6 location that fully informs persons entering each building or part of a building  
7 within the common interest development that the association knows the building  
8 contains asbestos-containing materials.

9 The sign shall also inform persons of the location where further information, as  
10 required by this chapter, is available about the asbestos-containing materials  
11 known to be located in the building.

12 (2) The owners or association disclose, as soon as practicable before the transfer  
13 of title of a separate interest in the common interest development, to a transferee  
14 the existence of asbestos-containing material in a building or part of a building  
15 within the common interest development.

16 Failure to comply with this section shall not invalidate the transfer of title of real  
17 property. This paragraph shall only apply to transfers of title of separate interests  
18 in the common interest development of which the owners have knowledge. As  
19 used in this section, “association” and “common interest development” are defined  
20 in Section 1351, or Sections 6528 and 6534, of the Civil Code.

21 (e) If a person contracting with an owner receives notice pursuant to this  
22 chapter, that contractor shall provide a copy of the notice to his or her employees  
23 or contractors working within the building.

24 (f) If the asbestos-containing construction material in the building is limited to  
25 an area or areas within the building that meet all the following criteria:

26 (1) Are unique and physically defined.

27 (2) Contain asbestos-containing construction materials in structural, mechanical,  
28 or building materials which are not replicated throughout the building.

29 (3) Are not connected to other areas through a common ventilation system; then,  
30 an owner required to give notice to his or her employees pursuant to subdivision  
31 (a) of Section 25915 or 25915.1 may provide that notice only to the employees  
32 working within or entering that area or those areas of the building meeting the  
33 conditions above.

34 (g) If the asbestos-containing construction material in the building is limited to  
35 an area or areas within the building that meet all the following criteria:

36 (1) Are accessed only by building maintenance employees or contractors and are  
37 not accessed by tenants or employees in the building, other than on an incidental  
38 basis.

39 (2) Contain asbestos-containing construction materials in structural, mechanical,  
40 or building materials which are not replicated in areas of the building which are  
41 accessed by tenants and employees.

42 (3) The owner knows that no asbestos fibers are being released or have the  
43 reasonable possibility to be released from the material; then, as to that asbestos-



1 containing construction material, an owner required to give notice to his or her  
2 employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may  
3 provide that notice only to its building maintenance employees and contractors  
4 who have access to that area or those areas of the building meeting the conditions  
5 above.

6 (h) In those areas of a building where the asbestos-containing construction  
7 material is composed only of asbestos fibers which are completely encapsulated, if  
8 the owner knows that no asbestos fibers are being released or have the reasonable  
9 possibility to be released from that material in its present condition and has no  
10 knowledge that other asbestos-containing material is present, then an owner  
11 required to give notice pursuant to subdivision (a) of Section 25915 shall provide  
12 the information required in paragraph (2) of subdivision (a) of Section 25915 and  
13 may substitute the following notice for the requirements of paragraphs (1), (3), (4),  
14 and (5) of subdivision (a) of Section 25915:

15 (1) The existence of, conclusions from, and a description or list of the contents  
16 of, that portion of any survey conducted to determine the existence and location of  
17 asbestos-containing construction materials within the building that refers to the  
18 asbestos materials described in this subdivision, and information describing when  
19 and where the results of the survey are available pursuant to Section 25917.

20 (2) Information to convey that moving, drilling, boring, or otherwise disturbing  
21 the asbestos-containing construction material identified may present a health risk  
22 and, consequently, should not be attempted by an unqualified employee. The  
23 notice shall identify the appropriate person the employee is required to contact if  
24 the condition of the asbestos-containing construction material deteriorates.

25 **Comment.** Paragraph (2) of subdivision (d) of Section 25915.2 is amended to add cross-  
26 references to Civil Code Sections 6528 and 6534, reflecting the enactment of the Commercial and  
27 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

28 **Health & Safety Code § 33050 (amended). Legislative declaration of policy in undertaking**  
29 **community redevelopment projects**

30 SEC. \_\_\_\_\_. Section 33050 of the Health and Safety Code is amended to read:

31 33050. (a) It is hereby declared to be the policy of the state that in undertaking  
32 community redevelopment projects under this part there shall be no discrimination  
33 because of any basis listed in subdivision (a) or (d) of Section 12955 of the  
34 Government Code, as those bases are defined in Sections 12926, 12926.1,  
35 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and  
36 Section 12955.2 of the Government Code.

37 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision  
38 (a) shall not be construed to apply to housing for older persons, as defined in  
39 Section 12955.9 of the Government Code. With respect to familial status, nothing  
40 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
41 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.  
42 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil

1 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code  
2 shall apply to subdivision (a).

3 **Comment.** Section 33050 is amended to add a cross-reference to Civil Code Section 6714,  
4 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
5 (Civ. Code §§ 6500-6876).

6 **Health & Safety Code § 33435 (amended). Obligation of lessees and purchasers to refrain**  
7 **from discrimination**

8 SEC. \_\_\_\_\_. Section 33435 of the Health and Safety Code is amended to read:

9 33435. (a) Agencies shall obligate lessees and purchasers of real property  
10 acquired in redevelopment projects and owners of property improved as a part of a  
11 redevelopment project to refrain from restricting the rental, sale, or lease of the  
12 property on any basis listed in subdivision (a) or (d) of Section 12955 of the  
13 Government Code, as those bases are defined in Sections 12926, 12926.1,  
14 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and  
15 Section 12955.2 of the Government Code. All deeds, leases, or contracts for the  
16 sale, lease, sublease, or other transfer of any land in a redevelopment project shall  
17 contain or be subject to the nondiscrimination or nonsegregation clauses hereafter  
18 prescribed.

19 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision  
20 (a) shall not be construed to apply to housing for older persons, as defined in  
21 Section 12955.9 of the Government Code. With respect to familial status, nothing  
22 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
23 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.  
24 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil  
25 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code  
26 shall apply to subdivision (a).

27 **Comment.** Section 33435 is amended to add a cross-reference to Civil Code Section 6714,  
28 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
29 (Civ. Code §§ 6500-6876).

30 **Health & Safety Code § 33436 (amended). Nondiscrimination and nonsegregation clauses**

31 SEC. \_\_\_\_\_. Section 33436 of the Health and Safety Code is amended to read:

32 33436. Express provisions shall be included in all deeds, leases, and contracts  
33 that the agency proposes to enter into with respect to the sale, lease, sublease,  
34 transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment  
35 project in substantially the following form:

36 (a)(1) In deeds the following language shall appear-- "The grantee herein  
37 covenants by and for himself or herself, his or her heirs, executors, administrators,  
38 and assigns, and all persons claiming under or through them, that there shall be no  
39 discrimination against or segregation of, any person or group of persons on  
40 account of any basis listed in subdivision (a) or (d) of Section 12955 of the  
41 Government Code, as those bases are defined in Sections 12926, 12926.1,  
42 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and

1 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,  
2 use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall  
3 the grantee or any person claiming under or through him or her, establish or permit  
4 any practice or practices of discrimination or segregation with reference to the  
5 selection, location, number, use or occupancy of tenants, lessees, subtenants,  
6 sublessees, or vendees in the premises herein conveyed. The foregoing covenants  
7 shall run with the land.”

8 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)  
9 shall not be construed to apply to housing for older persons, as defined in Section  
10 12955.9 of the Government Code. With respect to familial status, nothing in  
11 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,  
12 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)  
13 of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and  
14 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall  
15 apply to paragraph (1).

16 (b)(1) In leases the following language shall appear-- “The lessee herein  
17 covenants by and for himself or herself, his or her heirs, executors, administrators,  
18 and assigns, and all persons claiming under or through him or her, and this lease is  
19 made and accepted upon and subject to the following conditions:

20 That there shall be no discrimination against or segregation of any person or  
21 group of persons, on account of any basis listed in subdivision (a) or (d) of Section  
22 12955 of the Government Code, as those bases are defined in Sections 12926,  
23 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,  
24 and Section 12955.2 of the Government Code, in the leasing, subleasing,  
25 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased  
26 nor shall the lessee himself or herself, or any person claiming under or through  
27 him or her, establish or permit any such practice or practices of discrimination or  
28 segregation with reference to the selection, location, number, use, or occupancy, of  
29 tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

30 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)  
31 shall not be construed to apply to housing for older persons, as defined in Section  
32 12955.9 of the Government Code. With respect to familial status, nothing in  
33 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,  
34 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)  
35 of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and  
36 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall  
37 apply to paragraph (1).

