



2018 - 2019 DISCLOSURE AND NOTICE CHECKLIST

Each year in October, SwedelsonGottlieb publishes its Disclosure and Notice Checklist as a resource for Managers and Board Members. This Checklist sets out what disclosures and notices California community associations are required to provide to homeowners, how they are to be provided, and other considerations. This Checklist includes new disclosure requirements pursuant to recent legislative changes to the Davis-Stirling Act.

Annual Budget Report

Every California community association that is subject to the Davis-Stirling Act, regardless of size, must distribute to all its members, by individual delivery (as defined in Civil Code §4040), an Annual Budget Report no less than thirty (30) and no more than ninety (90) days before the end of each fiscal year. Note that if certain items are not provided, as identified in Civil Code §5605, the members must approve any increase in regular assessments. The Annual Budget Report is a compilation of the reports and information listed below, subject to more stringent standards as may be set forth in the association's governing documents.

The association must deliver either: (1) the full Annual Budget Report; or (2) a summary of the Annual Budget Report. The summary, as may be applicable, must include a general description of the content of the Annual Budget Report. Instructions on how to request a complete copy of the Annual Budget Report, at no cost to the member, must be printed in at least 10-point boldface type on the first page of the summary. If a member has requested to receive the Annual Budget Report in full, the association must deliver the full report to the member, rather than a summary of the Annual Budget Report. The Annual Budget Report must also be sent to any secondary address provided by a member.

✓ **Pro Forma Operating Budget**

Civil Code §5300(b)(1)

Associations must distribute their "pro forma" operating budget as part of the Annual Budget Report. It must show an estimate of revenue and expenses on an accrual basis.

Note: SwedelsonGottlieb recommends that community associations consider including a line item for bad debt in their budgets.

✓ **Reserve Summary**

Civil Code §§5300(b)(2), 5565

Associations must distribute a summary of the association's reserves, prepared pursuant to Civil Code §5565. It must be printed in bold type and be based on the most recent reserve study, either the report commonly known in the reserve study industry as the "update with site visit," which is required every three (3) years, or in other years, if the Association obtains an "update with no site visit," then that elective report, should be utilized.

✓ **Reserve Funding Plan Summary** Civil Code §§5300(b)(3), 5550(b)(5)
Associations must distribute a summary of the Reserve Funding Plan adopted by the board, as specified in paragraph (5) of subdivision (b) of Civil Code §5550. The summary must include a notice to members that the full Reserve Funding Plan is available upon request, and the association must provide the full Reserve Funding Plan to any member upon request.

✓ **Major Component Repair Statement** Civil Code §5300(b)(4)
Associations must distribute a statement as to whether the board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of thirty (30) years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.

✓ **Anticipated Special Assessment Statement** Civil Code §5300(b)(5)
Associations must distribute a statement as to whether the board, consistent with the Reserve Funding Plan adopted pursuant to Civil Code §5560, 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 to fund same. If so, the statement shall also set out the estimated amount, commencement date, and duration of the special assessment.

Note: This is always a required statement, so if there is no anticipated special assessment, distribute a statement confirming same.

✓ **Reserve Funding Mechanism Statement** Civil Code §5300(b)(6)
Associations must distribute a statement as to the mechanism or mechanisms by which the board will fund reserves to repair or replace major components, including assessments, borrowing, use of other association assets, deferral of selected replacements or repairs, or alternative mechanisms.

✓ **Assessment and Reserve Funding Disclosure Summary Form** Civil Code §§5300(e), 5570(a)
The Assessment and Reserve Funding Disclosure Summary form, prepared pursuant to Civil Code §5570(a), must accompany the Annual Budget Report or summary of the Annual Budget Report.

✓ **Procedures for Calculating Reserves Statement** Civil Code §§5300(b)(7), 5570(b)(4)
Associations must distribute a general statement addressing the procedures used for the calculation and establishment of the reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain. The statement shall include, but need not be limited to, reserve calculations made using the formula described in Civil Code §5570(b)(4), and may not assume a rate of return on cash reserves in excess of two percent (2%) above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

✓ **Outstanding Loan Statement** Civil Code §5300(b)(8)
Associations must distribute a statement as to whether the association has any outstanding loans with an original term of more than one (1) year, which must include the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

Note: This is always a required statement, so if there are no outstanding loans conforming to the above description, distribute a statement confirming same.

✓ **Insurance Summary** Civil Code §5300(b)(9)
Associations must distribute a summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies, as applicable. For each policy, the summary shall include the name of the insurer, the type of insurance, the policy limit, and the amount of the deductible, if any. To the extent that any of the required information 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 with the Annual Budget Report. The insurance summary must 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 §5300 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.”

