

August 27, 2022 | 9:00 am - 12:15 pm

CALIFORNIA

DAVIS-STIRLING ACT



ATA



HOA BOARD MEMBERS

Ask-the-Attorney & Davis-Stirling Overview

 **Echo**
EDUCATIONAL COMMUNITY
FOR HOA HOMEOWNERS

Housekeeping Items

- Please be courteous and respectful of online seminar participants, including speakers, staff, and sponsors.
- Any participant may be removed, blocked, or edited at the discretion of Echo at any time and for any reason.
- Participants are solely responsible for their comments and actions.
- Except for sponsors, this program is not a marketing forum for professional service providers.
- This event is copyrighted by Echo. We do not give permission to others to record the meeting in whole or in part.
- The program will be recorded. A copy of the recording and presentation slides will be emailed to registered participants within 7 days of the program.

Disclaimer

None of what is said during this seminar shall be construed as specific legal or expert advice from the speakers, sponsors, or Echo. If you wish specific advice, we encourage you to contact your attorney, management professional or a subject matter expert.

Premier Sponsors



SILVERCREEK
ASSOCIATION MANAGEMENT

Program Sponsors



Registration Sponsor



Silvercreek Association Management



Spina Insurance Agency

Spina Insurance, a Farmers Insurance Agency, has helped hundreds of Common Interest Developments design their perfect insurance program since 1984. Our agency specializes in customizing an insurance program that fits the individual needs of each Homeowners Association and Planned Unit Development they work with. Developing a lasting relationship built on trust is our main priority. The founder of our agency, Monty Hollingsworth, was instrumental in bringing ECHO chapters to the Bay Area and we proudly continue the long-lasting relationship we have cultivated with this amazing organization. We have two office locations in Sonoma and Marin County to better serve our clients.



CHRISTI SPINA
SANTA ROSA • NOVATO

(415) 382-9714 or (707) 523-3006 | cspina@farmersagent.com or cameron.cspina@farmersagency.com



Adams | Stirling

Adams | Stirling is the premier statewide law firm representing common interest developments of all forms, including commercial, mixed-use, recreational, 55+, high-rise, and master planned communities.

We use cutting-edge technology to increase our efficiency and reduce costs and turnaround times for our clients. We actively provide consumer education and leadership training for board members and managers.

We also provide practical and innovative legal solutions in a clear business format to over 3,000 associations. In addition, we work to strengthen the communities we serve by actively promoting leadership training of board members and managers.

Presenting Attorney



Megan Hall, Esq.

Prior to joining ADAMS | STIRLING, Megan represented a diverse client base of individuals in business from the San Joaquin County. She dealt with employment issues, personal injury, CEQA, unlawful detainer and probate matters. Megan has extensive experience litigating matters for clients. In addition to mediations and arbitrations, she handled depositions, motions, summary judgments, trials, and settlements.

Megan serves as corporate and litigation counsel to boards of directors of common interest developments throughout California. She counsels boards on managing conflict, director duties and responsibilities, meetings, elections, and corporate governance, as well as compliance with the Davis-Stirling Act, document interpretation and enforcement.





Angius & Terry LLP

Specializing in community association law, including construction defect litigation, for more than a quarter century. With offices in Los Angeles, Walnut Creek, Roseville, Manteca, Fresno, Riverside, San Diego, Ft. Lauderdale, Palm Harbor and Orlando we serve community associations throughout California, Nevada and Florida.

Community associations have placed their trust in ANGIUS & TERRY LLP to solve their legal problems for over 35 years. Through the years ANGIUS & TERRY LLP has had a single mission: To provide our clients with exceptional service and superior legal representation all built on the solid bedrock of long-term relationships.

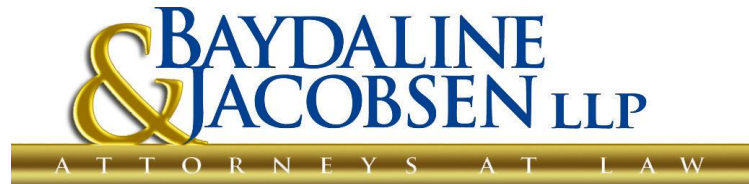
Presenting Attorney



Lance Stewart is a senior attorney with Angius & Terry LLP, exclusively representing homeowners' associations throughout California as their general corporate counsel. Association board members often face an overwhelming number of exceedingly complex legal matters, and need experienced, responsive counsel to help ensure their community functions properly, complies with its legal obligations, and avoids liability exposure. Lance has wide-ranging experience guiding HOA boards of directors through those difficult issues, including: interpreting and enforcing their governing documents; reviewing, drafting and negotiating vendor contracts; handling complicated disputes with or between homeowners; providing guidance in membership votes, including navigating the complexities of special assessments and HOA loans for major projects; and addressing discrimination concerns under the Federal Fair Housing Act and California Fair Employment & Housing Act.

Lance Stewart, Esq.





Baydaline & Jacobsen LLP

Presenting Attorney



Raihane Dalvi, Esq.

Raihane Dalvi assists community associations and their boards of directors in the management of their common interest development subdivisions. She provides assistance in day-to-day operational and general corporate matters, including the interpretation and enforcement of the restrictive covenants which apply to these communities, as well as the interpretation and application of California law affecting community associations.

Baydaline & Jacobsen LLP is a boutique law firm whose practice focuses exclusively on general counsel representation to community associations. Collectively the team at Baydaline & Jacobsen has over 40 years of combined experience specializing in the representation of HOAs as general corporate counsel. The firm handles a variety of legal issues and challenges facing community associations. As relationship specialists, the firm seeks immediate and long-term effective strategic solutions that are risk-adverse and results-oriented.

Our attorneys understand the complex issues affecting master associations which include sub-association community boards of directors and the rights and responsibilities of each entity. We represent all types of "common interest developments" including condominium projects, planned developments and stock cooperatives as defined in the Davis-Stirling Common Interest Development Act.



BERDING | WEIL
ATTORNEYS AT LAW

Berding & Weil is a comprehensive community association law firm and is the largest and most experienced construction defect and common interest development law firm in California.

We provide superior, client-focused legal services and solutions to building and property owners, community associations, corporations, and real estate investors throughout California. Our lawyers are highly experienced construction, community association, and transaction real estate attorneys. They have a thorough understanding of the challenging legal issues that arise, finding the best solutions for our clients' legal needs. Berding & Weil has recovered more than \$1.7 billion for its clients.

Berding | Weil LLP

Presenting Attorney



Jasmine Hale, Esq.

Jasmine Hale is a veteran community association attorney with 20 years of experience. She provides wide ranging services including governing document analysis, preparing restatements of CC&Rs and Bylaws, drafting legal opinions, conducting contract negotiations, guiding successful votes for and implementations of special and emergency assessments, coordinating capital improvement funding, and providing corporate counsel for Board governance and litigation matters. Ms. Hale is a fellow of the prestigious College of Community Association Lawyers (CCAL) and is a Delegate on the CAI Legislative Action Committee.