38 (c) In contracts entered into by the agency relating to the sale, transfer, or  
39 leasing of land or any interest therein acquired by the agency within any survey  
40 area or redevelopment project the foregoing provisions in substantially the forms  
41 set forth shall be included and the contracts shall further provide that the foregoing  
42 provisions shall be binding upon and shall obligate the contracting party or parties  
43 and any subcontracting party or parties, or other transferees under the instrument.

1       **Comment.** Section 33436 is amended to add cross-references to Civil Code Section 6714,  
2 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
3 (Civ. Code §§ 6500-6876).

4       **Health & Safety Code § 35811 (amended). Consideration of ethnicity, religion, sex, marital**  
5       **status, or national origin**

6       SEC. \_\_\_\_\_. Section 35811 of the Health and Safety Code is amended to read:

7       35811. (a) No financial institution shall discriminate in the availability of, or in  
8 the provision of, financial assistance for the purpose of purchasing, constructing,  
9 rehabilitating, improving, or refinancing housing accommodations due, in whole  
10 or in part, to the consideration of any basis listed in subdivision (a) or (d) of  
11 Section 12955 of the Government Code, as those bases are defined in Sections  
12 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section  
13 12955, and Section 12955.2 of the Government Code.

14       (b) Notwithstanding subdivision (a), with respect to familial status, subdivision  
15 (a) shall not be construed to apply to housing for older persons, as defined in  
16 Section 12955.9 of the Government Code. With respect to familial status, nothing  
17 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
18 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.  
19 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil  
20 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code  
21 shall apply to subdivision (a).

22       **Comment.** Section 35811 is amended to add a cross-reference to Civil Code Section 6714,  
23 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
24 (Civ. Code §§ 6500-6876).

25       **Health & Safety Code § 37630 (amended). Equal opportunity**

26       SEC. \_\_\_\_\_. Section 37630 of the Health and Safety Code is amended to read:

27       37630. (a) The local agency shall require that any property that is rehabilitated  
28 with financing obtained under this part shall be open, upon sale or rental of any  
29 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of  
30 Section 12955 of the Government Code, as those bases are defined in Sections  
31 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section  
32 12955, and Section 12955.2 of the Government Code. The local agency shall also  
33 require that contractors and subcontractors engaged in historical rehabilitation  
34 financed under this part provide equal opportunity for employment, without  
35 discrimination as to any basis listed in subdivision (a) of Section 12940 of the  
36 Government Code, as those bases are defined in Sections 12926 and 12926.1 of  
37 the Government Code, and except as otherwise provided in Section 12940 of the  
38 Government Code. All contracts and subcontracts for historical rehabilitation  
39 financed under this part shall be let without discrimination as to any basis listed in  
40 subdivision (a) of Section 12940 of the Government Code, as those bases are  
41 defined in Sections 12926 and 12926.1 of the Government Code, and except as  
42 otherwise provided in Section 12940 of the Government Code.

1 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision  
2 (a) shall not be construed to apply to housing for older persons, as defined in  
3 Section 12955.9 of the Government Code. With respect to familial status, nothing  
4 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
5 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.  
6 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil  
7 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code  
8 shall apply to subdivision (a).

9 **Comment.** Section 37630 is amended to add a cross-reference to Civil Code Section 6714,  
10 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
11 (Civ. Code §§ 6500-6876).

12 **Health & Safety Code § 50955 (amended). Civil rights and equal employment opportunity**

13 SEC. \_\_\_\_\_. Section 50955 of the Health and Safety Code is amended to read:

14 50955. (a) The agency and every housing sponsor shall require that occupancy  
15 of housing developments assisted under this part shall be open to all regardless of  
16 any basis listed in subdivision (a) or (d) of Section 12955 of the Government  
17 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and  
18 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the  
19 Government Code, that contractors and subcontractors engaged in the construction  
20 of housing developments shall provide an equal opportunity for employment,  
21 without discrimination as to any basis listed in subdivision (a) of Section 12940 of  
22 the Government Code, as those bases are defined in Sections 12926 and 12926.1  
23 of the Government Code, and except as otherwise provided in Section 12940 of  
24 the Government Code, and that contractors and subcontractors shall submit and  
25 receive approval of an affirmative action program prior to the commencement of  
26 construction or rehabilitation. Affirmative action requirements respecting  
27 apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070)  
28 of Division 3 of the Labor Code.

29 All contracts for the management, construction, or rehabilitation of housing  
30 developments, and contracts let by housing sponsors, contractors, and  
31 subcontractors in the performance of management, construction or rehabilitation,  
32 shall be let without discrimination as to any basis listed in subdivision (a) of  
33 Section 12940 of the Government Code, as those bases are defined in Sections  
34 12926 and 12926.1 of the Government Code, except as otherwise provided in  
35 Section 12940 of the Government Code, and pursuant to an affirmative action  
36 program, which shall be at not less than the Federal Housing Administration  
37 affirmative action standards unless the board makes a specific finding that the  
38 particular requirement would be unworkable. The agency shall periodically review  
39 implementation of affirmative action programs required by this section.

40 It shall be the policy of the agency and housing sponsors to encourage  
41 participation with respect to all projects by minority developers, builders, and  
42 entrepreneurs in all levels of construction, planning, financing, and management

1 of housing developments. In areas of minority concentration the agency shall  
2 require significant participation of minorities in the sponsorship, construction,  
3 planning, financing, and management of housing developments. The agency shall  
4 (1) require that, to the greatest extent feasible, opportunities for training and  
5 employment arising in connection with the planning, construction, rehabilitation,  
6 and operation of housing developments financed pursuant to this part be given to  
7 persons of low income residing in the area of that housing, and (2) determine and  
8 implement means to secure the participation of small businesses in the  
9 performance of contracts for work on housing developments and to develop the  
10 capabilities of these small businesses to more efficiently and competently  
11 participate in the economic mainstream. In order to achieve this participation by  
12 small businesses, the agency may, among other things, waive retention  
13 requirements otherwise imposed on contractors or subcontractors by regulation of  
14 the agency and may authorize or make advance payments for work to be  
15 performed. The agency shall develop relevant selection criteria for the  
16 participation of small businesses to ensure that, to the greatest extent feasible, the  
17 participants possess the necessary nonfinancial capabilities. The agency may, with  
18 respect to these small businesses, waive bond requirements otherwise imposed  
19 upon contractors or subcontractors by regulation of the agency, but the agency  
20 shall in that case substantially reduce the risk through (1) a pooled-risk bonding  
21 program, (2) a bond program in cooperation with other federal or state agencies, or  
22 (3) development of a self-insured bonding program with adequate reserves.

23 The agency shall adopt rules and regulations to implement this section.

24 Prior to commitment of a mortgage loan, the agency shall require each housing  
25 sponsor, except with respect to mutual self-help housing, to submit an affirmative  
26 marketing program that meets standards set forth in regulations of the agency. The  
27 agency shall require ~~such a~~ each housing sponsor to conduct the affirmative  
28 marketing program so approved. Additionally, the agency shall supplement the  
29 efforts of individual housing sponsors by conducting affirmative marketing  
30 programs with respect to housing at the state level.

31 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision  
32 (a) shall not be construed to apply to housing for older persons, as defined in  
33 Section 12955.9 of the Government Code. With respect to familial status, nothing  
34 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
35 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.  
36 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil  
37 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code  
38 shall apply to subdivision (a).

39 **Comment.** Subdivision (a) of Section 50955 is amended to make a stylistic revision.

40 Subdivision (b) is amended to add a cross-reference to Civil Code Section 6714, reflecting the  
41 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§  
42 6500-6876).

1 **Health & Safety Code § 51602 (amended). Nondiscrimination in occupancy of housing**

2 SEC. \_\_\_\_\_. Section 51602 of the Health and Safety Code is amended to read:

3 51602. (a) The agency shall require that occupancy of housing for which a loan  
4 is insured pursuant to this part shall be open to all regardless of any basis listed in  
5 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases  
6 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of  
7 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,  
8 and that contractors and subcontractors engaged in the construction or  
9 rehabilitation of housing funded by a loan insured pursuant to this part shall  
10 provide an equal opportunity for employment without discrimination as to any  
11 basis listed in subdivision (a) of Section 12940 of the Government Code, as those  
12 bases are defined in Sections 12926 and 12926.1 of the Government Code, and  
13 except as otherwise provided in Section 12940 of the Government Code.

