

BOARD MEMBER TRAINING

Duties & Responsibilities



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INTRODUCTION

Common Interest Developments did not exist 60 years ago. They were created in the early Sixties primarily for two reasons: to enable builders to build more homes on a given parcel and, to allow development on parcels that included land that otherwise would be unbuildable. Where a single-family detached housing development might place four to six homes on each acre of ground, attached housing can accommodate much higher densities, as many as ten to fifteen per acre—in low rise developments—and many more in high rise buildings. Land unsuitable for construction within a parcel can be avoided by clustering homes on the buildable portions of the land and ceding the rest to “common area.”

Greater density and clustering of homes brings with it special governance challenges. Where an owner typically maintains a single-family home, attached housing requires community maintenance. High-density living also demands rules for behavior and the use of property that are not necessary in less dense developments. In short, the higher the density, the more that must be done to accommodate the common interest. Housing which has elements of rules and common maintenance are referred to as “common interest” developments, although you will also hear such projects referred to by other names: homeowners associations, condos, town homes, or community associations. Regardless of which name is used to describe a particular project, this type of housing has become ubiquitous. Since approximately 1960, more than 300,000 common interest developments have been built in the United States, providing homes for over 62 million residents.

Being on the board isn't easy. A newly elected director usually approaches the task with energy, enthusiasm, hope, a commitment to transparency and “getting things done.” This last task requires learning how to govern. Governance entails an understanding of the frame within which directors make decisions and the powers and duties they have under California law.

Governing a community association has many aspects. Some obvious ones include being receptive to membership input, flexibility; and having the courage to look at hard issues and make sound decisions. Good governance includes operating within the parameters of the law and in states which are heavily regulated by statute, that isn't easy. How much “law” does a director (or a manager) need to know? How can they “compete” with the bloggers who quote legal chapter and verse to attack the board; how can directors assess the validity of legal challenges without always engaging counsel? What are the legal boundaries?

In California, most associations in common interest developments are non-profit corporations with a board of directors composed of property owners that manages the project. This board derives its authority from the governing documents that the builder of the property prepares in accordance with guidelines published by the California Department of Real Estate and California law. These governing documents include corporate Articles of Incorporation and Bylaws, and Covenants, Conditions, and Restrictions (CC&Rs) that impose rules and restrictions on the use of property within the development.

The board of directors, acting on behalf of the association, is responsible for the maintenance of the common areas of the property. Boards are also charged with enforcing the governing documents, collecting assessments needed to pay the expenses of the association, and in general, providing for the welfare of the association and its residents.

It is important that a new volunteer board member understand the structure of a common interest development, the association's authority over the property and its owners, and the unique manner in which an association is governed.

WHAT ARE THE TYPES OF COMMON INTEREST DEVELOPMENTS?

All of the land and property within a common interest development, regardless of type, is divided into two essential parts: the part owned by the individual owner, and everything else. The part that is owned by each individual, i.e., that property deeded specifically to that owner, is that owner's "*separate interest*." Everything else is "*common area*." [CC 4095] (The references here and following are to that portion of the California Civil Code known as the "Davis-Stirling Common Interest Development Act").

California law recognizes four types of common interest developments, but we will discuss only the two most common types—*Condominiums and Planned Developments*. [4100] The major difference between these types is found in the nature of the owner's separate interest. Since many important rights and duties are determined by who owns what, it is very important to understand the difference between condominiums and planned developments.

CONDOMINIUMS

The "separate interest" deeded to an owner of a condominium is usually the *air space within the unit itself*. The owners "*unit*" (as the owner's separate interest in a condominium is usually described) normally includes everything on the warm side (inside) of the sheet rock. It includes all of the fixtures protruding into the unit, such as lights, stove, and plumbing fixtures, but not the plumbing (or electrical wiring) within the walls. [4125]

All other portions of a condominium building are "*common area*." This includes all of the structural elements of the building, the foundation, and all of the waterproofing components such as exterior siding, windows, and roofs. The parking lots and all of the landscaped areas and recreational facilities adjacent to the building itself are also common area. **The owner of a condominium unit receives a deed to the "unit" and to a percentage of *all* of the common area.**

If there are 50 units in the project, for example, each owner will own an undivided 1/50th of the entire common area in addition to his or her individual unit.

Portions of the property such as *parking spaces, storage lockers, balconies or patios* may be dedicated to an individual owner's "**exclusive use**" but they are usually not part of the owner's separate interest—they are part of the common area that is restricted to a particular owner's use. The owner's right to these areas is usually stated in the deed to that owner's separate interest and also is described generally in the CCRs. Except for the owner's exclusive rights to use such areas, the property itself, like all common area, is owned in common by all of the owners of the property. [CC 4145]

PLANNED DEVELOPMENTS

The owner's separate interest in a planned development is usually referred to as a "*lot*." This is true for both detached and attached housing types. Both can be planned developments. A lot in a planned development of attached housing is very similar to a lot in a single-family development. It is a parcel of land with specific dimensions, and has a residence on it. **The owner of that lot owns the land and all of the parts of the building on that land.** Even though the buildings on the lots in an attached development have common walls, the boundaries of the owner's separate interest can be determined with reference to the governing documents and to the *subdivision or parcel map* recorded with the county. [CC 4175]



A “lot” in a planned development includes *all* of the building components within that lot, including foundations, structure, wires, pipes, and all of the waterproofing systems, such as siding and roofs. **The other owners in the planned development do not own any portion of an owner’s individual lot.**

In a planned development, the common area is everything outside of the boundaries of the lots. This often includes streets, walkways, landscaped areas, and recreational facilities. Unlike a condominium, the common area parcels in a planned development are usually *deeded to the association* which owns that property like any landowner, but subject to the rights and interests of the members of the association to use that property, as stated in the governing documents. Individual owners in planned developments can, in some cases, have exclusive rights to use portions of the association’s common area, like parking spaces, for example.

ARCHITECTURAL “STYLES”

It is important to know that the architectural “style” of a building does not necessarily determine its legal status. Condominiums could be anything from a high rise to a detached house, but are most commonly multi-story, multi-unit attached structures. If there is one unit on top of another, it is probably a condominium. (That style could also be a co-op, but those are rare in California.) The typical condominium project in California is either a high-rise steel and concrete building, or a low-rise wood frame structure consisting of one or several buildings each containing multiple, stacked apartment-style units. There are, however, many other architectural styles that can also be condominiums—work/live space lofts, or commercial buildings, for example.

Attached homes in a planned development are typically townhouse or row house-style, or duplex dwellings of one or two stories. The word “townhouse” refers only to an architectural style and does not, in and of itself, necessarily mean a planned development. There are also condominiums that are the “townhouse” style. But it doesn’t work the other way around—since planned developments require individually owned “lots,” there are no planned developments that are stacked, apartment-style units.

WHAT IS AN “ASSOCIATION” AND WHAT DOES IT DO?

A “community association” is an association of owners created to manage a common interest development.