Chapman & Intrieri, LLP

Chapman & Intrieri, LLP has extensive litigation experience in a variety of practice areas allowing us to address the diverse needs of our clients. Our community association and construction defect practice group has represented residential communities and homeowners for more than twenty-five (25) years and has recovered millions of dollars from developers, contractors, suppliers and manufacturers which has allowed our clients to successfully implement repairs to address construction defects related to numerous aspects and components of construction.

Presenting Attorney



J. Spencer Edgett, Esq.

J. Spencer Edgett is a partner with Chapman & Intrieri, LLP and since 2004 has primarily focused his practice on representing community associations both as general counsel and in successfully litigating and resolving numerous complex multi-million dollar construction defect claims. Mr. Edgett also regularly advises and assists community association managers and board members on all aspects of management and operations including fiduciary responsibilities, drafting and revising governing documents, vendor contract negotiations, collection matters and enforcement issues. Mr. Edgett has published articles related to common interest development law and community associations and has presented to homeowners and managers at various industry related educational seminars and workshops hosted by the California Association of Community Managers (CACM), Community Association Institute (CAI) and Educational Community for Homeowners (ECHO).





Community Legal Advisors Inc.
COMMUNITY ASSOCIATION ATTORNEYS

Community Legal Advisors, Inc.

Community Legal Advisors provides general counsel and assessment collection services to residential and commercial associations.

Members of our legal team have served as association managers, created residential and commercial community associations on behalf of developers, negotiated terms and conditions of CC&Rs with the California Department of Real Estate, advised the State Legislature regarding the new legislation, taught industry education courses, advised community associations in their daily operations and litigated conflicts between associations and their vendors, insurers and members.

Presenting Attorney



Mark is the Founder of Community Legal Advisors, Inc. which represents more than 500 HOA communities. His firm provides assessment collection and general counsel services. For more than 20 years, Mark has provided general counsel and civil litigation services to the firm's community association clients. Mark also serves on the Echo board of directors.

Mark Guithues, Esq.





Hughes Gill Cochrane Tinetti, P.C.

Presenting Attorney



Amy K. Tinetti, Esq.

Since 2004, Amy Tinetti has represented homeowner associations in all aspects of their corporate operations. Ms. Tinetti joined the firm in 2007 with the name changing to Hughes Gill Cochrane Tinetti, PC in 2017 when she became a shareholder.

Ms. Tinetti is a Fellow of the Community Associations Institute (CAI) College of Community Association Lawyers (CCAL). Only those attorneys who demonstrate the highest level of skill, experience and standard of professional and ethical conduct receive this honor. Fewer than 200 attorneys have been granted admission nationwide and Ms. Tinetti is one of just seven Northern California attorneys who has earned this distinction. She currently serves on its Board of Governors.

Ms. Tinetti is heavily involved with several industry organizations. She serves in leadership roles and is a frequent speaker and author on the local, state, and national level.

For twenty years, Hughes Gill Cochrane Tinetti, P.C. (HGCT) has provided effective, affordable legal representation to community associations throughout Northern California. It's all we do. And we do it with experience and insight, creating smart, strategic solutions that meet the complex and varied needs of common interest developments.

We handle both general representation and litigation for condominium projects, planned developments and commercial common interest developments; and are experts in the issues facing senior housing communities, timeshares, urban in-fill projects, and high-rise developments.

Hundreds of homeowner associations and community association managers trust us to expertly handle their legal needs. Whatever the project, we bring a collaborative, friendly approach our clients find refreshing and rewarding.



Tom Fier Attorney at Law

Law Office of Tom Fier

Mr. Fier is committed to assisting associations in understanding the laws governing their associations, resolving disputes, making informed decisions, and operating efficiently. The following are the services he provides:

- Consultation and Advice for Boards of Directors
- Enforcement of Governing Documents
- Governing Documents Review (Articles of Incorporation, Bylaws, CC&R's and Rules and Regulations)
- Interpretation and Opinions Concerning Governing Documents
- Update/Restate/Revise Governing Documents

Presenting Attorney



Tom Fier, Esq.

Tom has worked in this area for over 40 years. He has written many articles for ECHO. Additionally, he serves as a neutral (mediation and arbitration) for disputes between HOAs and homeowners





Scherer Smith & Kenny LLP

Scherer Smith & Kenny LLP serves common interest developments, landlords' and developers', and mid-sized and fast-growing entrepreneurial companies' needs in complex litigation, business, real estate, intellectual property and employment law. We bring strategic pragmatism and intense dedication to our client's needs. Since 1993 we have grown exclusively through referrals based on high caliber work, responsive service, and the strength of the partnership we bring to every engagement.

Presenting Attorney



William Scherer, Esq.

Bill promotes his clients' goals for success, employing 33 years of hands-on experience in law. As the founder of Scherer Smith & Kenny LLP, Bill is trusted counsel who values building long-term relationships. Bill extensively advises clients in all areas of real estate, including commercial leasing, entity formation and financing, and real estate development, with a unique focus on all aspects of California common interest development matters. Bill has represented dozens of homeowners' associations within the Bay Area.



Introduction

Presented by:

Mark Guithues, Esq.



Community Legal Advisors Inc.

COMMUNITY ASSOCIATION ATTORNEYS

Chapter 1: General Provisions

Presented by:
William Scherer, Esq.

Individual Delivery or Notice (§4040)

(a) If a provision of this act requires that an association deliver a document by “individual delivery” or “individual notice,” the document shall be delivered by one of the following methods:

- First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.
- Email, facsimile, or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. The consent may be revoked, in writing or by email, by the recipient.

(b) Upon receipt of a request by a member... identifying a secondary address for delivery of notices of the following types, the association shall deliver an additional copy of those notices to the secondary address identified in the request:

- Annual Reports.
- Required statements related to delinquent assessment collection.

...

Individual Delivery or Notice (§4040) (Cont.)

(d) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

(NOTE: beginning January 1, 2023: “individual delivery” or “individual notice” will require that an association deliver documents in accordance with each member’s specified preferred delivery method.)

Member Contact Information (§4041)

(a) A member shall, on an annual basis, provide written notice to the association of all of the following:

- The member's preferred delivery method for receiving notices from the association, which shall include the option of receiving notices by mail or email.
- An alternate or secondary delivery method for receiving notices from the association, which shall include the option to receive notices by mail or email.
- The name, mailing address, and email address of the owner's legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of the owner's extended absence from the separate interest.
- Whether the separate interest is owner-occupied, is rented out, if the parcel is developed but vacant, or if the parcel is undeveloped land.

(b) The association shall solicit these annual notices of each owner and, at least 30 days prior to making its own required disclosure..., shall enter the data into its books and records.

General Delivery or Notice (§4045)

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

- Any method provided for delivery of Individual Notice.
- Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.
- Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting general notices by the association in the Annual Policy Statement.
- If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.
- If the association maintains a website, by posting the notice on that website in a prominent location, if designated as a location for posting general notices in the Annual Policy Statement

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered by Individual Delivery. The option provided in this subdivision shall be described in the Annual Policy Statement.

Approvals (§4065 & 4070)

Approval by a majority of members §4065

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

Approval by a majority of a quorum §4070

If a provision of this act requires that an action be approved by a majority of a quorum of the members, the action shall be approved or ratified by an affirmative vote of a majority of the votes represented and voting in a duly held election in which a quorum is represented, which affirmative votes also constitute a majority of the required quorum.