14 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision  
15 (a) shall not be construed to apply to housing for older persons, as defined in  
16 Section 12955.9 of the Government Code. With respect to familial status, nothing  
17 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,  
18 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.  
19 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil  
20 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code  
21 shall apply to subdivision (a).

22 (c) A qualified developer shall certify compliance with this section and Section  
23 50955 according to requirements specified by the pertinent criteria of the agency.

24 **Comment.** Section 51602 is amended to add a cross-reference to Civil Code Section 6714,  
25 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
26 (Civ. Code §§ 6500-6876).

27 **Health & Safety Code § 116048 (amended). Public swimming pool in common interest**  
28 **development**

29 SEC. \_\_\_\_\_. Section 116048 of the Health and Safety Code is amended to read:

30 116048. (a) On or after January 1, 1987, for public swimming pools in any  
31 common interest development, as defined in Section 1351 or 6534 of the Civil  
32 Code, that consists of fewer than 25 separate interests, as defined in subdivision (l)  
33 of Section 1351 or in Section 6564 of the Civil Code, the person operating each  
34 ~~such~~ pool open for use shall be required to keep a record of the information  
35 required by subdivision (a) of Section 65523 of Title 22 of the California  
36 Administrative Code, except that the information shall be recorded at least two  
37 times per week and at intervals no greater than four days apart.

38 (b) On or after January 1, 1987, any rule or regulation of the department that is  
39 in conflict with subdivision (a) is invalid.

40 **Comment.** Section 116048 is amended to add cross-references to Civil Code Sections 6534  
41 and 6564, reflecting the enactment of the Commercial and Industrial Common Interest  
42 Development Act (Civ. Code §§ 6500-6876).

43 The section is also amended to make a stylistic revision.


## INSURANCE CODE

1 **Ins. Code § 790.031 (amended). Application of Sections 790.034, 2071.1 and 10082.3**

2 SEC. \_\_\_\_\_. Section 790.031 of the Insurance Code is amended to read:

3 790.031. The requirements of subdivision (b) of Section 790.034, and Sections  
4 2071.1 and 10082.3 shall apply only to policies of residential property insurance  
5 as defined in Section 10087, policies and endorsements containing those  
6 coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1  
7 of Division 2, policies issued by the California Earthquake Authority pursuant to  
8 Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies  
9 and endorsements that insure against property damage and are issued to common  
10 interest developments or to associations managing common interest developments,  
11 as those terms are defined in Section 1351, or in Sections 6528 and 6534, of the  
12 Civil Code, and to policies issued pursuant to Section 120 that insure against  
13 property damage to residential units or contents thereof owned by one or more  
14 persons located in this state.

15 **Comment.** Section 790.031 is amended to add cross-references to Civil Code Sections 6528  
16 and 6534, reflecting the enactment of the Commercial and Industrial Common Interest  
17 Development Act (Civ. Code §§ 6500-6876).

18  **Note.** The Commission invites comment on whether Section 790.031 applies to an  
19 exclusively commercial or industrial common interest development.

## REVENUE AND TAXATION CODE

20 **Rev. & Tax. Code § 2188.6 (amended). Separate assessment of property divided into**  
21 **condominiums**

22 SEC. \_\_\_\_\_. Section 2188.6 of the Revenue and Taxation Code is amended to  
23 read:

24 2188.6. (a) Unless a request for exemption has been recorded pursuant to  
25 subdivision (d), prior to the creation of a condominium as defined in Section 783  
26 of the Civil Code, the county assessor may separately assess each individual unit  
27 which is shown on the condominium plan of a proposed condominium project  
28 when all of the following documents have been recorded as required by law:

29 (1) A subdivision final map or parcel map, as described in Sections 66434 and  
30 66445, respectively, of the Government Code.

31 (2) A condominium plan, as defined in subdivision (e) of Section 1351 or in  
32 Section 6540 of the Civil Code.

33 (3) A declaration, as defined in subdivision (h) of Section 1351 or in Section  
34 6546 of the Civil Code.

35 (b) The tax due on each individual unit shall constitute a lien solely on that unit.

36 (c) The lien created pursuant to this section shall be a lien on an undivided  
37 interest in a portion of real property coupled with a separate interest in space



1 called a unit as described in subdivision (f) of Section 1351 or in subdivision (b)  
2 of Section 6542 of the Civil Code.

3 (d) The record owner of the real property may record with the condominium  
4 plan a request that the real property be exempt from separate assessment pursuant  
5 to this section. If a request for exemption is recorded, separate assessment of a  
6 condominium unit shall be made only in accordance with Section 2188.3.

7 (e) This section shall become operative on January 1, 1990, and shall apply to  
8 condominium projects for which a condominium plan is recorded after that date.

9 **Comment.** Section 2188.6 is amended to add cross-references to Civil Code Sections 6540,  
10 6542, and 6546, reflecting the enactment of the Commercial and Industrial Common Interest  
11 Development Act (Civ. Code §§ 6500-6876).

## VEHICLE CODE

### 12 **Veh. Code § 21107.7 (amended). Private road not open to public use**

13 SEC. \_\_\_\_ . Section 21107.7 of the Vehicle Code is amended to read:

14 21107.7. (a) Any city or county may, by ordinance or resolution, find and  
15 declare that there are privately owned and maintained roads as described in the  
16 ordinance or resolution within the city or county that are not generally held open  
17 for use of the public for purposes of vehicular travel but, by reason of their  
18 proximity to or connection with highways, the interests of any residents residing  
19 along the roads and the motoring public will best be served by application of the  
20 provisions of this code to those roads. No ordinance or resolution shall be enacted  
21 unless there is first filed with the city or county a petition requesting it by a  
22 majority of the owners of any privately owned and maintained road, or by at least  
23 a majority of the board of directors of a common interest development, as defined  
24 by Section 1351 or 6534 of the Civil Code, that is responsible for maintaining the  
25 road, and without a public hearing thereon and 10 days' prior written notice to all  
26 owners of the road or all of the owners in the development. Upon enactment of the  
27 ordinance or resolution, the provisions of this code shall apply to the privately  
28 owned and maintained road if appropriate signs are erected at the entrance to the  
29 road of the size, shape, and color as to be readily legible during daylight hours  
30 from a distance of 100 feet, to the effect that the road is subject to the provisions  
31 of this code. The city or county may impose reasonable conditions and may  
32 authorize the owners, or board of directors of the common interest development, to  
33 erect traffic signs, signals, markings, and devices which conform to the uniform  
34 standards and specifications adopted by the Department of Transportation.

35 (b) The department shall not be required to provide patrol or enforce any  
36 provisions of this code on any privately owned and maintained road subjected to  
37 the provisions of this code under this section, except those provisions applicable to  
38 private property other than by action under this section.

1 (c) As used in this section, “privately owned and maintained roads” includes  
2 roads owned and maintained by a city, county or district that are not dedicated to  
3 use by the public or are not generally held open for use of the public for purposes  
4 of vehicular travel.

5 **Comment.** Section 21107.7 is amended to add a cross-reference to Civil Code Section 6534,  
6 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
7 (Civ. Code §§ 6500-6876).

8 **Veh. Code § 22651 (amended). Circumstances in which removal of vehicle is permitted**

9 SEC. \_\_\_\_\_. Section 22651 of the Vehicle Code is amended to read:

10 22651. A peace officer, as defined in Chapter 4.5 (commencing with Section  
11 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried  
12 employee, who is engaged in directing traffic or enforcing parking laws and  
13 regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is  
14 located, may remove a vehicle located within the territorial limits in which the  
15 officer or employee may act, under the following circumstances:

16 (a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a  
17 tube or tunnel where the vehicle constitutes an obstruction to traffic.

18 (b) When a vehicle is parked or left standing upon a highway in a position so as  
19 to obstruct the normal movement of traffic or in a condition so as to create a  
20 hazard to other traffic upon the highway.

21 (c) When a vehicle is found upon a highway or public land and a report has  
22 previously been made that the vehicle is stolen or a complaint has been filed and a  
23 warrant thereon is issued charging that the vehicle was embezzled.

24 (d) When a vehicle is illegally parked so as to block the entrance to a private  
25 driveway and it is impractical to move the vehicle from in front of the driveway to  
26 another point on the highway.

27 (e) When a vehicle is illegally parked so as to prevent access by firefighting  
28 equipment to a fire hydrant and it is impracticable to move the vehicle from in  
29 front of the fire hydrant to another point on the highway.

30 (f) When a vehicle, except highway maintenance or construction equipment, is  
31 stopped, parked, or left standing for more than four hours upon the right-of-way of  
32 a freeway that has full control of access and no crossings at grade and the driver, if  
33 present, cannot move the vehicle under its own power.