[CC 4080] In most cases, the association is a non-profit, mutual benefit corporation created under the California Corporations Code. Associations have been referred to by various names, including “property owner associations” and “homeowner’s associations”, but the Davis-Stirling Act refers to them simply as, “associations.” Each owner of property in the development is a *member* of the association. A board of directors elected by the members governs the association. Once the developer has left the property, each unit or lot has one vote. The duties of the association are set out in the *Articles of Incorporation* and the *Bylaws*, two of the *governing documents* of the association.

The association is the “manager” of the common interest development. Management includes providing for proper **maintenance** of the buildings and the common areas; **collecting assessments** necessary to pay the association’s operating expenses and for contributions to reserves; **enforcing the governing documents**, including the restrictions on the use of the property by owners; conducting **meetings of members** and the board as required by the bylaws; and generally, to protect and preserve the property. These responsibilities can be and often are, delegated to professional managers, but the basic legal responsibility remains with the association and it’s **Board of Directors**.

THE RESPONSIBILITIES OF THE BOARD OF DIRECTORS

The board of directors is the policy-making body of a community association. It is charged with overseeing the day-to-day operation and management of the association. Generally, all authority vesting in the association is exercised by the board. [California Corporations Code section 7210] Exceptions are for the really big things an association does and these frequently require membership approval: mergers, dissolutions, large regular or special assessments, elections and recalls and governing document amendments. Most of these are subject to statutory election provisions that can be confusing when, as is common, they conflict with the election procedures contained in the association’s own CC&Rs and Bylaws.

The board usually meets monthly or quarterly, and while association members are encouraged to attend these meetings, members are not permitted to vote on matters before the board. The law intends that board decisions shall be made at open, noticed board meetings with proper agendas. Exceptions exist for decisions made in executive session or by unanimous written consent. The board must also provide notice of its meetings. Except in the case of an emergency, California law severely restricts the use of email or teleconferences by board members to conduct meetings or make decisions.

The board elects the officers of the association from among the directors. A president, vice president, secretary, and treasurer are the typical officers. The powers and duties of the board and its officers are spelled out in the bylaws of the association. They have broad and specific powers commensurate with their responsibilities. The association is a business and the board has the same authority and responsibility as the owners of any commercial business.

Maintenance of the Property

One of the most important management duties performed by an association is to provide for the preservation of the property. This is usually done through the use of skilled professionals, either professional property managers or contractors who can recognize the maintenance and repair requirements of the association and arrange for that work to be done.

However, before an association can maintain the property, it must determine what parts of the property the association is responsible for. This determination is critical because association maintenance resources are usually very limited and an association cannot afford to pay for maintenance or repairs that are the responsibility of the individual owners. An association's maintenance and repair responsibility is determined by the type of association, and by the provisions of the Declaration of Covenants, Conditions, and Restrictions.

In a **condominium** project, the individual owner is responsible for maintaining his or her separate interest. Since the separate interest of a condominium is only the interior air space of the condominium unit and occasionally window glazing, the maintenance and repair of all of the remainder of the project is the responsibility of the association.

Remember that the owner's separate interest in **attached planned developments** includes the lot and all of the building components located on that lot. If there were no other responsible parties, the owner of an attached residence in a planned development would be just as responsible for maintaining the property as is the owner of a detached home.

But because the properties are attached and cannot be easily maintained separately, and because the common areas also require maintenance, the CC&Rs of planned developments usually delegate responsibility for maintenance of the common area, and *some* of the maintenance of the buildings to the association. Therefore, when determining the allocation of maintenance and repair responsibilities in a planned development, check the CC&Rs. The declaration will describe, usually in some detail, just exactly which components of the buildings the association will maintain. Whatever is left is the responsibility of the owner.

Typically the CC&Rs of an attached planned development will require that the association maintain, in addition to the common areas, the exterior "waterproof envelope" of the buildings. This usually includes the roof, exterior walls, caulking and painting. The extent of such maintenance, however, varies widely between associations. For example, one association may be required to "paint and maintain" the exterior surfaces. Another may be required to "paint, maintain, repair, and replace" those same surfaces. Those two definitions represent very different repair responsibilities.

Since a major responsibility of an association is contracting for, and managing maintenance and repairs, it is important that the association retain the right professionals to write the specifications for the repair, review the contracts, prepare the bids, and supervise the work. This is true whether the job is routine landscape maintenance or a major roof replacement.

Single-family homes are also built on "lots" which belong to individual owners. They also share the use of common areas that lie outside of those lots and include streets, recreational space, and landscaping. But unlike planned developments with attached "townhouse" style buildings where the outer skin is shared, there is no need for the community association to maintain any portion of the building on the lot. In those developments the association typically maintains only what it owns—usually the common areas outside of the individual lots.



Enforcement of the CC&Rs

The association is charged with enforcing the Covenants, Conditions, and Restrictions. This includes the “*architectural*” restrictions on each owner’s right to modify the appearance or structure of his or her property. It also includes “use” restrictions that condition the owner’s use of the property. Each owner, as well as the association, has the right to enforce these restrictions. The CC&Rs are recorded with the County Recorder and “run with the land” i.e., they are binding on all present and future owners of the property.

It is this right, vested in the association, to regulate the use of property coupled with its obligation to maintain it that makes a common interest development a unique form of property ownership. It is also the arena that gives rise to criticism of boards of directors as being overzealous or insensitive to the needs of owners. **The board must carefully balance its power of enforcement with a “common sense” tolerance of human nature, if it is to avoid such criticism.**

It is essential that the association’s enforcement efforts are *timely, uniform, and fair*. If the board of directors ignores specific violations, or fails to enforce the CC&Rs generally, two things may happen—the owners may begin to ignore these restrictions; and, if and when the board does resume enforcement efforts, the courts may find that it has waived the right to do so. This may happen notwithstanding “non-waiver” provisions of the documents.

Enforcement *must not be arbitrary*. Ignoring a violation by one owner and enforcing the same restriction against another owner will make it difficult to obtain judicial support for the association’s efforts. **Fairness also requires that the association follow the rules of “*due process*,” i.e., notice and an opportunity to be heard.** These rules are usually found in the governing documents and can also be found in the *California Corporations Code* and in *Civil Code provisions of the Davis-Stirling Act*.

Boards of directors are responsible for enforcement, but are not required to initiate action against every single violation. Case law has given boards the right to exercise their “*business judgment*.” If it appears that the violation is trivial, accidental, or infrequent, the board may justifiably refuse to initiate enforcement action.

Enforcement can be anything from a simple discussion between a member of the board or the manager and the offending owner to letters, fines, or even legal action. However, before the board may resort to the courts, it is required to follow some simple *Alternative Dispute Resolution* procedures as required by the *California Civil Code*.

Budgeting and Collecting Assessments

The board of directors of the association is responsible for budgeting for both the annual operating expenses of the association and the necessary contributions to its reserve account. It is also responsible for collecting the necessary revenue to operate the association by assessing the members. The operations budget includes all of the expenses of the association for the current fiscal year, while the contributions to the reserve account are based on projections for maintenance or repairs to be done in the future. Annual expenses include such items as management, utility payments, administrative expenses, and insurance. Future maintenance reserves are for capital expenditures for major repairs.