Board Meeting (§4090 & 4155)

“Board meeting” means either of the following:

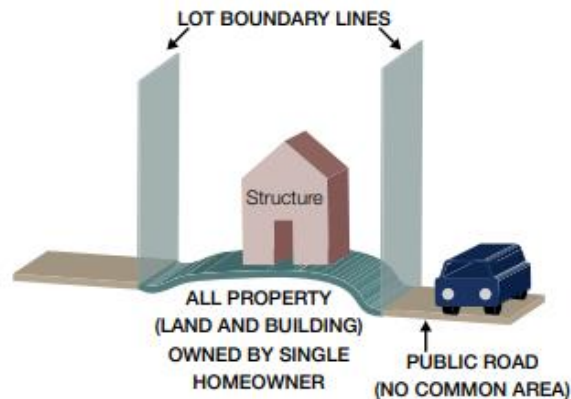
(a) A congregation, at the same time and place, ***of a sufficient number of directors to establish a quorum of the board***, to hear, discuss, or deliberate upon any ***item of business*** that is within the authority of the board.

(b) A teleconference, ***where a sufficient number of directors to establish a quorum of the board***, in different locations, are connected by electronic means, through audio or video, or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this act. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend, and at least one director or a person designated by the board shall be present at that location. Participation by directors in a teleconference meeting constitutes presence at that meeting as long as all directors participating are able to hear one another, as well as members of the association speaking on matters before the board.

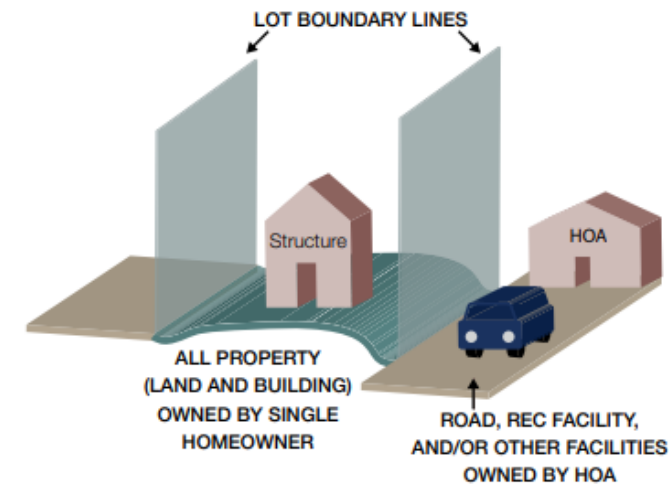
- ***“Item of business”*** means any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a quorum of the board.

Common Area (§4095)

- (a) “Common area” means the entire common interest development except the separate interests therein.
- (b) In a planned development, the common area may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

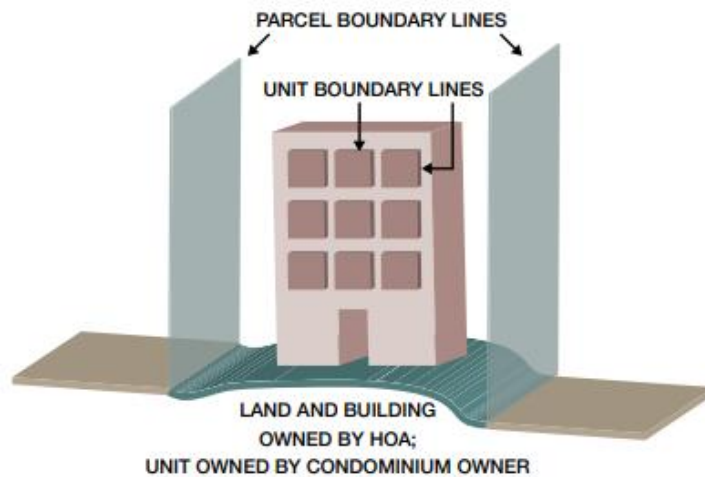


Typical Standard Subdivision

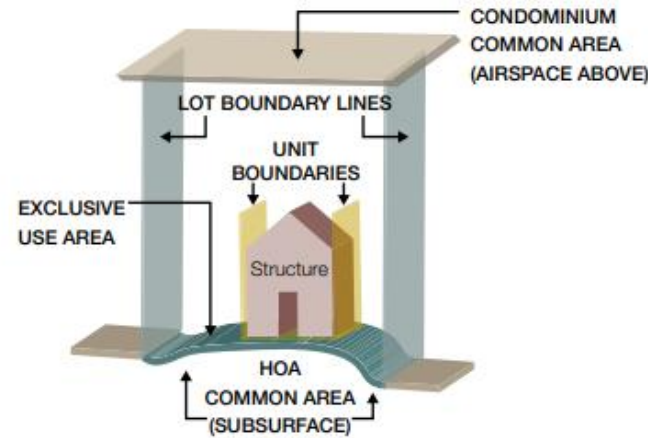


Planned Development

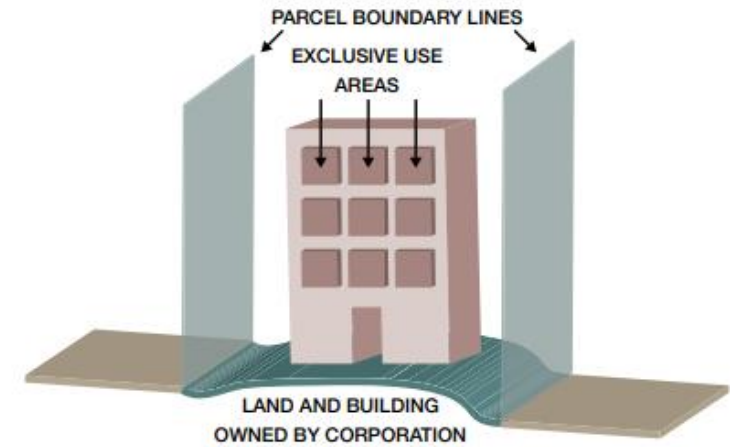
Common Area (Cont.)



Airspace Condominium



Detached Condominium



Stock Cooperative

Exclusive Use Common Area (§4145)

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

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

(c) 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, is exclusive use common area allocated exclusively to that separate interest.

Governing Documents & Separate Interest

(§4150) “Governing documents” means the **declaration and any other documents**, such as bylaws, operating rules, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

(§4185) (a) “Separate interest” has the following meanings:

- In a community apartment project, “separate interest” means the exclusive right to occupy an apartment.
- In a condominium project, “separate interest” means a separately owned unit.
- In a planned development, “separate interest” means a separately owned lot, parcel, area, or space.
- In a stock cooperative, “separate interest” means the exclusive right to occupy a portion of the real property.

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

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

Chapter 2

Applications of Davis-Stirling Act

Presented by:

Mark Guithues, Esq.



Community Legal Advisors Inc.

COMMUNITY ASSOCIATION ATTORNEYS

Creation of Common Interest Development

Has a “common interest development” been created?

If so, then the Davis-Stirling Act applies!