34 (g) When the person in charge of a vehicle upon a highway or public land is, by  
35 reason of physical injuries or illness, incapacitated to an extent so as to be unable  
36 to provide for its custody or removal.

37 (h)(1) When an officer arrests a person driving or in control of a vehicle for an  
38 alleged offense and the officer is, by this code or other law, required or permitted  
39 to take, and does take, the person into custody.

40 (2) When an officer serves a notice of an order of suspension or revocation  
41 pursuant to Section 13388 or 13389.

1 (i)(1) When a vehicle, other than a rented vehicle, is found upon a highway or  
2 public land, or is removed pursuant to this code, and it is known that the vehicle  
3 has been issued five or more notices of parking violations to which the owner or  
4 person in control of the vehicle has not responded within 21 calendar days of  
5 notice of citation issuance or citation issuance or 14 calendar days of the mailing  
6 of a notice of delinquent parking violation to the agency responsible for processing  
7 notices of parking violations, or the registered owner of the vehicle is known to  
8 have been issued five or more notices for failure to pay or failure to appear in  
9 court for traffic violations for which a certificate has not been issued by the  
10 magistrate or clerk of the court hearing the case showing that the case has been  
11 adjudicated or concerning which the registered owner's record has not been  
12 cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17,  
13 the vehicle may be impounded until that person furnishes to the impounding law  
14 enforcement agency all of the following:

15 (A) Evidence of his or her identity.

16 (B) An address within this state at which he or she can be located.

17 (C) Satisfactory evidence that all parking penalties due for the vehicle and all  
18 other vehicles registered to the registered owner of the impounded vehicle, and all  
19 traffic violations of the registered owner, have been cleared.

20 (2) The requirements in subparagraph (C) of paragraph (1) shall be fully  
21 enforced by the impounding law enforcement agency on and after the time that the  
22 Department of Motor Vehicles is able to provide access to the necessary records.

23 (3) A notice of parking violation issued for an unlawfully parked vehicle shall  
24 be accompanied by a warning that repeated violations may result in the  
25 impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full  
26 amount of parking penalties or bail has been deposited, that person may demand to  
27 be taken without unnecessary delay before a magistrate, for traffic offenses, or a  
28 hearing examiner, for parking offenses, within the county in which the offenses  
29 charged are alleged to have been committed and who has jurisdiction of the  
30 offenses and is nearest or most accessible with reference to the place where the  
31 vehicle is impounded. Evidence of current registration shall be produced after a  
32 vehicle has been impounded, or, at the discretion of the impounding law  
33 enforcement agency, a notice to appear for violation of subdivision (a) of Section  
34 4000 shall be issued to that person.

35 (4) A vehicle shall be released to the legal owner, as defined in Section 370, if  
36 the legal owner does all of the following:

37 (A) Pays the cost of towing and storing the vehicle.

38 (B) Submits evidence of payment of fees as provided in Section 9561.

39 (C) Completes an affidavit in a form acceptable to the impounding law  
40 enforcement agency stating that the vehicle was not in possession of the legal  
41 owner at the time of occurrence of the offenses relating to standing or parking. A  
42 vehicle released to a legal owner under this subdivision is a repossessed vehicle  
43 for purposes of disposition or sale. The impounding agency shall have a lien on

1 any surplus that remains upon sale of the vehicle to which the registered owner is  
2 or may be entitled, as security for the full amount of the parking penalties for all  
3 notices of parking violations issued for the vehicle and for all local administrative  
4 charges imposed pursuant to Section 22850.5. The legal owner shall promptly  
5 remit to, and deposit with, the agency responsible for processing notices of  
6 parking violations from that surplus, on receipt of that surplus, the full amount of  
7 the parking penalties for all notices of parking violations issued for the vehicle and  
8 for all local administrative charges imposed pursuant to Section 22850.5.

9 (5) The impounding agency that has a lien on the surplus that remains upon the  
10 sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4)  
11 has a deficiency claim against the registered owner for the full amount of the  
12 parking penalties for all notices of parking violations issued for the vehicle and for  
13 all local administrative charges imposed pursuant to Section 22850.5, less the  
14 amount received from the sale of the vehicle.

15 (j) When a vehicle is found illegally parked and there are no license plates or  
16 other evidence of registration displayed, the vehicle may be impounded until the  
17 owner or person in control of the vehicle furnishes the impounding law  
18 enforcement agency evidence of his or her identity and an address within this state  
19 at which he or she can be located.

20 (k) When a vehicle is parked or left standing upon a highway for 72 or more  
21 consecutive hours in violation of a local ordinance authorizing removal.

22 (l) When a vehicle is illegally parked on a highway in violation of a local  
23 ordinance forbidding standing or parking and the use of a highway, or a portion  
24 thereof, is necessary for the cleaning, repair, or construction of the highway, or for  
25 the installation of underground utilities, and signs giving notice that the vehicle  
26 may be removed are erected or placed at least 24 hours prior to the removal by a  
27 local authority pursuant to the ordinance.

28 (m) When the use of the highway, or a portion of the highway, is authorized by a  
29 local authority for a purpose other than the normal flow of traffic or for the  
30 movement of equipment, articles, or structures of unusual size, and the parking of  
31 a vehicle would prohibit or interfere with that use or movement, and signs giving  
32 notice that the vehicle may be removed are erected or placed at least 24 hours  
33 prior to the removal by a local authority pursuant to the ordinance.

34 (n) Whenever a vehicle is parked or left standing where local authorities, by  
35 resolution or ordinance, have prohibited parking and have authorized the removal  
36 of vehicles. Except as provided in subdivision (v), a vehicle shall not be removed  
37 unless signs are posted giving notice of the removal.

38 (o)(1) When a vehicle is found or operated upon a highway, public land, or an  
39 offstreet parking facility under the following circumstances:

40 (A) With a registration expiration date in excess of six months before the date it  
41 is found or operated on the highway, public lands, or the offstreet parking facility.

42 (B) Displaying in, or upon, the vehicle, a registration card, identification card,  
43 temporary receipt, license plate, special plate, registration sticker, device issued

1 pursuant to Section 4853, or permit that was not issued for that vehicle, or is not  
2 otherwise lawfully used on that vehicle under this code.

3 (C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or  
4 falsified registration card, identification card, temporary receipt, license plate,  
5 special plate, registration sticker, device issued pursuant to Section 4853, or  
6 permit.

7 (2) When a vehicle described in paragraph (1) is occupied, only a peace officer,  
8 as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of  
9 the Penal Code, may remove the vehicle.

10 (3) For the purposes of this subdivision, the vehicle shall be released to the  
11 owner or person in control of the vehicle only after the owner or person furnishes  
12 the storing law enforcement agency with proof of current registration and a  
13 currently valid driver's license to operate the vehicle.

14 (4) As used in this subdivision, "offstreet parking facility" means an offstreet  
15 facility held open for use by the public for parking vehicles and includes a publicly  
16 owned facility for offstreet parking, and a privately owned facility for offstreet  
17 parking if a fee is not charged for the privilege to park and it is held open for the  
18 common public use of retail customers.

19 (p) When the peace officer issues the driver of a vehicle a notice to appear for a  
20 violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5,  
21 or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle  
22 so removed from the highway or public land, or from private property after having  
23 been on a highway or public land, shall not be released to the registered owner or  
24 his or her agent, except upon presentation of the registered owner's or his or her  
25 agent's currently valid driver's license to operate the vehicle and proof of current  
26 vehicle registration, or upon order of a court.

27 (q) When a vehicle is parked for more than 24 hours on a portion of highway  
28 that is located within the boundaries of a common interest development, as defined  
29 in subdivision (c) of Section 1351 or in Section 6534 of the Civil Code, and signs,  
30 as required by paragraph (1) of subdivision (a) of Section 22658 of this code, have  
31 been posted on that portion of highway providing notice to drivers that vehicles  
32 parked thereon for more than 24 hours will be removed at the owner's expense,  
33 pursuant to a resolution or ordinance adopted by the local authority.

34 (r) When a vehicle is illegally parked and blocks the movement of a legally  
35 parked vehicle.

36 (s)(1) When a vehicle, except highway maintenance or construction equipment,  
37 an authorized emergency vehicle, or a vehicle that is properly permitted or  
38 otherwise authorized by the Department of Transportation, is stopped, parked, or  
39 left standing for more than eight hours within a roadside rest area or viewpoint.