Operations vs. Reserves

Some maintenance by associations is funded from the operations budget and other from the *reserves*. Both accounts are included in the association's financial statements. Which one applies depends on when the maintenance is done. Is the maintenance or repair done on an annual basis? If so, funding for that is properly included in the association's annual maintenance budget. Examples include small-scale painting, patching of asphalt, leak repair, and similar expenses.

Long-term maintenance or repair, i.e., projects done infrequently and which require substantial funding, is usually included in the *Reserve Budget*. Examples of projects usually funded from reserves include roof replacement, paving of streets, and large-scale painting or re-construction projects.

Reserve Studies

California law requires that each association conduct a “reserve study” every three years, and review it annually. [CC 5550, 5560, 5565] A reserve study is an investigation by an experienced professional to determine which of the association's components will require replacement in the foreseeable future. All components fitting that description are required to be part of the association's reserve budget. The purpose of such studies is to insure that the association is properly funded for future maintenance and repairs. The association's reserve budget projections are based on its reserve study.

Uncovering Construction Problems

An association is charged with the preservation of the owners' property. That duty includes maintenance, both long and short term, and includes insuring that the development is properly inspected so that all potential problems are uncovered. Reserve studies usually investigate only visible and accessible building components. Since construction issues can develop in places not readily open for inspection, it is important that the association's investigations occasionally include areas that are not generally accessible, e.g. under foundations, inside walls, decks and other enclosed areas.

If the project is less than ten years old, problems uncovered in annual inspections might remain the responsibility of the developer of the project. Proper inspection is just as important in older projects however, since in projecting the association's funding requirements, the sooner the cost of a major repair is known the sooner it can be included in the budget. The longer that the association saves for eventual repairs, the lower the annual assessment will be to each of the owners and the less likely it will be that a special assessment or bank loan will be necessary.



BOARD MEMBER LEGAL DUTIES

Board members are fiduciaries to their associations. A **fiduciary duty** is a high legal standard owed to the corporation. In common interest developments, the shareholders are the owners of the separate interests.

Fiduciary Duty is defined by Black's Law Dictionary as, "A duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person. It is the highest standard of duty implied by law." It is the goal post of a Director's duty to always meet or exceed the threshold. Failure to fulfill the legal duty can expose a Director to potential personal liability.

1. **DUTY OF CARE** – Directors must engage in reasonable due diligence and investigation. In carrying out a Director's duty of care, they must:
 - A. Attend meetings and generally be informed about the association's business and affairs. This includes showing up prepared and having read the Board packets.
 - B. Reasonably investigate issues, claims, and matters within the Board's scope of authority. Ask questions and perform due diligence. Do not skip this step, ever!
 - C. Enforce association governing documents. While the means of enforcement is a business decision, the Board should strive for a consistent and uniform approach.
2. **DUTY OF LOYALTY** – Directors must avoid self-dealing. In carrying out a Director's duty of loyalty, they must:
 - A. Act in the association's best interest, even at their own expense.
 - B. The law is aimed at preventing financial conflicts of interest, but with associations, Directors are well-served in avoiding the perception of bias even on non-monetary matters and receiving favors not available to all owners.
 - C. Preserve attorney-client privilege and other confidential information (discipline, collections, Executive Session materials, etc.).

BUSINESS JUDGMENT RULE

In establishing whether a Director has fulfilled their fiduciary duty, courts use the “Business Judgment Rule” standard. It’s not about making the *right* decision, it is about making a reasonably informed choice.

When Directors can establish they have fulfilled the tenets of the Business Judgment Rule, the courts will presume the Directors acted in good faith, even if the outcome is negative for the association. The only way to rebut the presumption of good faith is for an owner or opposing party to provide fraud or gross negligence.

There are two laws applicable to Directors of common interest developments that outline the tenets of the Business Judgment Rule. Both these statutes require that the Director’s actions fall within the scope of their authority. This does not mean a unilateral action by a Board member that would have fallen within their authority had it been approved by a majority of the Board will be covered: it will not.

1. **CORPORATIONS CODE §7231** – Directors must perform their duties in good faith, in a manner the Director believes to be in the best interests of the association, and following reasonable inquiry, as a similarly prudent person would make.

Directors can rely on relevant professional and/or expert advice, and even information provided by committees, unless they believe the committee’s recommendations, reports, or information should not be relied on. Conversely, acting in a manner that falls outside of the Board’s scope of authority and outside of what the association’s experts and vendors recommend may expose the association to liability, and potentially the Director to personal liability.

2. **CIVIL CODE §5800** – Directors must act within the scope of their authority (under the governing documents or the law), in good faith, in a way that is not wanton, willful, or grossly negligent, and their association must have the required insurance in place at the time of the act.



BOARD STRUCTURE & OVERSIGHT

Board members are elected by the members or appointed to vacancies on the Board by the other Board members. Board members are the ones who vote at meetings. Board members can be removed only by a vote of the owners (i.e., recall) or court action. All Directors have a right to submit items for meeting agendas. Directors are considered “personnel” of the corporation and because they are the decisionmakers, the association can have per se liability for their actions, especially as it relates to interactions with employees that arise to the level of harassment.



Officers are roles with specific functions that the Board appoints. Officers serve at the pleasure of the Board, so the Board can elect to change officer roles if it wishes. Appointment of officer roles either happens at the organizational meeting after a Director election or at an open meeting.

Corporations Code §7213 requires corporates to have a Chair/President, secretary, and treasurer. The Association’s Bylaws outline the officer roles.

- **President** – Serves as the chairperson of the corporation and the meetings. Typically serves as the primary point of contact with management, unless otherwise delegated to another director. Common duties include: presiding over meetings, liaison with management.
TIP: Presidents, like all Directors are entitled to make and vote for motions at Board meetings.
- **Treasurer/CFO** – Serves as the chief financial officer of the corporation. Common duties include: overseeing the association’s financials, reserve investments, budget preparation, tax returns, and reserve studies and also co-signs checks.
- **Secretary** – Serves as the corporation’s official custodian of its corporate records (e.g., minutes, etc.). Typical duties include: overseeing notices of meetings, preparation of meeting minutes, signing agreements and approved minutes, and corporate records.

TIP: If the Board approves minutes, the Secretary is to sign them, regardless of whether they attended the meeting or not.

WHAT LEGAL AUTHORITY GOVERNS COMMON INTEREST DEVELOPMENTS?

Common interest developments are a unique blend of Real Estate and Corporate Law. Real estate law governs the property itself, from the subdivision of the property to the restrictions on its use. Corporate law governs the creation and operation of the non-profit corporation that manages the property.