Introduction

Civil Code Sec. 4200: This Act applies and a “common interest development” is created whenever there is:

1. A “separate interest” (condo or lot , etc.)
 2. Coupled with the conveyance of an:
 - a. Interest in the common area **OR**
 - b. Membership in the Association **OR**
- AND** when **ALL** of the following are recorded:
- a. A declaration (CC&Rs)
 - b. Condo plan (if a condominium project)
 - c. Final map/parcel map (if gov regs require it)

No CID Created

- Single family homes
- CC&Rs recorded containing restrictions when property was subdivided (i.e., pets, parking, building height, etc.)
- No membership in an association
- No common area

CID Created

- Condominium
- Undivided interest in common area
- CC&Rs recorded
- Condo plan recorded

No CID Created

- Corporation formed and joined by various associations for costs to maintain streets/entrance used by the various associations
- Bylaws adopted
- Easement rights over street/entrances
- No CC&Rs
- No condo plan
- No final map/parcel map

Exemption if there is no Common Area

Civil Code Section 4201:

Nothing in this Act may be construed to apply to a real property development that does NOT contain common area. This section is declaratory of existing law.

Does not Apply to Commercial / Industrial

- Davis-Stirling Act does **NOT** apply to commercial/industrial CIDs.
- They have their “own” separate act (Civil Code 6500 et. seq.):
- “Commercial and Industrial Common Interest Development Act”

Commercial / Industrial Versus Davis-Stirling Act

Some differences:

1. No 28 day's notice to adopt operating rules.
2. No 20%/5% limits on regular/special assessments.
3. No Election Rules or election law applies.

Exception: Unless the commercial/industrial CID's Bylaws or CC&Rs require otherwise.

Chapter 3: Governing Documents

Presented by:
Megan Hall, Esq.

ADAMS | STIRLING
PROFESSIONAL LAW CORPORATION

Governing Documents

(Civil Code § 4150)

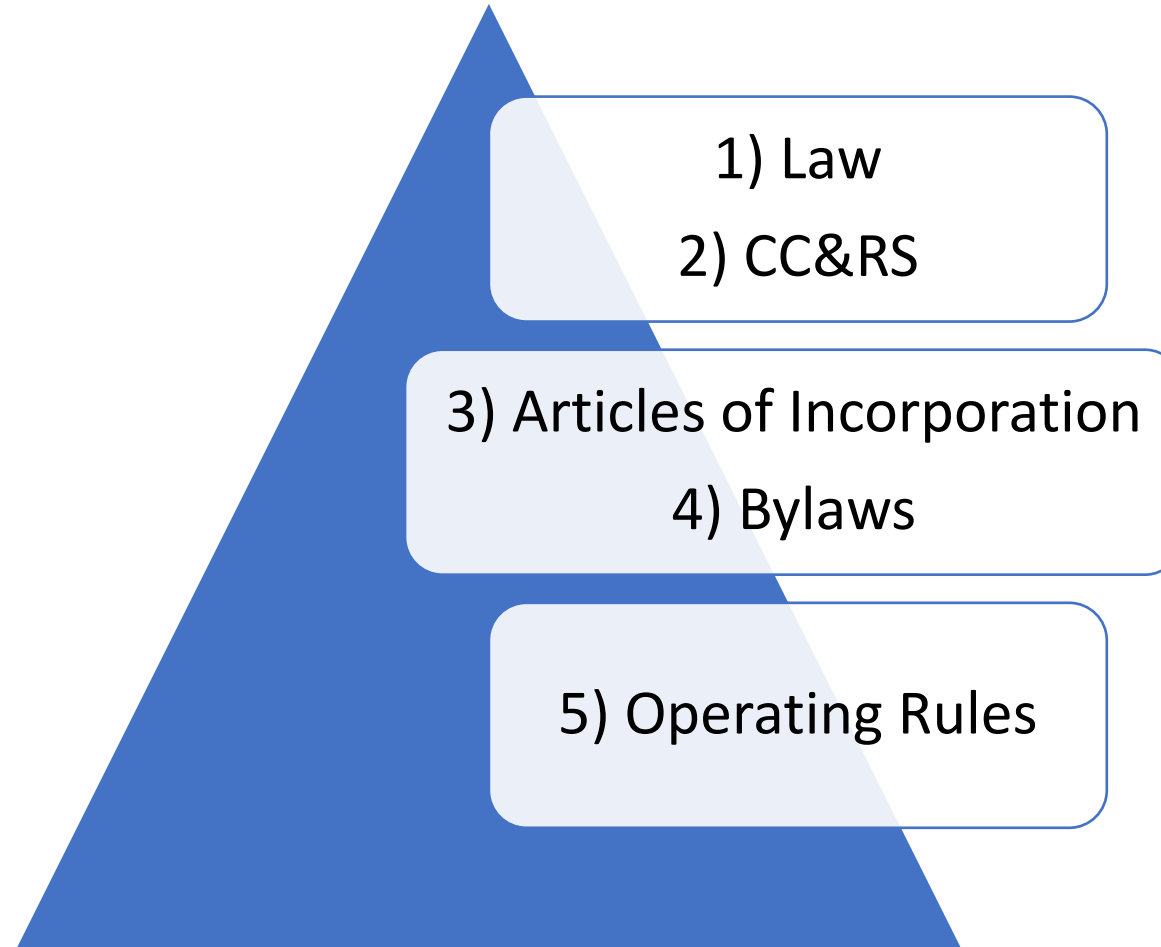
Governing Documents Defined:

- Declaration of Covenants, Conditions, and Restrictions (aka Declaration or CC&Rs)
- Articles of Incorporation
- Bylaws
- Operating Rules
- Condominium Plan/Subdivision Map



Hierarchy of Documents

(Civil Code § 4205)



Elements of Governing Documents

(Civil Code §§ 4250, 4280, 4285, 4350)



Declaration/CC&Rs: (Civil Code § 4250)

- Legal Description
- Statement identifying the type of development
- Name of the Association
- Any restrictions on the use or enjoyment of the development that are enforceable equitable servitudes

Elements of Governing Documents

(Civil Code §§ 4250, 4280, 4285, 4350)



Articles of Incorporation: (Civil Code § 4280)

- Filed with the Secretary of State
- Identifies the corporation as an association that is formed to manage a CID under the DSA
- States the corporate office address (or nearest cross streets)
- States the name and address of the managing agent/agent for service of process

Elements of Governing Documents

(Civil Code §§ 4250, 4280, 4285, 4350)



Condominium Plan: (Civil Code § 4285)

- Description or survey map of the property
- A 3D map which shows in detail the common area and separate interests
- Certification by the developer/subdivider (Civil Code § 4290)

Elements of Governing Documents

(Civil Code §§ 4250, 4280, 4285, 4350)



Operating Rules: (Civil Code § 4350)

- In writing
- Within the authority of the Board via the CC&Rs, AOI, or Bylaws
- Not in conflict with law, CC&Rs, AOI or Bylaws
- Adopted in good faith, and in substantial compliance with the requirements
- Reasonable

Amending the CC&Rs (Civil Code § 4270)