40 (2) Notwithstanding paragraph (1), when a commercial motor vehicle, as  
41 defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or  
42 left standing for more than 10 hours within a roadside rest area or viewpoint.

1 (3) For purposes of this subdivision, a roadside rest area or viewpoint is a  
2 publicly maintained vehicle parking area, adjacent to a highway, utilized for the  
3 convenient, safe stopping of a vehicle to enable motorists to rest or to view the  
4 scenery. If two or more roadside rest areas are located on opposite sides of the  
5 highway, or upon the center divider, within seven miles of each other, then that  
6 combination of rest areas is considered to be the same rest area.

7 (t) When a peace officer issues a notice to appear for a violation of Section  
8 25279.

9 (u) When a peace officer issues a citation for a violation of Section 11700 and  
10 the vehicle is being offered for sale.

11 (v)(1) When a vehicle is a mobile billboard advertising display, as defined in  
12 Section 395.5, and is parked or left standing in violation of a local resolution or  
13 ordinance adopted pursuant to subdivision (m) of Section 21100, if the registered  
14 owner of the vehicle was previously issued a warning citation for the same  
15 offense, pursuant to paragraph (2).

16 (2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of  
17 posting signs noticing a local ordinance prohibiting mobile billboard advertising  
18 displays adopted pursuant to subdivision (m) of Section 21100, may provide  
19 notice by issuing a warning citation advising the registered owner of the vehicle  
20 that he or she may be subject to penalties upon a subsequent violation of the  
21 ordinance, that may include the removal of the vehicle as provided in paragraph  
22 (1). A city or county is not required to provide further notice for a subsequent  
23 violation prior to the enforcement of penalties for a violation of the ordinance.

24 **Comment.** Subdivision (q) of Section 22651 is amended to add a cross-reference to Civil Code  
25 Section 6534, reflecting the enactment of the Commercial and Industrial Common Interest  
26 Development Act (Civ. Code §§ 6500-6876).

27 **Veh. Code § 22651.05 (amended). Removal of vehicle by trained volunteer in specified**  
28 **circumstances**

29 SEC. \_\_\_\_. Section 22651.05 of the Vehicle Code is amended to read:

30 22651.05. (a) A trained volunteer of a state or local law enforcement agency,  
31 who is engaged in directing traffic or enforcing parking laws and regulations, of a  
32 city, county, or jurisdiction of a state agency in which a vehicle is located, may  
33 remove or authorize the removal of a vehicle located within the territorial limits in  
34 which an officer or employee of that agency may act, under any of the following  
35 circumstances:

36 (1) When a vehicle is parked or left standing upon a highway for 72 or more  
37 consecutive hours in violation of a local ordinance authorizing the removal.

38 (2) When a vehicle is illegally parked or left standing on a highway in violation  
39 of a local ordinance forbidding standing or parking and the use of a highway, or a  
40 portion thereof, is necessary for the cleaning, repair, or construction of the  
41 highway, or for the installation of underground utilities, and signs giving notice

1 that the vehicle may be removed are erected or placed at least 24 hours prior to the  
2 removal by local authorities pursuant to the ordinance.

3 (3) Wherever the use of the highway, or a portion thereof, is authorized by local  
4 authorities for a purpose other than the normal flow of traffic or for the movement  
5 of equipment, articles, or structures of unusual size, and the parking of a vehicle  
6 would prohibit or interfere with that use or movement, and signs giving notice that  
7 the vehicle may be removed are erected or placed at least 24 hours prior to the  
8 removal by local authorities pursuant to the ordinance.

9 (4) Whenever a vehicle is parked or left standing where local authorities, by  
10 resolution or ordinance, have prohibited parking and have authorized the removal  
11 of vehicles. A vehicle may not be removed unless signs are posted giving notice of  
12 the removal.

13 (5) Whenever a vehicle is parked for more than 24 hours on a portion of  
14 highway that is located within the boundaries of a common interest development,  
15 as defined in subdivision (c) of Section 1351 or in Section 6534 of the Civil Code,  
16 and signs, as required by Section 22658.2, have been posted on that portion of  
17 highway providing notice to drivers that vehicles parked thereon for more than 24  
18 hours will be removed at the owner's expense, pursuant to a resolution or  
19 ordinance adopted by the local authority.

20 (b) The provisions of this chapter that apply to a vehicle removed pursuant to  
21 Section 22651 apply to a vehicle removed pursuant to subdivision (a).

22 (c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his  
23 or her own free will, provides services, without any financial gain, to a local or  
24 state law enforcement agency, and who is duly trained and certified to remove a  
25 vehicle by a local or state law enforcement agency.

26 **Comment.** Section 22651.05 is amended to add a cross-reference to Civil Code Section 6534,  
27 reflecting the enactment of the Commercial and Industrial Common Interest Development Act  
28 (Civ. Code §§ 6500-6876).

29 **Veh. Code § 22658 (amended). Removal of vehicle from private property by property owner**

30 SEC. \_\_\_\_ . Section 22658 of the Vehicle Code is amended to read:

31 22658. (a) The owner or person in lawful possession of private property,  
32 including an association of a common interest development as defined in Section  
33 1351, or in Sections 6528 and 6534, of the Civil Code, may cause the removal of a  
34 vehicle parked on the property to a storage facility that meets the requirements of  
35 subdivision (n) under any of the following circumstances:

36 (1) There is displayed, in plain view at all entrances to the property, a sign not  
37 less than 17 inches by 22 inches in size, with lettering not less than one inch in  
38 height, prohibiting public parking and indicating that vehicles will be removed at  
39 the owner's expense, and containing the telephone number of the local traffic law  
40 enforcement agency and the name and telephone number of each towing company  
41 that is a party to a written general towing authorization agreement with the owner

1 or person in lawful possession of the property. The sign may also indicate that a  
2 citation may also be issued for the violation.

3 (2) The vehicle has been issued a notice of parking violation, and 96 hours have  
4 elapsed since the issuance of that notice.

5 (3) The vehicle is on private property and lacks an engine, transmission, wheels,  
6 tires, doors, windshield, or any other major part or equipment necessary to operate  
7 safely on the highways, the owner or person in lawful possession of the private  
8 property has notified the local traffic law enforcement agency, and 24 hours have  
9 elapsed since that notification.

10 (4) The lot or parcel upon which the vehicle is parked is improved with a single-  
11 family dwelling.

12 (b) The tow truck operator removing the vehicle, if the operator knows or is able  
13 to ascertain from the property owner, person in lawful possession of the property,  
14 or the registration records of the Department of Motor Vehicles the name and  
15 address of the registered and legal owner of the vehicle, shall immediately give, or  
16 cause to be given, notice in writing to the registered and legal owner of the fact of  
17 the removal, the grounds for the removal, and indicate the place to which the  
18 vehicle has been removed. If the vehicle is stored in a storage facility, a copy of  
19 the notice shall be given to the proprietor of the storage facility. The notice  
20 provided for in this section shall include the amount of mileage on the vehicle at  
21 the time of removal and the time of the removal from the property. If the tow truck  
22 operator does not know and is not able to ascertain the name of the owner or for  
23 any other reason is unable to give the notice to the owner as provided in this  
24 section, the tow truck operator shall comply with the requirements of subdivision  
25 (c) of Section 22853 relating to notice in the same manner as applicable to an  
26 officer removing a vehicle from private property.

27 (c) This section does not limit or affect any right or remedy that the owner or  
28 person in lawful possession of private property may have by virtue of other  
29 provisions of law authorizing the removal of a vehicle parked upon private  
30 property.

31 (d) The owner of a vehicle removed from private property pursuant to  
32 subdivision (a) may recover for any damage to the vehicle resulting from any  
33 intentional or negligent act of a person causing the removal of, or removing, the  
34 vehicle.

35 (e)(1) An owner or person in lawful possession of private property, or an  
36 association of a common interest development, causing the removal of a vehicle  
37 parked on that property is liable for double the storage or towing charges  
38 whenever there has been a failure to comply with paragraph (1), (2), or (3) of  
39 subdivision (a) or to state the grounds for the removal of the vehicle if requested  
40 by the legal or registered owner of the vehicle as required by subdivision (f).

41 (2) A property owner or owner's agent or lessee who causes the removal of a  
42 vehicle parked on that property pursuant to the exemption set forth in  
43 subparagraph (A) of paragraph (1) of subdivision (l) and fails to comply with that



1 subdivision is guilty of an infraction, punishable by a fine of one thousand dollars  
2 (\$1,000).

