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## PART THREE

# SUMMARY OF CALIFORNIA CIVIL CODES FOR COMMON INTEREST DEVELOPMENTS

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SELECTED CALIFORNIA STATUTES AFFECTING COMMON INTEREST DEVELOPMENTS<sup>1</sup>

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# CALIFORNIA CORPORATIONS CODE § 7231 • GOVERNING BOARDS OF DIRECTORS

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## Duties And Liabilities

A director shall perform the duties of a director, including duties a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry as an ordinarily prudent person in a like position would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely upon information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented; counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or

A committee of the board, upon which the director does not serve, as to matters within its designated authority, which the director believes to merit confidence, so long as, in any such case, the director acts in good faith and after reasonable inquiry, when the need therefore is indicated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.

A person who performs the duties of a director, in accordance with subdivisions (a) and (b), shall have no liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which assets held by a corporation are dedicated.

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## CALIFORNIA CIVIL CODE § 1351 (I) • EXCLUSIVE USE COMMON AREA

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

“Exclusive use common area” means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and, which is, or will be, appurtenant to the separate interest or interests. Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common area allocated exclusively to that separate interest. Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

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## CALIFORNIA CIVIL CODE § 1364 • RESPONSIBILITY FOR MAINTENANCE OF COMMON INTEREST DEVELOPMENT:

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Unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, or maintaining the common areas, other than exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest.

In a community apartment project, condominium project, or stock cooperative, as defined in Section 1351, unless otherwise provided in the declaration, the association is responsible for the repair and maintenance of the common area occasioned by the presence of wood destroying pests or organisms.

In a planned development as defined in Section 1351, unless a different maintenance scheme is provided in the declaration, each owner of a separate interest is responsible for the repair and maintenance of that separate interest as may be occasioned by the presence of wood destroying pests or organisms. Upon approval of the majority of all members of the association,

the responsibility for such repair and maintenance may be delegated to the association, which shall be entitled to recover the cost thereof as a special assessment.

The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the association shall be borne by the owner of the separate interest affected.

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

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

Notice by the association shall be deemed complete upon either:

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

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

For purposes of this section, "occupant" means an owner, resident, guest, invitee, tenant, lessee, sub-lessee, or other person in possession of the separate interest.

Notwithstanding the provisions of the declaration, the owner of a separate interest is entitled to reasonable access to the common areas for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common areas of a separate interest, pursuant to paragraph (2) of subdivision (i) of Section 1351. The access shall be subject to the consent of the association, whose approval shall not be unreasonably withheld, and which may include the association's approval of telephone wiring upon the exterior of the common areas, and other conditions as the association determines reasonable.

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# ASSEMBLY BILL NO. 2100

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## CHAPTER 188

FILED WITH SECRETARY OF STATE AUGUST 28, 2006

APPROVED BY GOVERNOR AUGUST 28, 2006

PASSED THE ASSEMBLY AUGUST 7, 2006

PASSED THE SENATE JUNE 29, 2006

AMENDED IN SENATE JUNE 19, 2006

AMENDED IN ASSEMBLY MAY 9, 2006

AMENDED IN ASSEMBLY APRIL 19, 2006

INTRODUCED BY Assembly Member Laird

(Coauthor: Assembly Member Mullin)

FEBRUARY 17, 2006

An act to amend Sections 1365, 1365.2.5, and 1365.5 of, and to add Section 1365.6 to, the Civil Code, relating to common interest developments.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2100, Laird Common interest developments: reserve funding.

(1) Existing law requires the association of a common interest development to prepare and distribute to all members a pro forma operating budget that includes, among other things, a summary of the association's reserves, a statement regarding the mechanism or mechanisms by which the board of directors will fund reserves to repair or replace major components, and a statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

This bill would require the pro forma operating budget to also include the current deficiency in reserve funding expressed on a per unit basis, a statement as to whether the board of directors of the association has determined to defer or not undertake repairs or replacement of any major component, and a statement whether the association has any outstanding loans, as specified.

(2) Existing law requires the board of directors, at least once every three years, to conduct a visual inspection of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, as specified. The study is required to include, among other things, an estimate of

the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the major components identified, after subtracting total reserve funds as of the date of the study.

This bill would require the study to also include a reserve funding plan that indicates how the association plans to fund the annual contribution to meet the association's obligation for the repair and replacement of all major components, as specified. This bill would require, if the board of directors determines an assessment increase is required to fund the reserve funding plan, any assessment increase the board adopts to be approved in a separate board action from the action to adopt a reserve funding plan. The bill would require, commencing January 1, 2009, a summary of the reserve funding plan to be distributed to all members.

(3) Existing law requires the association of a common interest development to distribute a disclosure regarding assessment and reserve funding in a certain form. This bill would revise that form, as specified.

(4) Existing law provides that no contract or other transaction between a corporation and one or more of its directors, or any corporation, firm, or association in which any of its directors has a material financial interest or are directors thereof, is either void or void able because the director or directors, or the other corporation, firm, or association, are parties or present at the meeting of the board or a committee that authorizes, approves, or ratifies the contract or transaction, if certain disclosures are made and other specified conditions are met. Existing law also provides that interested or common directors may be counted in determining the presence of a quorum at a meeting of the board or a committee that authorizes, approves, or ratifies a contract or transaction.

This bill would make these provisions applicable to any contract or other transaction authorized, approved, or ratified by the board of directors of an association or a committee of the board, regardless of whether the association is a corporation.