- Pursuant to the requirements of the Governing Documents (i.e. approved by the percentage of Members noted in the CC&Rs, lenders, or any others identified)
- Certified/signed by the President and/or Officer(s) of the Association
- The Amendment is recorded
- Don't forget Civil Code §§ 4225, 4235, 4230

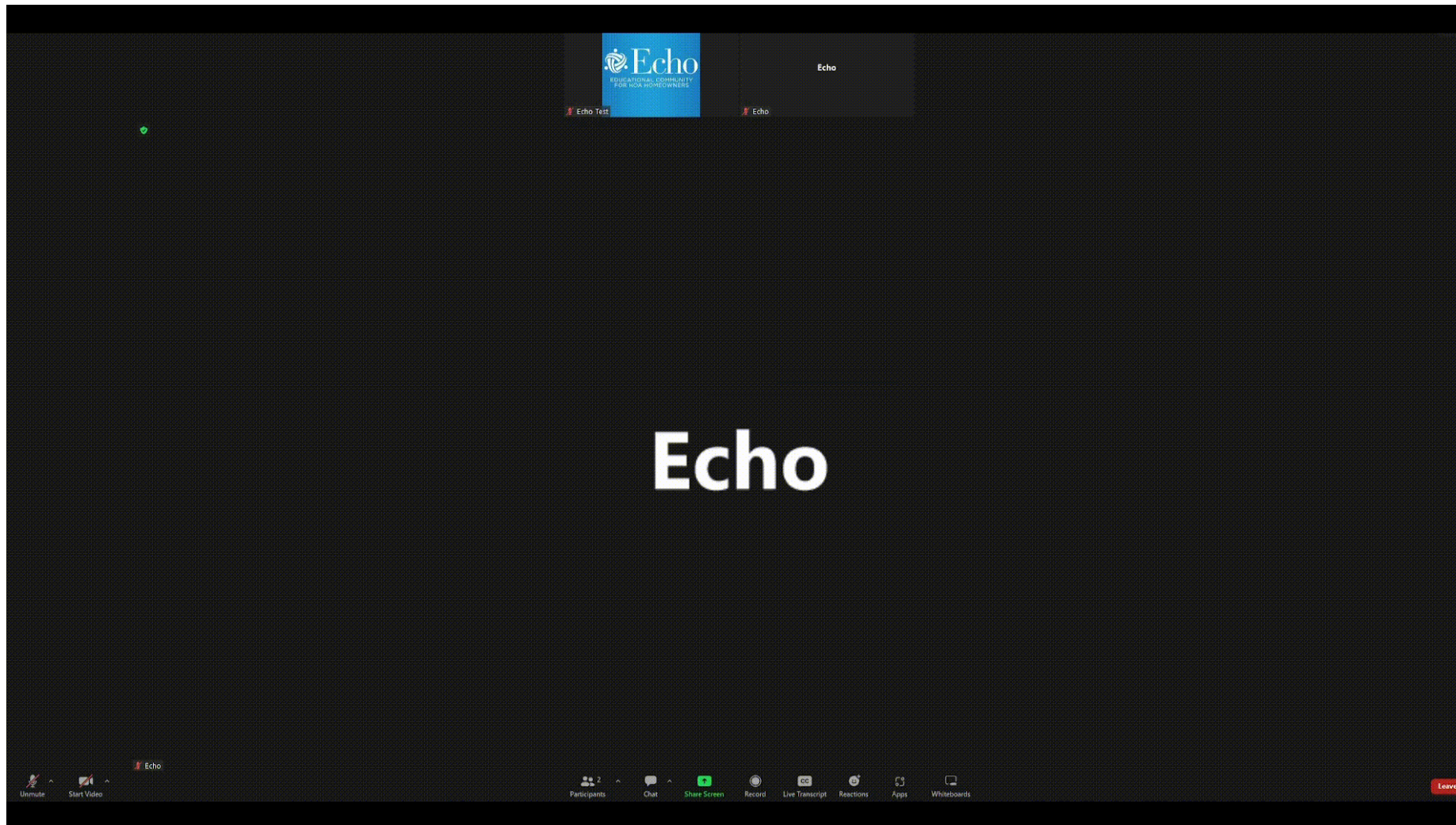


Amending the CC&Rs (Civil Code § 4270)

- If the CC&Rs require more than 50% of the Members to amend the CC&Rs a Petition to the Superior Court may be made to lower the approval percentage.
- The Association has to show the efforts made to gain approval.



Breakout Session #1



Chapter 4: Ownership and Transfer of Interests

Presented by:
Lance Stewart, Esq.



Article 1. Ownership Rights and Interests

Civil Code § 4500-4515

- Each homeowner holds undivided equal share in Common Area as tenants in common – one share per home (separate interest).
- Nonexclusive rights/easements for ingress, egress, support through Common Area.
- Peaceful Assembly. Right of members and residents to peacefully assemble and freely communicate re: matters of public interest.
 - HOA governing documents can't prevent members from:
 - peacefully assembling;
 - inviting candidates for public office;
 - canvassing or petitioning other members; or
 - distributing information.
 - HOAs not permitted to charge fee or deposit for use of the common area for those purposes, or require the homeowners to insure the common area when they do.

Article 2. Transfer Disclosure

Civil Code § 4525-4545

- Homeowner-seller must disclose specified HOA documents to prospective purchaser.
- HOA must provide those documents to the homeowner-seller w/ 10 calendar days.
- Can collect actual cost of gathering and providing – but specified form and other requirements for doing so. (Cannot do so for documents retained electronically.)

Article 3. Transfer Fee

Civil Code § 4575-4580

- HOA usually can't impose assessments, penalties, fees for transfer of property, except
 - Actual costs of updating records
 - Cost of producing documents (above)

Article 4. Restrictions on Transfers

Civil Code § 4600-4620

- HOA cannot grant new exclusive use of Common Area to a member without membership vote.
 - 67% approval required by statute
 - Resolution must specify: whether HOA will be compensated; insurance coverage
- Significant exceptions, including:
 - Disability Accommodation
 - Unassigned parking
 - Electric Vehicle Charging Station in member's garage or parking space
 - Solar Energy System on Common Area roof
 - Compliance with law or public agency
 - Others

Article 4. Restrictions on Transfers

Civil Code § 4600-4620 (Cont.)

- Mechanic's Liens
 - HOA hires vendor; fails to pay. No mechanic's lien against another homeowner's interest, unless expressly consented to the work.
 - Deemed consent for emergency repairs.
 - Deemed consent when HOA hires vendor for work to the Common Area. Risk of lien on all homeowners' property if HOA fails to pay.
 - HOA obligation to notify members of lien w/l 60 days.

Article 5. Transfer of Separate Interest

Civil Code § 4625-4650

- Transfer of separate interest includes homeowner's undivided equal interest in the project/Common Area.

Chapter 5: Property Use and Maintenance

Presented by:
Lance Stewart, Esq.