GOVERNING DOCUMENTS

Non-profit corporations with a board of directors manage almost all common interest developments whether they are condominiums or planned developments. Associations are created under the authority of the California Corporations Code. The filing of *Articles of Incorporation* with the California Secretary of State creates the corporation itself. The rules of the corporation, concerning everything from the number of directors to the dates of meetings are contained in the association's *Bylaws*.

Common interest developments are distinct parcels of land, and land in California is subject to the law of **Real Property**. Anything that causes a change in the ownership status of land must be *recorded with the County Recorder* in the county where the land is located. This is also true of anything that seeks to regulate the use of real property.

A modern common interest development could not exist if every owner had unrestricted use of the property. Because of the density and attached homes, restrictions on the use of property are necessary. These restrictions are contained in the association's *Declaration of Covenants, Conditions, and Restrictions*. The *Declaration*, or "CC&Rs," is signed by the developer and recorded with the county recorder before any of the individual lots or units are sold. Recording the CC&Rs extends their authority over all lots or units in the subdivision. [CC 4250]

"Rules" or "house rules" are extensions of the CC&Rs that are usually within the authority of the board of directors to enact, modify, or remove, subject to a veto by the membership [CC 4340, 4350, 4360]. They are minor procedural or behavioral regulations, which are derived from the overall authority of the CC&Rs.

The Articles of Incorporation, The Bylaws, The Declaration of Covenants, Conditions, and Restrictions, and any house rules, are the *governing documents* of the association.

STATE LAW

The governing authority of the association, as well as the limitations upon that authority, is contained in the governing documents, and in the laws of the State of California. State law on common interest developments is found in both *statutory and case law*. State statutes that regulate common interest developments are found in many places, but primarily in the *California Corporations Code* and in the *California Civil Code*.

The *California Corporations Code* governs the operations of the association as a non-profit, mutual benefit corporation. In most cases, the Bylaws of the association will be sufficient to deal with the day-to-day operation of the association as a corporation. The Bylaws deal with such topics as the qualifications of a member of the association and of directors, election and removal of directors, the powers of the board of directors, and the meetings of the board and of the members. Where the Bylaws fail to address a subject, the Corporations Code will supply the law.

The *California Civil Code*, principally Sections 4000 through 6150, contains the provisions of the Davis-Stirling Act, a comprehensive collection of statutes dealing with the management of common interest developments. Unlike the Corporations Code, which in most cases defers to the association's Bylaws, The Davis-Stirling Act contains provisions that supersede the Bylaws or CC&Rs, as well as provisions that do not. Reference must be made to the specific provisions of the act to determine whether the act or the governing documents prevail.

CASE LAW

There are published decisions of cases decided by the appellate courts of California that contain precedent that is applicable to common interest developments. Where a case decided by an appellate court contains decisional law that is in direct conflict with a provision of the association's governing documents, the case law will prevail. Decisions of state appellate courts in the area of common interest development law provide guidance useful in interpreting the provisions of the governing documents.



LEGAL CONSIDERATIONS

Boards are obligated to be reasonably familiar with and enforce their association's governing documents and also to follow the applicable laws. That is a lot of information for people who are volunteers serving their communities.

We will breakdown the various components so the Board can better understand where their duties arise from. Civil Code §4205 establishes a hierarchy of document authority, so when there are conflicts, the higher authority will prevail:

Law → CC&Rs → Bylaws → Rules

1. **LAWS** – There are a variety of laws that pertain to common interest developments, but the primary ones include the Davis-Stirling Common Interest Development Act and the Corporations Code (only for incorporated association). While the Davis-Stirling Act and the Corporations Code normally equally apply, in the event of a conflict between the two, the Davis-Stirling Act will prevail.
2. **GOVERNING DOCUMENTS** – Civil Code §4150 defines governing documents to mean, “The declaration and any other documents, such as bylaws, operating rules, articles of incorporation, or articles of association, which govern the operating of the common interest development or association.”

Most associations will have CC&Rs, Bylaws, Articles of Incorporation (only if they are formally incorporated by the Secretary of State), and operating rules. Operating rules will often include general use restrictions, architectural standards, election rules, and others that vary from community to community.

Board should take care to periodically review and, when appropriate, update their community's governing documents to help set their association up for long term success.

3. **FINANCIAL RESOLUTIONS** – Civil Code §5500 requires the Board to review the Association's finances monthly. Starting in 2019, Boards have an obligation to approve written resolutions authorizing certain types of transfers as outlined in Civil Code §5380.



DIRECTOR ACTIONS & CONDUCT

Decorum

Directors do not have to like each other, but they should act with proper decorum towards each other, employees, vendors, owners, residents, and guests. Improper decorum can lead to liability and litigation.

Importantly, because Directors are the face of the community, how they treat others is often mirrored in how they are treated in return.

Directors should act along the following lines while serving their community:

- Act professional in all interactions (verbal and written). Avoid use of profanity, offensive gestures, and the appearance of bias.
- Focus on issues, not personalities, and conduct themselves with courtesy and respect towards each other, vendors, employees, and other owners.
- Avoid personal attacks on others and use of profanity, including on social media, at board meetings, and in person.
- Avoid words, gestures, or actions that appear biased against a member of a protected class because that person is a member of a protected class. Directors also need to report to the Board any incidents they become aware of that involve bias against a member of a protected class.
- Do not confront owners and residents directly, except in cases of emergency where an imminent risk to person or property is involved. Otherwise, advise the Board of the issue/concern, for the Board's follow up and potential disciplinary action. When appropriate, contact security or law enforcement. **Individual Board members cannot and should not direct employees to take action on the association's behalf. This is something to be directed to the GM or the Board for follow up.**
- **Respect that when a vote is made by the Board, that is the vote and it needs to be supported and respected.** Acts to subvert decisions or repeated requests for new decisions should be avoided.
- Issues will arise, and mistakes will be made. Try to work collaboratively to solve them.

Director Misconduct

Director misconduct creates liability for the association, the rest of the Board, and the problem Director. Boards cannot turn a blind eye to such conduct. Boards have many tools to try and address improper actions by a fellow Director:

- Unofficial discussion.
- Censure (either in an executive or open meeting) formally recorded in the minutes.
- Removal from office (President, Secretary, Treasurer, etc.).
- Legal action

Duty of Confidentiality

Each Board member is legally obligated (remember, part of the Duty of Loyalty) to keep the association's confidentiality information confidential. The association, not a Director, is the holder of the privilege, but it only takes 1 Director to waive the privilege. Do so at your peril!

- **Executive Session Information** – Information obtained during an executive session cannot be discussed except at an executive session meeting. This includes resident complaints, employee matters, collections issues including payment plans, member discipline, attorney-client privileged communications, and anything else discussed during the executive session.
- **Attorney-Client Privileged** – Information obtained from legal counsel cannot be discussed except at an executive session meeting.

Repercussions for Violations

The duty to keep association confidential information confidential does not end with the conclusion of a Director's term, it continues indefinitely. A Director's unauthorized disclosure of confidential information that results in harm or a claim against the association may find they are subject to potential personal liability and not covered by the association's insurance policies.