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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SECTION 1. Section 1365 of the Civil Code is amended to read:  
1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

- (a) A pro forma operating budget, which shall include all of the following:
- (1) The estimated revenue and expenses on an accrual basis.
  - (2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, based only on assets held in cash or cash equivalents, which shall be printed in boldface type and include all of the following:
    - (A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
    - (B) As of the end of the fiscal year for which the study is prepared:
      - (i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.
      - (ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.
      - (iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). Instead of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.
    - (C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).
    - (D) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of clause (ii) of subparagraph (B) from the amount determined for purposes of clause (i) of subparagraph (B) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.
  - (3) A statement as to all of the following:
    - (A) Whether the board of directors of the association has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.
    - (B) Whether the board of directors of the association, consistent with the reserve funding plan adopted pursuant to subdivision (e) of Section 1365.5, has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefore. If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment.
    - (C) The mechanism or mechanisms by which the board of directors will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms.

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

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

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision. Notwithstanding a contrary provision in the governing documents, a copy of the operating budget shall be annually distributed not less than 30 days nor more than 90 days prior to the beginning of the association's fiscal year.

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

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

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

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

(f) (1) A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies, which shall be distributed not less than 30 days nor more than 90 days

preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

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

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

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

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

SEC. 2. Section 1365.2.5 of the Civil Code is amended to read:

1365.2.5. (a) The disclosures required by this article with regard to an association or a property shall be summarized on the following form:

***Assessment and Reserve Funding Disclosure Summary***

(1) The current regular assessment per ownership interest is \$\_\_\_\_\_ per \_\_\_\_\_. Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_\_ of the attached summary.

(2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_\_ of the attached report.

(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association's obligation for repair and/or replacement of major components during the next 30 years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next

30 years that have not yet been approved by the board or the members?

Approximate date assessment will be due:	Amount per ownership interest per month per year:
	Total:

(5) All major components are included in the reserve study and are included in its calculations.

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5, the estimated amount required in the reserve fund at the end of the current fiscal year is \$\_\_\_\_, based in whole or in part on the last reserve study or update prepared by \_\_\_\_ as of \_\_\_\_ (month), \_\_\_\_ (year). The projected reserve fund cash balance at the end of the current fiscal year is \$\_\_\_\_, resulting in reserves being \_\_\_\_ percent funded at this date.

If an alternate, but generally accepted, method of calculation is also used, the required reserve amount is \$\_\_\_\_. (See attached explanation)

(7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next

five budget years is \$\_\_\_\_\_, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is \$\_\_\_\_\_.

leaving the reserve at \_\_\_\_\_ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be \$\_\_\_\_\_, leaving the reserve at \_\_\_\_\_ percent funding.

Note: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change.

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

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

(2) "Major component" has the meaning used in Section 1365.5.

Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each pro forma operating budget or summary thereof that is delivered pursuant to this article. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.

(4) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the board to fund reserves in accordance with this calculation.

SEC. 3. Section 1365.5 of the Civil Code is amended to read:

1365.5. (a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

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

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

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

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

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

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

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

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

(d) When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting

of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.

*(e) At least once every three years, the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association, excluding the association's reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.*

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

- (1) Identification of the major components that the association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years.*
- (2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.*
- (3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).*
- (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.*
- (5) A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan.*

The plan shall be adopted by the board of directors at an open meeting before the membership of the association as described in Section 1363.05. If the board of directors determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in Section 1366.

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

- (1) Moneys that the association's board of directors has identified for use to defray the future repair or replacement of, or additions to, those major components that the association is obligated to maintain.
- (2) The funds received, and not yet expended or disposed of, from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from funds described in paragraph (1).

(g) As used in this section, "reserve account requirements" means the estimated funds that the association's board of directors has determined are required to be available at a specified point in

time to repair, replace, or restore those major components that the association is obligated to maintain

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

SEC. 4. Section 1365.6 is added to the Civil Code, to read:

1365.6. Notwithstanding any other law, and regardless of whether an association is a corporation, as defined in Section 162 of the Corporations Code, the provisions of Section 310 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the board or a committee of the board.

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## CALIFORNIA CIVIL CODE § 1366 • REGULAR AND SPECIAL ASSESSMENTS

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

Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code, section 7613 of the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any of the following:

An extraordinary expense required by an order of a court.

An extraordinary expense necessary to repair or maintain the common interest development or any of it for which the association is responsible where a threat to personal safety on the property is discovered.

An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the Insurance Code.

The association shall provide notice by first-class mail to the owners of the separate interests, of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due.

Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they have become due. If an assessment is delinquent, the association may recover all of the following:

Reasonable cost incurred in collecting the delinquent assessment, including reasonable attorneys' fees.

A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.

Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed 12 percent interest, commencing 30 days after the assessment becomes due.

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

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## CALIFORNIA CIVIL CODE § 1366.1 • EXCESSIVE ASSESSMENTS

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An association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

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## CALIFORNIA CIVIL CODE § 1368 • DOCUMENTS TO BE PROVIDED TO PROSPECTIVE PURCHASER

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

A copy of the governing documents of the common interest development.

If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

A copy of the most recent documents distributed pursuant to Section 1365.

A true statement in writing from an authorized representative of the association, as to the amount of the association's current regular and special assessments and fees, as well as any assessments levied upon the owner's interest in the common interest development, which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection, which as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367.

Any change in the association's current regular and special assessments and fees, which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision. Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a

copy of the requested items specified in paragraphs (1), (2), (3), and (4) of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items. An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest, except the association's actual costs to change its records and that authorized by subdivision (b).

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

Nothing in this section affects the validity of title to real property transferred in violation of this section. In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Section 1133 and 1134.