Article 1. Protected Uses

Civil Code § 4700-4753

- Limitations on HOA's ability to regulate what homeowners do with their homes. Things State wants to encourage, particularly regarding climate change.
- Includes:
 - Drought-Resistant/Water-Efficient Landscaping
 - Electric Vehicle Charging Stations and EV-dedicated TOU meters
 - Solar Energy Systems
 - Backyard Agriculture
 - Satellite dishes/antennae

Article 1. Protected Uses

Civil Code § 4700-4753 (cont.)

- General structure:
 - HOA must allow homeowners to do X.
 - But can impose reasonable restrictions.
 - Highly technical, but usually includes:
 - Can't significantly increase homeowner's cost.
 - (Where applicable), can't significantly decrease efficiency.
 - Actual damages, civil penalties if violate.
 - Many of these topics also governed by other parts of the law – particularly non-DSA portions of Civil Code; Gov't Code; and Health & Safety Code.
 - For issues important to HOA, work with counsel on appropriate policy.

Article 1. Protected Uses

Civil Code § 4700-4753 (cont.)

- Rental Restrictions (2021 – AB 3182; 2022 – AB 1584)
 - No rental cap under 25% of homes.
 - Can prohibit short-term rentals of up to 30 days.
 - Must comply starting Jan. 1, 2021; update governing documents by July 1, 2022.
- ADUs/JADUs on lots zoned for single-family residential use
- Also addresses:
 - Display of signs, and religious symbols on exterior of home
 - Pets
 - Clotheslines, drying racks
 - Other issues

Article 2. Modification of Separate Interest

Civil Code § 4760-4765 (cont.)

- Homeowners may modify the property they own, barring structural/mechanical issues.
- Requirements for Architectural Review procedure for physical change to member's home, or the Common Area.
- Fair Housing: members must be able to modify their property and adjoining aspects of the Common Area to facilitate access for disabled persons.
 - Board entitled to review specs for building code; governing documents; passage to other residents; other issues.
 - Work with counsel; err on the side of granting.

Article 3. Maintenance

Civil Code § 4775-4790 (cont.)

- Who maintains what
 - HOA → Common Area
 - Homeowner → home (separate interest)
 - HOA/homeowner split exclusive use Common Area
- BUT – governing documents can overrule.
- Relocation costs
- HOA use of pesticide in Common Area or homes
- Wood-destroying pests
 - HOA responsible for Common Area (see condos)
 - In PUDs, HOS responsible for separate interest – but members can vote to delegate that responsibility to the HOA

Chapter 6: Association Governance

Presented by:
Amy K. Tinetti, Esq.



Article 1 – Association Existence and Powers

- **Section 4805** – association may exercise the powers of a nonprofit mutual benefit corporation, even if unincorporated

Article 2 – Board Meeting

- **Section 4900** – entire Article known as “Common Interest Development Open Meeting Act”
- **Section 4910** – no action on any item of business outside of a board meeting; meetings may not be conducted via a series of emails (exception = emergency if all directors consent to meet via email)
- **Section 4920** – notice requirement for board meetings
 - Open meeting = at least four days’ notice of time and place of meeting
 - Executive session = at least two days’ notice of time and place of meeting
 - Emergency = no notice required
 - Agenda required
 - Notice by general delivery
 - If governing documents contain a longer notice requirement, documents control
- **Section 4923** – emergency board meeting if “there are circumstance that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice” as otherwise required

Article 2 – Board Meeting

- **Section 4925** – member attendance and participation
 - Any member may attend open meeting, but not executive session
 - Teleconference meeting must be audible to members at location specified
 - Members have the right to speak at “association” and board meetings; a reasonable time limit for all members to speak shall be established by the board
- **Section 4930** – importance of agendas
 - Board may not discuss or take action on an item at a nonemergency meeting unless item was on the agenda
 - If not on the agenda, director or manager may: briefly respond to questions or statements; ask a question for clarification; make a brief announcement; make a report on the person’s own activities; provide a reference to or other references to the managing agent (or other agents or staff); request a report at a subsequent meeting; direct managing agent or other agent to perform administrative tasks on non-agenda item

Article 2 – Board Meeting (Cont.)

- **Section 4935** – executive session
 - Board may adjourn to, or meet solely in, executive session to discuss:
 - Litigation
 - Formation of contracts with third parties
 - Member discipline
 - Personnel matters
 - Payment of assessments
 - Board shall adjourn to, or meet solely in, executive session to discuss:
 - Member discipline, if requested by the member
 - Payment plan
 - Whether to foreclose on a lien

Article 2 – Board Meeting (Cont.)

- **Section 4950** – minutes
 - Available within 30 days of meeting
 - Minutes, proposed minutes, or summary of minutes must be distributed to a member upon request
 - Annual policy statement must inform member of their right to obtain copies of minutes and how to do so
- **Section 4955** – enforcement of Article by member
 - Within one year of the date the cause of action accrues
 - Prevailing member entitled to reasonable attorneys' fees and court costs and court may impose a civil penalty of up to \$500 for each violation
 - Prevailing association shall not recover any costs unless the court finds the action to be frivolous, unreasonable or without foundation

Article 3 – Member Meeting

- **Section 5000** – parliamentary procedure required; members have the right to speak, and the board shall establish a time limit for all members to speak

Article 4 – Member Election

- **Section 5100** – secret ballots required for:
 - Elections regarding assessments requiring member approval
 - Election and removal of directors
 - Amendments to the governing documents
 - Grant of exclusive use of common area
 - Anything else identified in operating (election) rules

Article 4 – Member Election (Cont.)

- **Section 5103** – election by acclamation
- **New for 2022!**
 - Six requirements to elect by acclamation:
 - Association has held a “regular” (balloted) election in the last three years
 - Association provided individual notice of the following at least 90 days before the nomination deadline: number of board positions to be filled, nomination deadline, manner to submit nominations, and statement re regarding election by acclamation
 - Association provided reminder notice (via individual notice) 7 to 30 days before the nomination deadline of everything in 90-day notice plus a list of the names of all of the qualified candidates to fill the board positions as of the reminder notice
 - Written or electronic notice to nominating member and/or nominee (self-nomination) acknowledging the nomination; notice to member must say whether member is qualified and, if not, the basis for disqualification and the procedure for appealing the nomination
 - All qualified candidates must be permitted to run (also, term limits permissible and qualifications for nominees must apply to directors)
 - Association board votes to consider qualified candidates elected by acclamation at an open board meeting; agenda must reflect name of each qualified candidate to be seated by acclamation

Article 4 – Member Election (Cont.)

- **Section 5105** – election rules
 - An association shall adopt operating rules regarding elections
 - Election rules must address several things
 - Election rules may not be amended less than 90 days prior to an election
 - Operating rule adoption procedure applies
- **Section 5110** – inspectors of elections
 - One or three
 - Required for secret ballot votes
 - Must be independent third party
 - Report made by inspector is prima facie evidence of facts stated in report

Article 4 – Member Election (Cont.)