3 (f) An owner or person in lawful possession of private property, or an  
4 association of a common interest development, causing the removal of a vehicle  
5 parked on that property shall notify by telephone or, if impractical, by the most  
6 expeditious means available, the local traffic law enforcement agency within one  
7 hour after authorizing the tow. An owner or person in lawful possession of private  
8 property, an association of a common interest development, causing the removal  
9 of a vehicle parked on that property, or the tow truck operator who removes the  
10 vehicle, shall state the grounds for the removal of the vehicle if requested by the  
11 legal or registered owner of that vehicle. A towing company that removes a  
12 vehicle from private property in compliance with subdivision (l) is not responsible  
13 in a situation relating to the validity of the removal. A towing company that  
14 removes the vehicle under this section shall be responsible for the following:

15 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

16 (2) The removal of a vehicle other than the vehicle specified by the owner or  
17 other person in lawful possession of the private property.

18 (g)(1)(A) Possession of a vehicle under this section shall be deemed to arise  
19 when a vehicle is removed from private property and is in transit.

20 (B) Upon the request of the owner of the vehicle or that owner's agent, the  
21 towing company or its driver shall immediately and unconditionally release a  
22 vehicle that is not yet removed from the private property and in transit.

23 (C) A person failing to comply with subparagraph (B) is guilty of a  
24 misdemeanor.

25 (2) If a vehicle is released to a person in compliance with subparagraph (B) of  
26 paragraph (1), the vehicle owner or authorized agent shall immediately move that  
27 vehicle to a lawful location.

28 (h) A towing company may impose a charge of not more than one-half of the  
29 regular towing charge for the towing of a vehicle at the request of the owner, the  
30 owner's agent, or the person in lawful possession of the private property pursuant  
31 to this section if the owner of the vehicle or the vehicle owner's agent returns to  
32 the vehicle after the vehicle is coupled to the tow truck by means of a regular  
33 hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by  
34 means of a conventional trailer, and before it is removed from the private property.  
35 The regular towing charge may only be imposed after the vehicle has been  
36 removed from the property and is in transit.

37 (i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section  
38 is excessive if the charge exceeds the greater of the following:

39 (i) That which would have been charged for that towing or storage, or both,  
40 made at the request of a law enforcement agency under an agreement between a  
41 towing company and the law enforcement agency that exercises primary  
42 jurisdiction in the city in which is located the private property from which the  
43 vehicle was, or was attempted to be, removed, or if the private property is not

1 located within a city, then the law enforcement agency that exercises primary  
2 jurisdiction in the county in which the private property is located.

3 (ii) That which would have been charged for that towing or storage, or both,  
4 under the rate approved for that towing operator by the California Highway Patrol  
5 for the jurisdiction in which the private property is located and from which the  
6 vehicle was, or was attempted to be, removed.

7 (B) A towing operator shall make available for inspection and copying his or her  
8 rate approved by the California Highway Patrol, if any, within 24 hours of a  
9 request without a warrant to law enforcement, the Attorney General, district  
10 attorney, or city attorney.

11 (2) If a vehicle is released within 24 hours from the time the vehicle is brought  
12 into the storage facility, regardless of the calendar date, the storage charge shall be  
13 for only one day. Not more than one day's storage charge may be required for a  
14 vehicle released the same day that it is stored.

15 (3) If a request to release a vehicle is made and the appropriate fees are tendered  
16 and documentation establishing that the person requesting release is entitled to  
17 possession of the vehicle, or is the owner's insurance representative, is presented  
18 within the initial 24 hours of storage, and the storage facility fails to comply with  
19 the request to release the vehicle or is not open for business during normal  
20 business hours, then only one day's storage charge may be required to be paid  
21 until after the first business day. A business day is any day in which the lienholder  
22 is open for business to the public for at least eight hours. If a request is made more  
23 than 24 hours after the vehicle is placed in storage, charges may be imposed on a  
24 full calendar day basis for each day, or part thereof, that the vehicle is in storage.

25 (j)(1) A person who charges a vehicle owner a towing, service, or storage charge  
26 at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the  
27 vehicle owner for four times the amount charged.

28 (2) A person who knowingly charges a vehicle owner a towing, service, or  
29 storage charge at an excessive rate, as described in subdivision (h) or (i), or who  
30 fails to make available his or her rate as required in subparagraph (B) of paragraph  
31 (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more  
32 than two thousand five hundred dollars (\$2,500), or by imprisonment in the county  
33 jail for not more than three months, or by both that fine and imprisonment.

34 (k)(1) A person operating or in charge of a storage facility where vehicles are  
35 stored pursuant to this section shall accept a valid bank credit card or cash for  
36 payment of towing and storage by a registered owner, the legal owner, or the  
37 owner's agent claiming the vehicle. A credit card shall be in the name of the  
38 person presenting the card. "Credit card" means "credit card" as defined in  
39 subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of  
40 this section, credit card does not include a credit card issued by a retail seller.

41 (2) A person described in paragraph (1) shall conspicuously display, in that  
42 portion of the storage facility office where business is conducted with the public, a

1 notice advising that all valid credit cards and cash are acceptable means of  
2 payment.

3 (3) A person operating or in charge of a storage facility who refuses to accept a  
4 valid credit card or who fails to post the required notice under paragraph (2) is  
5 guilty of a misdemeanor, punishable by a fine of not more than two thousand five  
6 hundred dollars (\$2,500), or by imprisonment in the county jail for not more than  
7 three months, or by both that fine and imprisonment.

8 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is  
9 civilly liable to the registered owner of the vehicle or the person who tendered the  
10 fees for four times the amount of the towing and storage charges.

11 (5) A person operating or in charge of the storage facility shall have sufficient  
12 moneys on the premises of the primary storage facility during normal business  
13 hours to accommodate, and make change in, a reasonable monetary transaction.

14 (6) Credit charges for towing and storage services shall comply with Section  
15 1748.1 of the Civil Code. Law enforcement agencies may include the costs of  
16 providing for payment by credit when making agreements with towing companies  
17 as described in subdivision (i).

18 (l)(1)(A) A towing company shall not remove or commence the removal of a  
19 vehicle from private property without first obtaining the written authorization from  
20 the property owner or lessee, including an association of a common interest  
21 development, or an employee or agent thereof, who shall be present at the time of  
22 removal and verify the alleged violation, except that presence and verification is  
23 not required if the person authorizing the tow is the property owner, or the owner's  
24 agent who is not a tow operator, of a residential rental property of 15 or fewer  
25 units that does not have an onsite owner, owner's agent or employee, and the  
26 tenant has verified the violation, requested the tow from that tenant's assigned  
27 parking space, and provided a signed request or electronic mail, or has called and  
28 provides a signed request or electronic mail within 24 hours, to the property owner  
29 or owner's agent, which the owner or agent shall provide to the towing company  
30 within 48 hours of authorizing the tow. The signed request or electronic mail shall  
31 contain the name and address of the tenant, and the date and time the tenant  
32 requested the tow. A towing company shall obtain, within 48 hours of receiving  
33 the written authorization to tow, a copy of a tenant request required pursuant to  
34 this subparagraph. For the purpose of this subparagraph, a person providing the  
35 written authorization who is required to be present on the private property at the  
36 time of the tow does not have to be physically present at the specified location of  
37 where the vehicle to be removed is located on the private property.

38 (B) The written authorization under subparagraph (A) shall include all of the  
39 following:

40 (i) The make, model, vehicle identification number, and license plate number of  
41 the removed vehicle.

1 (ii) The name, signature, job title, residential or business address and working  
2 telephone number of the person, described in subparagraph (A), authorizing the  
3 removal of the vehicle.

4 (iii) The grounds for the removal of the vehicle.

5 (iv) The time when the vehicle was first observed parked at the private property.

6 (v) The time that authorization to tow the vehicle was given.

7 (C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing  
8 company prior to payment of a towing or storage charge shall provide a photocopy  
9 of the written authorization to the vehicle owner or the agent.

10 (ii) If the vehicle was towed from a residential property, the towing company  
11 shall redact the information specified in clause (ii) of subparagraph (B) in the  
12 photocopy of the written authorization provided to the vehicle owner or the agent  
13 pursuant to clause (i).

14 (iii) The towing company shall also provide to the vehicle owner or the agent a  
15 separate notice that provides the telephone number of the appropriate local law  
16 enforcement or prosecuting agency by stating “If you believe that you have been  
17 wrongfully towed, please contact the local law enforcement or prosecuting agency  
18 at [insert appropriate telephone number].” The notice shall be in English and in the  
19 most populous language, other than English, that is spoken in the jurisdiction.