Ethics Policy

Boards should adopt a code of conduct outlining board duties, conduct and conflicts of interest. Due to recent changes to Civil Code §5100, this type of policy may largely be ceremonial and unenforceable in terms of serving as a basis for removal from the Board, but it can be a powerful demonstration to the community and the other Directors that the Board members understand their fiduciary duty and agree to engage in a professional, respectful manner while in office.



BOARD MEETINGS

The Davis-Stirling Act requires that Boards act at duly noticed meetings, except in limited cases of emergency when notice is impractical.

A Board meeting is defined as, “A congregation, at the same time and place, of a sufficient number of directors to establish a quorum of the Board, to hear, discuss, or deliberate upon any item of business that is within the authority of the Board.” That is an incredibly broad definition of what qualifies as a “meeting” so Boards should take care to follow the notice requirements to avoid potential civil penalties for violations.

There are two types of Board meetings: open and executive. Depending on which type of meeting is being conducted, the notice requirements and topics permitted change. Boards are legally required to meet at least once a quarter, or more frequently if mandated by the association’s Bylaws.

Email Discussions

While it was long understood that except for emergency meetings, Boards were not permitted to discuss association business over email, this has changed with a recent case that held discussion does not qualify as a “meeting” and thus is not prohibited, but decisions are prohibited over email unless it is an emergency. Still, we urge caution and prudence and recommend Boards limit email discussions.

Board Actions

When a majority of the Board approves an item, even if you did not vote to approve the item, each Director needs to act in good faith and then work on supporting the Board’s approved item. Taking actions to undermine an approved Board agenda item is harmful to the Board and the association and needs to be avoided.

TIP: Board meetings should be run efficiently and in most cases should not name more than 2-hours to complete. If you’re spending more time than that, it suggests there are some inefficiencies that should be addressed. Consider allotting a set amount of time (e.g., no more than 5 minutes) for each Director to speak about a motion and then call for the vote. This will help move the Board’s business along in an orderly manner.

TIP: Where and when appropriate, creating a committee and delegating to a committee or a specific Director can help the Board run the community in an effective and efficient manner. A best practice is to have a charter for the committee so it knows the parameters of its authority and the Board’s expectations. If delegating to a Director, make sure to note the delegation in the minutes along with any parameters.

Notice of Board Meetings

Board meeting notices must contain the date, time, and location of the meeting along with the agenda for the meeting. Notices require general delivery, which can be accomplished by posting in the general notice location, mailing, including in a billing statement, or broadcasting (if applicable).

- Open Meetings require at least 4-days prior notice
- Executive Meetings require at least 2-days prior notice

- Emergency Meetings do not require notice, but it must be “circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board.”
- Items can be added to the agenda after posting, but only if an emergency situation exists. The vote should be reflected in the minutes, along with the basis of the emergency.
- All Directors have a right to add items to their meeting agendas, but not all topics may be discussed at a meeting, time permitting.

Topics for Board Meetings

Some Bylaws require a specific form of parliamentary procedure, but most do not. Boards should do their best to follow a standard approach to conducting business so that following a motion, there is reasonable time for discussion and questions amongst the Directors before votes are taken. The President (or in his or her absence, the Vice President) typically presides over the meeting and helps the Board move through the agenda. Managers will often assist the President in conducting the meeting.

- **Executive Meetings** – Civil Code §4935 allows that these meetings can exclude owners, so they are limited in what the Board can vote on and include the following:
 - Formation of third-party contracts. There is nothing that states terminations of contracts are permitted to be discussed in an executive session.
 - Owner disciplinary hearings if requested by the owner.
 - Pending litigation – The law is not clear whether this includes both current and potential litigation, but a broad application seems most appropriate in order to avoid non-sensical circumstances where a board is obligated to discuss sensitive matters in the open that other parts of the Civil Code would permit the board to withhold or redact in a records inspection request.
 - Personnel matters – Employee issues must be discussed in Executive Meetings to comply with employee privacy laws. In addition, because Directors are a form of personnel, Boards can meet in Executive Meetings to censure directors if they wish.
 - Payment plans
 - Votes to foreclose
 - Other topics not covered in law that are appropriate to discuss in an executive session: resident requests for reasonable accommodations (to protect their right to privacy) and discussions with legal counsel (even if its about a topic that is normally not covered by the executive session protection). Confer with counsel if there is a question.
- **Open Meetings** – Anything voted on at an Executive Meeting must be generally noted at the Open Meeting. Any other topic the Board wishes to discuss that is not an Executive Meeting topic can be discussed at an Open Meeting.



Owners' Rights at Board Meetings

It is important to remember, the Board meetings are for the Board to conduct the association's business. They are not intended as an equal exchange between the Board and the owners. The Board needs to appropriately oversee their meetings in order to ensure they are making timely decisions.

- The Board must set aside time for an Owner Forum during its Open Meetings. It can be at the beginning or end of meeting and allows owners to address the board on any subject. It is important to understand that no response from the Board is required by law.
- Owners may observe the conduct of the board's business but do not have a right to participate.
- The Board can establish the meeting parameters, such as imposing a time limit on how long an owner can address the Board. Most implement a 3-5 minute per person limit. The Board can also set a limit on the length of the open forum.
- The Board can require owners to submit their topics or questions in writing.
- If an owner becomes disruptive during a meeting, he or she may either be expelled from the meeting or fined. Directors should NOT attempt to physically remove an owner. If the person refuses to leave, additional monetary penalties may be assessed.
- Owners do not have a right to record the meeting without the Board's consent. Boards concerned about owners recording their meetings should make an announcement at the beginning of the meeting prohibiting it.

MEETING MINUTES

Associations must maintain written minutes of their Board, membership, and committee meetings – including architectural.

What to Include in the Minutes?

There is no law that details what must be included in minutes, so it's a matter of balancing the need to create a clear enough corporate record of what was and wasn't approved by the Board, but without publishing a literal transcript of the meeting discussions. Too little information, and it can be difficult to accurately understand what the Board voted on. Too much information and it can create issues.

Information to Include in Minutes:

- Date, time, and location of the meeting along with a clear description of whether it was an Executive or Open Meeting.
- List the Directors and Officers present or absent, along with invited guests (e.g., Manager or vendors), but not list owners.
- List all motions – whether they fail or are approved. Minutes do not have to list who voted and how, but they can, that is a Board decision.
- Reflect the approval of any prior minutes from draft format, at which point the Secretary of the association signs them, even if the Secretary was not at that meeting.
- A good framework is to follow the meeting agenda in taking minutes.
- Remember, anything discussed in the Executive Meeting must be generally noted in the Open Meeting.
- Date of the next meeting, if set.
- Adjournment.



Distribution of Meeting Minutes.

- “Draft” Open Meeting minutes must be available within 30 days of the meeting.
- Owners have a right to request and receive copies of Open Meeting minutes only.



FAIR HOUSING LAWS

Generally, the Americans With Disabilities Act (ADA) does not apply to common interest developments, but state and federal Fair Housing Laws do apply.