- **Section 5115** – ballots and timelines
 - Director elections (and recall elections):
 - General notice of the procedure and deadline for submitting a nomination at least 30 days prior to deadline (i.e., nomination period of at least 30 days)
 - General notice of the following at least 30 days before ballots are distributed (i.e., save the date notice): date, time and physical address for ballot return; date, time and location of the meeting at which ballots will be counted; names of candidates that will appear on the ballot
 - All secret ballot elections:
 - Ballots mailed by first-class mail or delivered to each member
 - At least 30 days to return ballots
 - No identifying information on ballot
 - Dual-envelope ballots; voter signs outer envelope and also includes name and address that entitles voter to vote
 - Quorum required if stated in documents or law; quorum may be established by ballots
 - Association shall allow for cumulative voting if governing document provides for cumulative voting
 - Text of proposed amendment shall be delivered to the members with the ballots in any election to approve amendment of the governing documents

Article 4 – Member Election (Cont.)

- **Section 5120** – opening and tabulating ballots
 - Ballots opened and tabulated at an open meeting of the board or members
 - Members may witness tabulation
 - Ballots may not be opened or otherwise reviewed in advance of meeting
 - Inspector or designee may verify member’s information and signature on outer envelope prior to meeting
 - Once a ballot is received, it is irrevocable
 - Tabulated results of election shall be: promptly reported to the board; recorded in minutes of the next board meeting; available for review by the members
 - General notice of tabulated results of election must be provided to members within 15 days of election
- **Section 5125** – custody of election materials and challenge
 - Election materials (ballots, envelopes, voter list, proxies, and candidate registration list in custody of inspector(s) prior to tabulation and until time for challenge expires (i.e., one year after election)
 - Then transferred to association
 - Member may make written request to inspect and review ballots; confidentiality maintained

Article 4 – Member Election (Cont.)

- **Section 5130** – proxies
 - Proxy = member authorizing another member to vote on their behalf
 - Proxies are not the same as ballots
 - Proxyholder votes by ballot; if directed proxy, instructions to proxyholder detached
- **Section 5135** – association funds may not be used for campaign purposes
- **Section 5145** – enforcement and challenge
 - One year to challenge
 - Election shall be voided if burden of proof met
 - Prevailing member entitled to reasonable attorneys' fees and court costs and court may impose a civil penalty of up to \$500 for each violation
 - Prevailing association shall not recover any costs unless the court finds the action to be frivolous, unreasonable or without foundation
 - Member may file in small claims

Article 5 – Record Inspection

- **Section 5200** – definitions for “association records,” “enhanced association records,” and “association election materials”; membership list now includes emails
- **Section 5205** – inspection of records
 - Member or representative designated in writing
 - Inspection and copying in business office or mutually-agreeable place if no business office
 - Copies of specified records may be provided to members
 - Association may bill for action of copying and mailing; must inform member of costs in advance
 - Association may bill for redaction (\$10 per hour and \$200 total per request maximum)
 - Documents may be provided electronically
- **Section 5210** – time periods for inspection
 - Association records available for current fiscal year and two previous fiscal years
 - Minutes subject to inspection permanently (including minutes for committee with decision-making authority)
 - Time periods:
 - Current fiscal year = within 10 business days following receipt of request
 - Previous two fiscal years = within 30 calendar days following receipt of request
 - Other time periods for: disclosures, minutes and membership list

Article 5 – Record Inspection (Cont.)

- **Section 5215** – reasons for redaction
- **Section 5216** – Safe at Home program protections (to protect victims of domestic violence)
- **Section 5220** – a member may opt out of the membership list!
- **Section 5225** – a member must state, in writing, the purpose for which the membership list is requested; purpose must be reasonably related to requester’s interest as a member
- **Section 5230** – association records may not be used for a commercial purpose and an association may not sell members’ personal information
- **Section 5235** – enforcement
 - Member may be awarded attorneys’ fees and costs and civil penalty of up to \$500 may be assessed
 - Member may file in small claims
 - Association may recover costs only if court finds the action to be frivolous, unreasonable or without foundation

Article 6 – Recordkeeping

- **Section 5260** – the following requests shall be delivered to the association in writing:
 - Change the member’s information on membership list
 - Add or remove a second email or mailing address for delivery of individual notices
 - Individual delivery of general notices or request to cancel a prior request
 - Opt out of membership list or cancel prior request to opt out
 - Receive a full copy of annual budget report or annual policy statement
 - All reports in full or cancel prior request

Article 7 – Annual Reports

- **Section 5300** – association shall distribute annual budget report 30-90 days before the end of fiscal year; many items included in annual budget report
- **Section 5305** – review of financial statement required in any fiscal year in which gross income of association exceeds \$75,000
- **Section 5310** – board shall distribute annual policy statement 30-90 days before the end of fiscal year; many items included
- **Section 5320** – association may distribute:
 - Full report by individual delivery
 - Summary of report (including instructions regarding how to request complete copy of report at no cost)
 - If member requests full reports, must be provided

Article 8 – Conflict of Interest

- **Section 5350** – conflicts of interest
 - Corporations Code sections regarding contracts apply
 - Director or committee member shall not vote on any of the following:
 - Discipline of director or committee member
 - Assessment against director or committee member for damage to common area
 - Request by director or committee member for payment plan
 - Decision whether to foreclose on a lien on the director or committee member's separate interest
 - Review of proposed physical change to director or committee member's separate interest
 - Grant of exclusive use of common area to the director or committee member

Article 9 – Managing Agent

- **Section 5375** – prospective management agent shall provide written statement to the board regarding: names, business addresses, shareholders, licenses, professional certifications or designations, ownership interests, profit-sharing arrangement or other monetary incentives with other companies, referral fees or other monetary benefits
- **Section 5375.5** – managers and management companies must disclose conflicts of interest when presenting bids (referral fee or other monetary benefit, ownership interest or profit-sharing arrangements)
- **Section 5380** – protection of association funds
 - Transfers out of operating or reserve accounts must be approved by the board in writing
 - \$5,000 or 5% of estimated income for 50 or fewer separate interests
 - \$10,000 or 5% of estimated income for 51 or more separate interests

Article 10 – Government Assistance

- **Section 5405** – association must file form with secretary of state regarding the association and its location
- **Section 5450** – emergency legislation effective 2021 regarding remote meetings
 - Unsafe or impossible to meet because state of disaster or emergency declared
 - Several conditions to meet remotely:
 - Notice of first remote meeting delivered to members by individual delivery
 - Notice of each remote meeting must include: technical instructions; telephone number and email address of person who can provide technical assistance before and after meeting; and a reminder that a member may request individual delivery of meeting notices and instruction for how to do so
 - Every director and member has same ability to participate that would exist for in person meeting
 - Votes of directors by roll call
 - Telephone participation permitted
- Ballot tabulation meeting can be conducted via video conference, but camera must be placed in a location such that members can witness the inspector counting and tabulating votes

Chapter 7: Finances

Presented by:
Tom Fier, Esq.

Law Office of Tom Fier

Accounting – Civil Code § 5500 Board Review

Review on a monthly basis:

- Current reconciliation of the association's operating and reserve accounts.
- Compare operating revenues and expenses with the current budget.
- The current year's actual operating revenues and expenses compared to the current year's budget.
- The latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.
- An income and expense statement for the association's operating and reserve accounts.
- The check register, monthly general ledger, and delinquent assessment receivable reports.