Note: New Civil Code §5806, which takes effect January 1, 2019, requires that associations maintain a fidelity bond equal to at least the amount of funds in their reserve account plus the sum of three months of assessments, or greater limits provided in the governing documents. The policy must provide coverage for the directors, officers, employees, and managing agent.

✓ **Charges for Documents Provided** Civil Code §§5300(b)(12), 4528

Associations must distribute a copy of the “Charges for Documents Provided” disclosure form, identified in Civil Code §4528, which must identify the costs associated with providing each document listed on the form.

✓ **FHA Approval Status Statement (Condos Only)** Civil Code §5300(b)(10)

For condominium associations (only), the Annual Budget Report must include a statement describing whether the common interest development is a Federal Housing Administration (FHA)-approved condominium project pursuant to FHA guidelines. The statement must be in at least 10-point font on a separate piece of paper and in the following form:

“Certification by the Federal Housing Administration may provide benefits to members of an association, including an improvement in an owner’s ability to refinance a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.

This common interest development is a condominium project. The association of this common interest development [is/is not (circle one)] certified by the Federal Housing Administration.”

✓ **VA Approval Status Statement (Condos Only)** Civil Code §5300(b)(11)

For condominium associations (only), the Annual Budget Report must include a statement describing whether the common interest development is a federal Department of Veterans Affairs (VA)-approved condominium project pursuant to VA guidelines. The statement must be in at least 10-point font on a separate piece of paper and in the following form:

“Certification by the federal Department of Veterans Affairs may provide benefits to members of an association, including an improvement in an owner’s ability to refinance a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.

This common interest development is a condominium project. The association of this common interest development [is/is not (circle one)] certified by the federal Department of Veterans Affairs.”

Annual Policy Statement

Associations must distribute to all members, by individual delivery (as defined in Civil Code §4040), an Annual Policy Statement no less than thirty (30) and no more than ninety (90) days before the end of each fiscal year, which shall contain the items referenced below.

Associations must deliver either: (1) the full Annual Policy Statement; or (2) a summary of the Annual Policy Statement. The summary, as may be applicable, must include a general description of the content of the Annual Policy Statement. Instructions on how to request a complete copy of the Annual Policy Statement, at no cost to the member, must be printed in at least 10-point boldface type on the first page of the summary. Notwithstanding the foregoing, if a member has requested to receive the Annual Policy Statement in full, the association must deliver the full report to the member, rather than a summary of the Annual Policy Statement. The Annual Policy Statement must also be sent to any secondary address as may be requested by a member pursuant to Civil Code §4040(b).

✓ **Association's Designated Recipient** Civil Code §§5310(a)(1), 4035

Associations must provide the name and address of the person designated to receive official communications to the association pursuant to Civil Code §4035.

Note: If no designated recipient is identified in the Annual Policy Statement, deliveries to the association may be made to the president or secretary of the association.

✓ **Right of Notice to Two Addresses** Civil Code §§5310(a)(2), 4040(b)

Associations must provide a statement explaining that a member may submit a request to have notices sent to up to two different specified addresses pursuant to Civil Code §4040(b).

✓ **General Notice Location** Civil Code §§5310(a)(3), 4045(a)(3)

Associations must describe the location, if any, designated for the posting of general notices pursuant to Civil Code §4045(a)(3).

Note: The association cannot post general notices (e.g., notices of board meetings) in any common area location, except those identified in the Annual Policy Statement. Failure to describe the location will result in the association's inability to post general notices on association property.

✓ **Right to Receive General Notice by Individual Delivery** Civil Code §§5310(a)(4), 4045(b)

Associations must give notice of a member's option to receive general notices by individual delivery pursuant to Civil Code §4045(b).

✓ **Right to Receive Board Minutes** Civil Code §§5310(a)(5), 4950(b)

Associations must give notice of a member's right to receive copies of board meeting minutes and of how and where to do so pursuant to Civil Code §4950(b).

✓ **Statement of Assessment Collection Policies** Civil Code §§5310(a)(6), 5730

Associations must provide the notice language exactly as set forth in Civil Code §5730, in at least 12-point type.

✓ **Assessment Collection Policy** Civil Code §5310(a)(7)

Associations must provide a statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments. This requirement is generally satisfied by distributing the association's Assessment Collection Policy.

This policy usually describes:

- How, when and under what conditions the association will record and foreclose upon assessment liens;
- The nature and amount of late charges, interest and collection costs; and
- Owners' rights to demand internal dispute resolution (commonly referred to as "IDR") and alternative dispute resolution (commonly referred to as "ADR") at different times during the collection process.

Note: Although the many notices required as part of the non-judicial foreclosure process are not covered in this Disclosure and Notice Checklist, please be aware that pursuant to Civil Code §5660, a copy of the association's Assessment Collection Policy must also be distributed with pre-lien notices.