Federal Fair Housing Act

Prohibits discrimination in housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin.

California Fair Employment and Housing Act

Largely mirrors the Federal Fair Housing Act and prohibits discrimination in housing-related activities on the basis of

California Unruh Civil Rights Act

Government Code §12955 prohibits discrimination in housing on basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.

Examples of Discrimination in Housing

- Governing Documents – Rules – e.g., rules prohibiting more than 2 pets and owner gets a 3rd dog as an emotional support animal.
- Existing facilities – e.g., association refuses application to install hardwood floor, but the owner has allergies and needs to modify the unit in order to accommodate their condition.
- Requests for reasonable accommodations/modifications – applies to individuals with a documented disability.
- Owner or tenant is being harassed by another resident because they are a member of a protected class, such as being gay or a racial or ethnic minority.

Harassment

Harassment on the basis of an owner, resident, guest, or vendor being a member of a protected class is prohibited. If the association knows – *or should have known* – of the harassment, the Board has an affirmative duty to investigate and take action, if within the Board's scope of authority and ability. Failure to investigate and take action exposes the association to liability. Associations should have harassment policies.

As it pertains to employees, while bullying an employee may not qualify as unlawful (depending on the circumstances), it can trend dangerously close to qualifying as creating a hostile environment and thus expose the Association to liability.

Liability Exposure

Because the Board members are the responsible authority for the association (i.e., you are the supervisor), your actions can create a heightened level of liability. In other words, the association is automatically liable for the harassment when it is committed by a supervisor (or, in this case, a Board member). The only way the association can avoid liability when a Director is the one engaging in the harassment is to demonstrate that the association reasonably tried to prevent it and the employee unreasonably failed to take advantage of the association's preventative measures.

Definitions of Disability

Federal Law “a physical or mental impairment which substantially limits one or more of such person's major life activities.”

California Law – mental disorder or condition or physical disease, disorder, condition that limits a major life activity (physical, mental, and social activities and working).

The term “major life activity” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.

Accommodations

Means an exception, modification or change to rules, policies or services that will assist a resident with a disability in using a dwelling. Context in which these requests are made can include, without limitation:

- Emotional support/service animals are not “pets”
- Installation of hard surface flooring or other architectural improvement that is not permitted
- Response to violation notice (e.g., parking)

Modifications

Involves a structural change made to existing premises in order to afford a disabled person full enjoyment of the premises, at the disabled person's expense. However, if in the common area, the ongoing maintenance of the improvement is at the association's expense.

Requirements for Approval

1. Needs to have a connection between the disability and the requested accommodation or modification.
2. An “unreasonable accommodation” is one that results in a “fundamental alteration” in the nature of the association's business or imposes an “undue financial or administrative burden.”
3. Interactive Good Faith Process – When an association refuses a requested accommodation because it is not reasonable, the association should discuss with the requester whether there is an alternative accommodation is possible. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it.

CONTRACTS & VENDOR OVERSIGHT

Contracts

The Board can discuss and even approve contracts with third parties in its Executive Session meetings. Because it involves spending association funds, if the Board elects to approve and discuss during an Executive Session meeting, we recommend the Board include some discussion as to the approval and basis for same in the Open Meeting minutes to provide context for the owners who will only see the expense but not the reason for why to help bolster the Board's business decision and rationale.

Vendor Oversight

Typically, management will be the association's primary interface with vendors. If the Board wants to delegate this authority to a certain Director or a Committee, the Board should approve this delegation in an Open Meeting and make a note of it in the minutes. If the Board intends to provide the designated Director with approval authority to make decisions (e.g., financial decisions, substantive choices, etc.), the parameters of this authority should be clearly spelled out beforehand to protect both the association and the Director so the expectations and limits of authority are clear.



OWNER DISCIPLINE & ENFORCEMENT

Discipline

The CC&Rs and the law allow the association to impose discipline. The Board must first comply with the notice and hearing requirements in the governing documents, except in cases where towing is authorized. The Board cannot delegate its hearing responsibilities to a Committee. The means of disciplinary action are a business decision so there is no wrong or right answer on what to do and when, but the Board should strive to impose a uniform system of disciplinary action to avoid claims of discrimination and selective enforcement by owners. The Board should also set clear policies and act consistently with those policies, again to help lower liability from claims of discrimination.

Fines

The association must have a published fine schedule which is provided in the annual disclosure package to the owners. Review the schedule periodically to ensure the fines are reasonable and sufficient to bring about compliance. When appropriate, consider waiving a fine if an owner becomes compliant. This serves as a “carrot” to be relieved of the financial penalty with a “stick” if they fail to comply and can be an effective tool in gaining compliance, which is the goal of disciplinary action.

Common Area Amenity Suspension

The CC&Rs allow the association to suspend an owner’s common area amenity rights. Depending on the amenities, if any, this can serve as an effective way to gain compliance, especially if the owner has as tenant.

Voting Rights

Because of recent changes to Civil Code §5105, the association can no longer suspend an owner’s right to vote as a form of punishment for non-compliance.

Owner’s Enforcemant Rights

Civil Code §5975 provides both the association and an owner with equal rights to enforce violations of the governing documents (except for assessment collection). Thus, if the matter involves an owner-to-owner dispute, the Board should make a finding if it involves a violation, but you can elect not to pursue further action in favor of an owner seeking enforcement at their expense instead of the association’s. Again, it’s a business decision how the Board enforces the governing documents.

Owner-to-Owner Disputes

Board has right and obligation to enforce governing document violations. Thus, not all owner complaints will qualify as a violation. Even if they do, the Board has discretion in determining the means and methods of enforcement. The objective is to investigate and then act consistently to lower liability.

INSURANCE

Directors and Officers (“D&O”) Insurance

Required by law to protect volunteer directors, officers, and committee members from liability while serving the community. D&O policies are normally a “claims-made” policy which means they only cover incidents that happen during and are reported within the policy’s time frame. Timely reporting of claims and/or providing notice of a threat of a claim are important to ensure coverage is not declined on a claim that otherwise would have been covered. If the association has a volunteer homeowner serve as an Inspector of Election, the D&O policy should cover them as well, but confirm with your agent beforehand.

D&O insurance typically covers things like negligence and breach of fiduciary duty provided the conduct was meets the Business Judgment Rule (within the scope of duties, performed in good faith, and not willful, wanton, or grossly negligent).

Civil Code §5800 requires the following amounts of coverage depending on size of the association.

General Liability

Required by law. Typically protects and covers (i) damages and claims arising in the common areas (e.g., slip and falls), (ii) property damage caused by a covered risk like fire or sudden water loss, and (iii) libel, slander, and copyright. Owners do not always have a requirement to maintain insurance, even though they should for their own protection.

Civil Code §5800 requires the following amounts of coverage demand on the size of the association. The Board should conduct a periodic audit of the association’s amounts and types of coverage to ensure the association is sufficiently insured, even above the minimum required. When needed consider obtaining special riders.