20 (D) A towing company shall not remove or commence the removal of a vehicle  
21 from private property described in subdivision (a) of Section 22953 unless the  
22 towing company has made a good faith inquiry to determine that the owner or the  
23 property owner’s agent complied with Section 22953.

24 (E)(i) General authorization to remove or commence removal of a vehicle at the  
25 towing company’s discretion shall not be delegated to a towing company or its  
26 affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire  
27 hydrant or in a fire lane, or in a manner which interferes with an entrance to, or  
28 exit from, the private property.

29 (ii) In those cases in which general authorization is granted to a towing company  
30 or its affiliate to undertake the removal or commence the removal of a vehicle that  
31 is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that  
32 interferes with an entrance to, or exit from, private property, the towing company  
33 and the property owner, or owner’s agent, or person in lawful possession of the  
34 private property shall have a written agreement granting that general authorization.

35 (2) If a towing company removes a vehicle under a general authorization  
36 described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully  
37 parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that  
38 interferes with an entrance to, or exit from, the private property, the towing  
39 company shall take, prior to the removal of that vehicle, a photograph of the  
40 vehicle that clearly indicates that parking violation. Prior to accepting payment,  
41 the towing company shall keep one copy of the photograph taken pursuant to this  
42 paragraph, and shall present that photograph and provide, without charge, a

1 photocopy to the owner or an agent of the owner, when that person claims the  
2 vehicle.

3 (3) A towing company shall maintain the original written authorization, or the  
4 general authorization described in subparagraph (E) of paragraph (1) and the  
5 photograph of the violation, required pursuant to this section, and any written  
6 requests from a tenant to the property owner or owner's agent required by  
7 subparagraph (A) of paragraph (1), for a period of three years and shall make them  
8 available for inspection and copying within 24 hours of a request without a  
9 warrant to law enforcement, the Attorney General, district attorney, or city  
10 attorney.

11 (4) A person who violates this subdivision is guilty of a misdemeanor,  
12 punishable by a fine of not more than two thousand five hundred dollars (\$2,500),  
13 or by imprisonment in the county jail for not more than three months, or by both  
14 that fine and imprisonment.

15 (5) A person who violates this subdivision is civilly liable to the owner of the  
16 vehicle or his or her agent for four times the amount of the towing and storage  
17 charges.

18 (m)(1) A towing company that removes a vehicle from private property under  
19 this section shall notify the local law enforcement agency of that tow after the  
20 vehicle is removed from the private property and is in transit.

21 (2) A towing company is guilty of a misdemeanor if the towing company fails to  
22 provide the notification required under paragraph (1) within 60 minutes after the  
23 vehicle is removed from the private property and is in transit or 15 minutes after  
24 arriving at the storage facility, whichever time is less.

25 (3) A towing company that does not provide the notification under paragraph (1)  
26 within 30 minutes after the vehicle is removed from the private property and is in  
27 transit is civilly liable to the registered owner of the vehicle, or the person who  
28 tenders the fees, for three times the amount of the towing and storage charges.

29 (4) If notification is impracticable, the times for notification, as required  
30 pursuant to paragraphs (2) and (3), shall be tolled for the time period that  
31 notification is impracticable. This paragraph is an affirmative defense.

32 (n) A vehicle removed from private property pursuant to this section shall be  
33 stored in a facility that meets all of the following requirements:

34 (1)(A) Is located within a 10-mile radius of the property from where the vehicle  
35 was removed.

36 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a  
37 towing company has prior general written approval from the law enforcement  
38 agency that exercises primary jurisdiction in the city in which is located the  
39 private property from which the vehicle was removed, or if the private property is  
40 not located within a city, then the law enforcement agency that exercises primary  
41 jurisdiction in the county in which is located the private property.

42 (2)(A) Remains open during normal business hours and releases vehicles after  
43 normal business hours.

1 (B) A gate fee may be charged for releasing a vehicle after normal business  
2 hours, weekends, and state holidays. However, the maximum hourly charge for  
3 releasing a vehicle after normal business hours shall be one-half of the hourly tow  
4 rate charged for initially towing the vehicle, or less.

5 (C) Notwithstanding any other provision of law and for purposes of this  
6 paragraph, “normal business hours” are Monday to Friday, inclusive, from 8 a.m.  
7 to 5 p.m., inclusive, except state holidays.

8 (3) Has a public pay telephone in the office area that is open and accessible to  
9 the public.

10 (o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to  
11 assist vehicle owners or their agents by, among other things, allowing payment by  
12 credit cards for towing and storage services, thereby expediting the recovery of  
13 towed vehicles and concurrently promoting the safety and welfare of the public.

14 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further  
15 the safety of the general public by ensuring that a private property owner or lessee  
16 has provided his or her authorization for the removal of a vehicle from his or her  
17 property, thereby promoting the safety of those persons involved in ordering the  
18 removal of the vehicle as well as those persons removing, towing, and storing the  
19 vehicle.

20 (3) It is the intent of the Legislature in the adoption of subdivision (g) to  
21 promote the safety of the general public by requiring towing companies to  
22 unconditionally release a vehicle that is not lawfully in their possession, thereby  
23 avoiding the likelihood of dangerous and violent confrontation and physical injury  
24 to vehicle owners and towing operators, the stranding of vehicle owners and their  
25 passengers at a dangerous time and location, and impeding expedited vehicle  
26 recovery, without wasting law enforcement’s limited resources.

27 (p) The remedies, sanctions, restrictions, and procedures provided in this section  
28 are not exclusive and are in addition to other remedies, sanctions, restrictions, or  
29 procedures that may be provided in other provisions of law, including, but not  
30 limited to, those that are provided in Sections 12110 and 34660.

31 (q) A vehicle removed and stored pursuant to this section shall be released by  
32 the law enforcement agency, impounding agency, or person in possession of the  
33 vehicle, or any person acting on behalf of them, to the legal owner or the legal  
34 owner’s agent upon presentation of the assignment, as defined in subdivision (b)  
35 of Section 7500.1 of the Business and Professions Code; a release from the one  
36 responsible governmental agency, only if required by the agency; a government-  
37 issued photographic identification card; and any one of the following as  
38 determined by the legal owner or the legal owner’s agent: a certificate of  
39 repossession for the vehicle, a security agreement for the vehicle, or title, whether  
40 paper or electronic, showing proof of legal ownership for the vehicle. Any  
41 documents presented may be originals, photocopies, or facsimile copies, or may be  
42 transmitted electronically. The storage facility shall not require any documents to  
43 be notarized. The storage facility may require the agent of the legal owner to

1 produce a photocopy or facsimile copy of its repossession agency license or  
2 registration issued pursuant to Chapter 11 (commencing with Section 7500) of  
3 Division 3 of the Business and Professions Code, or to demonstrate, to the  
4 satisfaction of the storage facility, that the agent is exempt from licensure pursuant  
5 to Section 7500.2 or 7500.3 of the Business and Professions Code.

6 **Comment.** Subdivision (a) of Section 22658 is amended to add cross-references to Civil Code  
7 Section 6528 and 6534, reflecting the enactment of the Commercial and Industrial Common  
8 Interest Development Act (Civ. Code §§ 6500-6876).

## WATER CODE

### 9 **Water Code § 13553 (amended). Recycled water**

10 SEC. \_\_\_\_ . Section 13553 of the Water Code is amended to read:

11 13553. (a) The Legislature hereby finds and declares that the use of potable  
12 domestic water for toilet and urinal flushing in structures is a waste or an  
13 unreasonable use of water within the meaning of Section 2 of Article X of the  
14 California Constitution if recycled water, for these uses, is available to the user  
15 and meets the requirements set forth in Section 13550, as determined by the state  
16 board after notice and a hearing.

17 (b) The state board may require a public agency or person subject to this section  
18 to furnish any information that may be relevant to making the determination  
19 required in subdivision (a).

20 (c) For purposes of this section and Section 13554, “structure” or “structures”  
21 means commercial, retail, and office buildings, theaters, auditoriums,  
22 condominium projects, schools, hotels, apartments, barracks, dormitories, jails,  
23 prisons, and reformatories, and other structures as determined by the State  
24 Department of Public Health.