Satisfaction of Review Requirements – Civil Code § 5501

- Every member or a subcommittee of the board, or the treasurer and at least one other board member reviews the documents and statements in Section 5500 independent of a board meeting, and the review is ratified at the board meeting and that ratification is stated in the minutes of that meeting, then the review requirements are satisfied.

Transfers Requiring Board Approval – Civil Code § 5502

Prior written approval of the board is needed, unless:

- The lesser of \$5,000 or 5% of the income in the annual budget for associations with 50 or less separate interests;
- The lesser of \$10,000 or 5% of the estimated income in the annual operating budget for Associations with 51 or more separate interests.

Use of Reserve Funds – Civil Code § 5510

Prior written approval of the board is needed, unless it is to use it:

- To withdraw money from a reserve account, two signatures are required: two directors, or one officer who is not a director and one director.
- No reserve funds shall be used for any purpose other than repair, or litigation of repair of major components that the association is obligated to repair, etc. for which the reserve fund was established.

Temporary Transfer of Reserve Funds – Civil Code § 5515

- The board may authorize a temporary transfer of money from reserves to meet short-term requirements, provided proper notice is given.
- Reasons must be given for the transfer, options for repayment and whether a special assessment is needed.
- If the transfer is authorized, the board must issue a written finding, recorded in the minutes, explaining the reasons the transfer is needed and describing when and how it will be repaid.
- Transferred funds must be repaid within one year, unless after notice a finding justifies a temporary delay.
- The board may levy a special assessment to repay the transfer, recorded in the minutes, explaining the reasons the transfer is needed and describing when and how it will be repaid. The board may extend the date the payment on the special assessment is due.

Use of Funds for Litigation – Civil Code § 5520

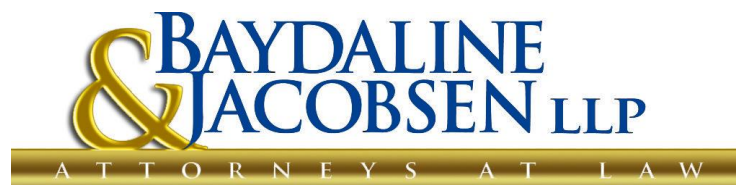
- When funds from reserves are temporarily transferred to pay for litigation, notice must be given.
- At least quarterly, an accounting shall be made of all expenses relating to the litigation, which shall be available for inspection to members at the association's office.

Breakout Session #2



Chapter 8: Assessments & Collections

Presented by:
Raihane Dalvi, Esq.



Regular Assessments

- Covers normal operations + reserves for long-term repairs/replacement
- Determined by Board during annual budgeting process
- Methods of approval:
 - Board Approval. Board may increase Regular Assessments by no more than 20% greater than previous fiscal year
 - Member Approval: If exceeds 20%

Special Assessments

- Necessary for paying:
 - Unexpected expenses
 - Capital improvements
- Methods of approval:
 - Board Approval. If 5% (or less) of the budgeted gross expenses of HOA for the fiscal year.
 - Membership Approval. If exceeds 5%, then majority vote required

Emergency Assessments

- Board may pass an emergency assessment under any of the following emergency situations:
 - Court Order
 - Threat to Safety
 - Unforeseen Expense

Reimbursement Assessments

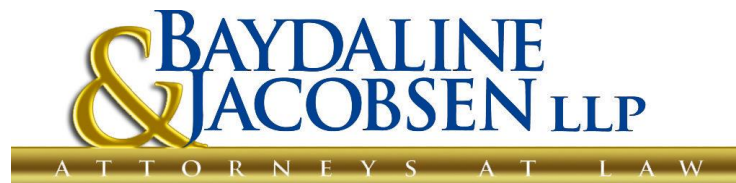
- Reimburse HOA for repairs to Common Area damaged by owner/guests/tenants
- Included in some (but not all) governing documents
- Requires:
 - Written notice of disciplinary hearing,
 - Hearing, and
 - Board determination.

Collections

- Recording Liens
- Payment Plans
- Foreclosure on Lien
- Board Vote on Foreclosure

Chapter 9: Insurance & Liability

Presented by:
Raihane Dalvi, Esq.



Insurance

- General liability insurance
- Directors and officers' liability insurance
- Fidelity insurance
- Risks of no insurance:
 - Members liable for the losses of injured persons or property.
 - Breach of directors' fiduciary duties.

Chapter 10: Dispute Resolution & Enforcement

Presented by:
Jasmine Hale, Esq.

BERDING | **W**EIL
ATTORNEYS AT LAW

Discipline

- Notices to Owner
- How to Hold (and not hold) a Hearing?

Meet & Confer (IDR)

- What is IDR?
- How to Conduct an IDR?
- What Happens After the IDR?

Alternative Dispute Resolution (ADR)

- What is ADR?
- When is ADR Required?
- Do's and Don'ts for ADR?

Lawsuits

- Important Considerations?
- Who Pays for the Legal Fees and Costs?
- When Not to Sue?

Chapter 11: Construction Defect Litigation

Presented by:

Spencer Edgett, Esq.



Calderon Act (Civil Code §6000)

- Pre-litigation dispute resolution procedure (similar to SB800 later enacted)
- Applies to claims against builder/developer/general contractor for construction defects in components association owns or is responsible to maintain/repair, i.e., common areas
- Applies to projects with 20 or more units
- Purpose (Resolve Disputes Informally / Outside of Court)

Calderon Procedure / Process

- Dispute Resolution Facilitator/Special Master Appointed to Facilitate
- Document Exchange
- Site Inspections/Testing
- Exchange Mediation Privileged Expert Reports
- Participate in Joint Expert Meetings / Mediation

Settlement Agreements / Notice of Resolution (Civil Code §6100)

- Notice to Membership of Settlement Includes:
 - Description of defects that will be repaired
 - Estimate of timeline for reconstruction
 - Status of claims for defects not being corrected/repared

Written Notice to Members Prior to Filing Suit (Civil Code §6150)

- No later than 30 days prior to filing suit (unless SOL will expire)
- Notice shall provide:
 - Meeting will take place to discuss problems that lead to filing and financial impacts on association and its members
 - Options to address the problems including filing suit
 - The time and place of meeting

Breakout Session #3



You're a volunteer.
You deserve some help.

Lead Confidently.

California laws governing homeowner associations constantly change and it's tough to stay informed and educated. Echo helps more than 7,000 board members approach every board meeting with confidence.

Become an Echo member today!
Email jprice@echo-ca.org
or call 408-297-3246



 **Echo**
EDUCATIONAL COMMUNITY
FOR HOA HOMEOWNERS

Local Resource Panels

9/6/2022 – Wine Country Resource Panel

9/14/2022 – North Bay Resource Panel

Board Member's Club

Echo Board Members Only

Meets the second Tuesday of every month 5:30pm – 7:00pm

Tentative 2022 Board Forum Topics

- September – Funding Reserves to Avoid Life & Health Issues – and New Legislation

To join [Click Here](#) or contact Patty at pkurzet@echo-ca.org

Future Echo Events

9/10/2022 – Educational Seminar: Navigating Coastal Policy

9/17/2022 – HOA Financial Management & Reserves Workshop

9/22/2022 – Community Conversation: Other HOA Financials