Fidelity Bond

Civil Code §5806 requires all associations to have fidelity coverage in an amount equal to or greater than the combined amount of the reserves and total assessments for 3 months unless the governing documents call for greater limits). It must cover all people handling funds, even the management company. It must provide coverage for “computer and funds transfer fraud” in the same amount or greater (unless the governing documents call for greater limits).

Other Types

Employee Practices Liability Insurance. Workers Compensation. Earthquake.

Owner Insurance

Consider having the association’s insurance agent provide a townhall workshop to educate owners on insurance so they are sufficiently covered.

INSPECTION OF RECORDS

Owner Requests

Civil Code §5200 permits an owner to request inspection and copy of certain types of association records for certain durations. Thus, the association cannot restrict or otherwise prohibit records that an owner has a right to request.



- These requests are time sensitive and can create potential for financial penalties if not responded to in a timely manner.
- The inspection should occur at the association's office, if any, or at management office.
- If management charges the association its time to assemble the records, the association can seek recovery of these costs from the owner, but you must inform the owner of the anticipated charges before proceeding and obtain their permission. If they don't agree to bear the charges, the association legally does not have to make the records available.

Director Requests

Corporations Code §8334 provides Directors with an “absolute right” to review all association records, even beyond those records an owner has a right to inspect. This right can be limited when it may:

- Violate an owner's right to privacy (e.g., inspecting an owner's proxy to see how they voted).
- Be a conflict of interest (e.g., Director in litigation with the association cannot request to see association's records when it relates to their lawsuit).
- Involve a violation of the Director's fiduciary duty (e.g., if a Director intends to violate their duty of confidentiality).
- Only current Directors have a right under the Code. It's a use it or lose it right.
- Confer with counsel if a Director requests review of employee and personnel records because this may not fall under the list of records they are entitled to see.

Election Materials Requests

Handled by the Inspector of Election, not the association.

FINANCIAL DUTIES

Prepare Annual Budget & Disclosure Package

Distribute Budget – The Board must distribute the association’s budget 30-90 days prior to the beginning of the next fiscal year. Failure means any increase in regular assessments must be approved by the membership.

Assessment Increases – The Board can approve an increase up to 20% of regular assessments and up to 5% of special assessments without owner approval. Boards are also permitted to impose emergency assessments of larger amounts without owner approval, but they are narrow, and must be by court order, to remedy a threat to personal safety, or something that was not reasonably foreseen when the Board approved the budget.

Budget Surplus – As a nonprofit, associations should break-even each year. Any excess income should be transferred to next year’s budget, put into reserves, or refunded to owners. (Revenue Ruling 70-604)

Capital Improvements – CC&Rs generally require membership approval for capital improvements. Capital improvements are generally defined as any material alteration or addition to the common areas such as installing spa, replacing composition shingle roof with clay tile, adding fences, etc.

Invest Conservatively

Civil Code §5515 requires “The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account.” This means the association’s funds should be in safe investments like CD and U.S. Treasury bills. Association funds must be placed in FDIC accounts.

Review Finances

While Boards are only required to meet once a quarter, they are required to review the association’s financials on a monthly per Civil Code §5500. This means they need to do all the following:

- Reconcile the operating account
- Reconcile the reserve account
- Review the reserve revenues and expenses
- Review bank statements
- Review income and expense statements
- Review the check register, general ledger, and delinquent assessment receivable reports
- Conduct reserve study (annually)

Collect Assessments

Offsets – Owners cannot request an offset or reduction of dues just because they claim the association failed to maintain common areas or because they don’t use the amenities.

Penalties & Interest – Board should charge penalties and interest to encourage timely payments.

Late Charges – \$10 late fee or 10% (whichever is greater) when delinquent – 15 days after the due date. Make sure to check the CC&Rs to see if one is selected.

Interest – 12% commencing 30 days after assessment is due. Make sure to check the CC&Rs to see if a different amount is set.

Crediting Payments – Payments must first be applied to the principal owed and then toward late charges, interest, and collection costs.

Assessment Disputes – If an owner disputes any of the association's assessments or charges, he or she has the right to resolve the dispute through alternative dispute resolution (ADR). Association must annually inform owner of ADR.

Compromise – Boards have authority to compromise amounts owed, waive late charges & interest, and work out payment plans. However, should keep a lien on the property until the delinquency is paid.

Methods of Assessment Collection

1. File lawsuit for money judgment (small claims, superior court)
2. Lien & foreclose (judicial & non-judicial)
3. Suspend Privileges – but can no longer suspend voting rights!



CONCLUSION: A PHILOSOPHY OF MANAGEMENT

New board members are often shocked upon the realization that members rarely appreciate their efforts. In many cases, election to the board of directors of their homeowner's association is their first exposure to politics of any kind. The members at large often view the board of directors as a kind of extension of municipal government and treat them as they would any garden-variety politician. This circumstance can be somewhat disconcerting to new board members who view their volunteer activity as a major sacrifice worthy of praise, not scorn.

Confrontations can create an adversarial relationship between the board and the members at large. If the board develops a "bunker" mentality and views complaining members as threats, they will not be effective. While it is hard to do when challenges from the members arise, board members should attempt to bring dissenting members "into the loop" and listen as carefully as possible to their complaints.

Many decisions can be tough. For example, raising assessments sufficient to fund all of the responsibilities of an association, both short and long-term will undoubtedly bring complaints from some members. However, a board that fails to acknowledge the long-term maintenance and repair requirements of the development and does not provide a means of funding for that eventuality will have failed to adequately represent the members of the association. A difficult political environment should not be used to excuse a lack of vision.

Common Interest Developments are a noble experiment in grass roots management. They allow many people to have a voice in a very intimate matter—the care of their homes. Whether the experiment succeeds or fails will depend almost entirely on the ability of the directors and the members at large to ignore their self-interest and focus instead on the larger and long-term needs of the "community."

***ANNUAL BUDGET REPORT – 30 to 90 Days Before End of Fiscal Year**

The Pro Forma Budget or Summary of the Pro Forma Budget	\$5300(b)(1)
Summary of Association Reserves	\$5300(b)(2); §5565
Summary of the Reserve Funding Plan	\$5300(b)(3); §5550 (b)(5)
Statement of Any Board Decision to Defer or Not Undertake Certain Component Repairs	\$5300(b)(4)
Statement of Any Anticipated Special Assessments	\$5300(b)(5)
Statement of Method(s) of Reserve Funding	\$5300(b)(6)
Statement Outlining Procedure Used to Calculate Reserves	\$5300(b)(7); §5570(b)(4)
Association Loan Disclosure	\$5300(b)(8)
Summary of Specified Insurance Coverages	\$5300(b)(9)
Statement of FHA-approved status - Condominium Projects only (Effective 7/1/2016)	\$5300(b)(10)
Statement of VA-approved status - Condominium Projects only (Effective 7/1/2016)	\$5300(b)(11)
Copy of Completed "Charges for Documents Provided" Disclosure Form	\$5300(b)(12); §4528
Assessment and Reserve Fund Disclosure Summary – Form	\$5300(e); §5570