25 (d) Recycled water may be used in condominium projects, as defined in Section  
26 1351 or 6542 of the Civil Code, subject to all of the following conditions:

27 (1) Prior to the indoor use of recycled water in any condominium project, the  
28 agency delivering the recycled water to the condominium project shall file a report  
29 with, and receive written approval of the report from, the State Department of  
30 Public Health. The report shall be consistent with the provisions of Title 22 of the  
31 California Code of Regulations generally applicable to dual-plumbed structures  
32 and shall include all the following:

33 (A) That potable water service to each condominium project will be provided  
34 with a backflow protection device approved by the State Department of Public  
35 Health to protect the agency’s public water system, as defined in Section 116275  
36 of the Health and Safety Code. The backflow protection device approved by the  
37 State Department of Public Health shall be inspected and tested annually by a  
38 person certified in the inspection of backflow prevention devices.

1 (B) That any plumbing modifications in the condominium unit or any physical  
2 alteration of the structure will be done in compliance with state and local  
3 plumbing codes.

4 (C) That each condominium project will be tested by the recycled water agency  
5 or the responsible local agency at least once every four years to ensure that there  
6 are no indications of a possible cross connection between the condominium's  
7 potable and nonpotable systems.

8 (D) That recycled water lines will be color coded consistent with current statutes  
9 and regulations.

10 (2) The recycled water agency or the responsible local agency shall maintain  
11 records of all tests and annual inspections conducted.

12 (3) The condominium's declaration, as defined in Section 1351 or 6546 of the  
13 Civil Code, shall provide that the laws and regulations governing recycled water  
14 apply, shall not permit any exceptions to those laws and regulations, shall  
15 incorporate the report described in paragraph (1), and shall contain the following  
16 statement:

17 "NOTICE OF USE OF RECYCLED WATER

18 This property is approved by the State Department of Public Health for the use  
19 of recycled water for toilet and urinal flushing. This water is not potable, is not  
20 suitable for indoor purposes other than toilet and urinal flushing purposes, and  
21 requires dual plumbing. Alterations and modifications to the plumbing system  
22 require a permit and are prohibited without first consulting with the appropriate  
23 local building code enforcement agency and your property management company  
24 or ~~homeowners'~~ owners' association to ensure that the recycled water is not mixed  
25 with the drinking water."

26 (e) The State Department of Public Health may adopt regulations as necessary to  
27 assist in the implementation of this section.

28 (f) This section shall only apply to condominium projects that are created,  
29 within the meaning of Section 1352 or 6580 of the Civil Code, on or after January  
30 1, 2008.

31 (g) This section and Section 13554 do not apply to a pilot program adopted  
32 pursuant to Section 13553.1.

33 **Comment.** Subdivision (d) of Section 13553 is amended to add cross-references to Civil Code  
34 Sections 6542 and 6546, and to make a terminological change, reflecting the enactment of the  
35 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

36 Subdivision (f) is amended to add a cross-reference to Civil Code Section 6580, for the same  
37 reason.

38 **Note.** The Commission invites comment on whether Section 13553 applies to an exclusively  
39 commercial or industrial common interest development, notwithstanding the use in Section  
40 13553(d) of the undefined term "homeowners' association."



## DISPOSITION OF EXISTING LAW

The table below shows the disposition of each provision of the existing Davis-Stirling Common Interest Development Act in the proposed law.

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1350.....	not continued	1357.130.....	not continued
1350.5.....	6502	1357.140.....	not continued
1350.7.....	not continued	1357.150.....	not continued
1351 (intro.).....	6526	1358(a).....	6660
1351(a).....	6528	1358(b).....	6662
1351(b).....	6532	1358(c).....	6664
1351(c).....	6534	1358(d).....	6666
1351(d).....	6536	1358 (last ¶).....	6670
1351(e)(1)-•.....	6624	1358 (next to last ¶).....	6668
1351(e)(3).....	6624, 6626(a)	1359.....	6656
1351(e) (next to last ¶).....	6626(b)-(c)	1360.....	6714
1351(e) (last ¶).....	6628	1360.5.....	6706
1351(f).....	6542	1361.....	6652
1351(g).....	6544	1361.5.....	6654
1351(h).....	6546	1362.....	6650
1351(i).....	6550	1363(a).....	6750
1351(j).....	6552	1363(b).....	not continued
1351(k).....	6562	1363(c).....	6752
1351(l).....	6564	1363(d).....	not continued
1351(m).....	6566	1363(e).....	not continued
1352.....	6580	1363(f).....	not continued
1352.5.....	6606(a)-(b), (d)	1363(g) (1st sent.).....	6850
1353(a)(1) (1st & 2d sent.).....	6614(a)	1363(g) (2d sent.).....	not continued
1353(a)(1)-(4) (except 1st & 2d sent.).....	not continued	1363(h).....	not continued
.....	not continued	1363(i).....	not continued
1353(b).....	6614(b)	1363(j).....	6854
1353.5.....	6702	1363.001.....	6760
1353.6.....	6704	1363.005.....	not continued
1353.7.....	not continued (but see 6612)	1363.03.....	not continued
1353.8.....	6712	1363.04.....	not continued
1354.....	6856	1363.05.....	not continued
1355(a) (1st sent.).....	6620(a) (1st sent.)	1363.07.....	not continued
1355(a)(1).....	6620(a)(2)	1363.09.....	not continued
1355(a)(2).....	6620(a)(3)	1363.1.....	not continued
1355(a)(3).....	6620(a)(4)	1363.2.....	not continued
1355(b) (1st sent.).....	6616	1363.5.....	6622
1355(b)(1).....	6620(a)(1)	1363.6.....	6762
1355(b)(2).....	6620(a)(2), 6620(b)	1363.810.....	not continued
1355(b)(3).....	6620(a)(3)	1363.820.....	not continued
1355.5.....	6608	1363.830.....	not continued
1356.....	not continued	1363.840.....	not continued
1357(a).....	6618(a)	1363.850.....	not continued
1357(b) (1st sent.).....	6618(b), 6620	1364(a).....	6716(a)
1357(c).....	not continued	1364(b).....	6718
1357(d).....	6618(c)	1364(c).....	6716(b)
1357.100.....	not continued	1364(d)-(e).....	6720
1357.110.....	not continued	1364(f).....	6722
1357.120.....	not continued	1365.....	not continued

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1365.1.....	not continued	1367.1(h).....	6820(b)
1365.2.....	not continued	1367.1(i).....	6818(b)
1365.2.5.....	not continued	1367.1(j).....	6822(b)
1365.3.....	not continued	1367.1(k).....	6814(f)
1365.5.....	not continued	1367.1(l).....	6819
1365.6.....	6758(a)	1367.1(m).....	not continued (but see 6828)
1365.7.....	not continued	1367.1(n).....	not continued
1365.9.....	6840	1367.4.....	not continued
1366(a) (1st sent. only).....	6800	1367.5.....	not continued
1366(a) (except 1st sent.).....	not continued	1367.6.....	not continued
1366(b).....	not continued	1368.....	not continued
1366(c).....	6804	1368.1.....	6710
1366(d).....	not continued	1368.3.....	6858
1366(e).....	not continued	1368.4.....	6860
1366(f).....	6808(c)	1368.5.....	6150
1366.1.....	not continued	1369.....	6658
1366.2.....	not continued	1369.510.....	not continued
1366.4.....	not continued	1369.520.....	not continued
1367.....	not continued (but see 6828)	1369.530.....	not continued
1367.1(a) (1st sent.).....	6808(a)	1369.540.....	not continued
1367.1(a) (2d sent.).....	6812 (intro.)	1369.550.....	not continued
1367.1(a)(1)-(3).....	6812(a)-(c)	1369.560.....	not continued
1367.1(a)(4)-(6).....	not continued	1369.570.....	not continued
1367.1(b).....	6810	1369.580.....	not continued
1367.1(c).....	not continued	1369.590.....	not continued
1367.1(d) (1st - 5th sent.).....	6814(a)-(e)	1370.....	6602
1367.1(d) (6th sent.).....	6818(a)	1371.....	6604
1367.1(d) (7th & 8th sent.).....	6824(a)	1372.....	6510
1367.1(e).....	6824(b)	1373.....	6580(a), 6531
1367.1(f).....	6816	1374.....	6580(b)
1367.1(g) (1st sent.).....	6826	1375.....	6000
1367.1(g) (2d sent.).....	6820(a)	1375.05.....	6050
1367.1(g) (3d sent.).....	6822(a)	1375.1.....	6100
1367.1(g) (4th sent.).....	6822(c) (intro.)	1376.....	6708
1367.1(g)(1)-(2).....	6822(c)(1)-(2)	1378.....	not continued