***ANNUAL POLICY STATEMENT – 30 to 90 Days Before End of Fiscal Year**

Name and Address of Person Designated to Receive Official Communications to the Association	\$5310(a)(1); §4035
Notice of Right to Submit Secondary Address for Annual Disclosures and Collection Notices	\$5130(a)(2); §4040(b)
Notice of Location, if any, Designated for Posting General Notices	\$5310(a)(3); §4045
Notice of Right to Receive General Notices by Individual Delivery Upon Request	\$5310(a)(4); §4045(b)
Notice of Right to Receive Minutes of Board Meetings	\$5310(a)(5); §4950(b)
Notice of Collection Rights & Duties – Form	\$5310(a)(6); §5730
Assessment Collection Policy	\$5310(a)(7)
Discipline Policy, If Any, Including Schedule of Fines ("Fine Policy")	\$5310(a)(8); §5850
Dispute Resolution Summary ("Meet and Confer" and Alternative Dispute Resolution)	\$5310(a)(9); §5920; §5965
Architectural Guidelines and Procedures	\$5310(a)(10); §4765(c)
Mailing Address for Overnight Payment of Assessments	\$5310(a)(11); §5655(c)

***NOTE:** These disclosures may alternatively be made in summary, generally describing their contents. Such a summary, if provided in lieu of complete reports, must include a notice, in 10-point boldface type on the first page, advising members how to request complete report(s) at no cost.

ADDITIONAL FINANCIAL DISCLOSURES

Use of Reserve Funds	By General Notice After Decision	\$5520
Intent to Borrow From Reserves	In General Notice of Board Meeting	\$5515(a)
Intent to Postpone Repayment of Borrowed Reserves	Within 1 Year of Decision to Borrow, in General Notice of Board Meeting	\$5515(d)
Review of Financial Statement	Within 120 Days After Close of Fiscal Year	\$5305
Notice of Special Assessment or Increase in Regular Assessments	Not less than 30 Days and Not More Than 60 Days Before Due	\$5615

DOCUMENTS TO SELLERS AND MEMBERS / OTHER

Disclosures to Sellers (Documents/Pricing Form)	Within 10 Days of Receiving Written Request	\$4525; §4530
Statement of Non-Incorporation	If Applicable, With Disclosure to Sellers	\$4525(a)(1)
Notice of Age Restrictions	If Applicable, With Disclosure to Sellers	\$4525(a)(2)
Notice of Rental Restrictions	If Applicable, With Disclosure to Sellers	\$4525(a)(9)
Statement Regarding Discriminatory Covenants - Form	When Providing Any Governing Document	Gov't Code §12956.1

ARCHITECTURAL CONTROLS / RULE-MAKING

Architectural Guidelines and Procedures	In Annual Policy Statement	\$4765(c); §5310(a)(10)
Notice of Right to Reconsideration of Denied Application, If Decision Not Made By Board	With Written Denial	\$4765(a)(5)
Notice of Intent to Make Certain Rules Changes	By General Notice, At Least 30 Days Prior to Board Adoption; Emergency Rules Excepted	\$4360(a)&(d)
Notice of Adoption of Certain Rule Changes	Provided by General Notice, Not More Than 15 Days After Adoption	\$4360(c)

MEMBER ADDRESSES		
Solicit member addresses	Annually, arguably 60 to 90 days before Annual Budget Report is issued	§4041(b)
MEETINGS		
Notice and Agenda of Open Board Meetings	By General Notice, At Least 4 Days Prior to Board Meeting	§4920(a); §4930
Notice of Emergency Board Meeting	No Notice Required	§4920(b)(1)
Notice and Agenda of Executive Session Meeting	By General Notice, At Least 2 Days Prior to Board Meeting	§4920(b)(2); §4930
Notice of Right to Receive Minutes of Board Meetings	In Annual Policy Statement	§4950; §5310(a)(5)
Notice of Intent to Make Certain Rules Changes	By General Notice, At Least 30 Days Prior to Board Adoption	§4360(a)
Notice to Member of Board Meeting to Consider Imposing Discipline	By Individual Delivery, At Least 10 Days Prior to Board Meeting	§5855(a)
MEMBER DISCIPLINE / DISPUTE RESOLUTION		
Enforcement Policy, If Any, Including Schedule of Monetary Penalties ("Fine Policy")	In Annual Policy Statement	§5850
Notice to Member of Board Meeting to Consider Imposing Discipline	By Individual Delivery, At Least 10 Days Prior to Board Meeting	§5855(a)
Notice to Member of Discipline Imposed	By Individual Delivery, Not More Than 15 Days After Decision	§5855(c)
Alternative Dispute Resolution Rights Summary	In Annual Policy Statement	§5310(a)(9); §5965
Internal Dispute Resolution ("Meet-and-Confer") Program Summary	In Annual Policy Statement	§5310(a)(9); §5920
LIENS / COLLECTIONS		
Notice of Right to Submit Secondary Address For Collection Notices	In Annual Policy Statement	§5130(a)(2)
Pre-Lien Notice	At Least 30 Days Before Recording Lien	§5660
Assessment Collection Policy	In Annual Policy Statement / With Pre-Lien Notice	§5310(a)(7); §5660(a)
Notice of Right to Inspect Financial Records	With Pre-Lien Notice	§5660(a)
Notice of Right to Meet with Board to Discuss Delinquent Assessment Payment Plan	With Pre-Lien Notice	§5660(d)
Notice of Right to Dispute Assessment Debt by "Meet and Confer"	With Pre-Lien Notice	§5660(e)
Notice of Right to Request Post-Lien ADR	With Pre-Lien Notice	§5660(f)
INSURANCE		
Summary of Specified Insurance Coverages	In Annual Budget Report	§5300(b)(9)
CONSTRUCTION DEFECTS		
Notice of Construction Defect Litigation	30 Days Before Suit is Filed	§6150
Notice of Construction Defect Resolution / Repair Plan and Timeline	As Soon as Reasonably Practicable After Resolution	§6100
Receipt / Expenditure of Construction Defect Award / Settlement Monies	In Annual Budget Report or Year-End Review of Financial Statement	§5565(b)(3)
CORPORATE DISCLOSURES		
Statement of Officers' Names, Addresses / Agent for Service of Process	File Every Other Year, Up to Five Months Prior to Anniversary Date of Initial Filing	Corp. Code §8210
Registry / Statement of CID Association	File with Secretary of State Every Other Year, with Statement of Officers' Names, etc. / Within 60 Days of Change in On-Site or Management Address	§5405

***NOTE:** This checklist applies only to mixed-use and residential common interest developments.

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GUIDE TO COMMUNITY ASSOCIATION TRANSITION



Are you taking over from developer control?
Download our Guide to Transition for everything you need to know!



Keys to a Community Association's
Successful Transition from Developer
Control to Homeowner Governance

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