✓ **Governing Document Enforcement and Fine Policy** Civil Code §§5310(a)(8), 5850

Associations must provide the association's discipline policy, if any, including any schedule of penalties for violations of the governing documents pursuant to Civil Code §5850.

✓ **Dispute Resolution Procedure Summary** Civil Code §§5310(a)(9), 5920, 5965

Associations must provide a summary of dispute resolution procedures, pursuant to Civil Code §§5920 and 5965.

✓ **Architectural Guidelines and Procedures** Civil Code §§5310(a)(10), 4765

Associations must provide their members with notice of any requirements for association approval of physical changes to property pursuant to Civil Code §4765. The notice must describe the types of changes that require association approval and must include a copy of the procedure used to review and approve or disapprove a proposed change.

✓ **Overnight Payment Mailing Address** Civil Code §§5310(a)(11), 5655

Associations must provide the mailing address for overnight payment of assessments pursuant to Civil Code §5655.

✓ **Miscellaneous Information** Civil Code §5310(a)(12)

Associations may provide any other information that is required by law or the governing documents or that the board determines to be appropriate for inclusion.

Fiscal Year End Disclosures

Within 120 days after the close of each fiscal year:

✓ **Review of Financial Statement** Civil Code §5305

For any fiscal year in which the association's gross income exceeds \$75,000, a review of its financial statement must be prepared by a licensee of the California Board of Accountancy and distributed to the members within one hundred twenty (120) days after the close of each fiscal year. This review may be distributed by individual delivery as defined by Civil Code §4040.

Note: Some governing documents require an audit (which is a higher and more involved level of review by an accountant), as opposed to a review.

✓ **Notice of Right to Receive Annual Report**

Corporations Code §8321

For any fiscal year in which the association's gross revenues are at least \$10,000, it must prepare an annual report within one hundred twenty (120) days after the end of the association's fiscal year and notify members on an annual basis of their right to receive the annual report. The association must provide the annual report at its own expense to any member submitting a written request for a copy of the report.

The annual report must contain:

- A year-end balance sheet and income statement, and statement of cash flow for the fiscal year;
- A notice stating where records of the association members' names and addresses are stored; and
- Disclosure of transactions with interested parties and of indemnification agreements.

Associations must attach either the accountant's report, if an independent accountant has reviewed or audited the financial statement, or a certificate by an officer indicating that the statement was prepared without review or audit.

✓ **Notice of Transaction with Officer or Director**

Corporations Code §8322

If applicable, associations must provide notice to the membership of any transaction between the association and a director during the previous fiscal year involving more than \$50,000. To maintain indemnity, most governing documents prohibit directors from being paid for their services as directors, but some will allow directors to be paid for services in other non-board capacities.

Additional Disclosures/Notices

✓ **Reserve Fund Transfer for Litigation Expenses**

Civil Code §5520

When an association uses or transfers any funds from its reserve account to fund litigation, it must notify the members of the transfer and of the availability of an accounting in the next available mailing to the membership. This notice may be given by general delivery as defined by Civil Code §4045.

✓ **Litigation Expenses**

Civil Code §5520

Unless an association's governing documents impose more stringent standards, the association shall prepare an accounting of the litigation reserve fund expenses (paid with money from the reserve fund) on at least a quarterly basis. The accounting shall be made available for inspection by members at the association's office.

✓ **Assessment Increases**

Civil Code §5615

Notice of an assessment increase or special assessment must be provided to members not less than thirty (30) nor more than sixty (60) days before the increase or assessment is due. This notice must be given by individual delivery as defined by Civil Code §4040.

Note: Even if the budget identifies the increased assessments, it is always a good idea to prepare and distribute a general notice.

Note: This is different from the 60-day window to provide notice of an increase in budgeted regular assessments based on the beginning of the fiscal year.

✓ **Notice of Intent to Borrow from Reserves**

Civil Code §5515

Boards may authorize the temporary transfer of money 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.

The notice shall include:

- The reasons the transfer is needed
- Some of the options for repayment, and
- Whether a special assessment may be considered.

If the board authorizes the transfer, the board shall issue a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

✓ **Notice of Intent to Postpone Repayment of Borrowed Reserves** **Civil Code §5515**

Boards may, after giving the same notice required for considering a transfer of money from a reserve fund, 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 repayment of borrowed reserves within one (1) year of the board's decision to borrow. The board must exercise prudent fiscal management in maintaining the integrity of the reserve account, and, if necessary, levy a special assessment to recover the full amount of the expended funds within the prescribed time limit.

✓ **Notice of Insurance Changes** **Civil Code §5810**

The association shall, as soon as reasonably practicable, provide individual notice pursuant to §4040 to all members if any of the insurance policies described in the annual budget report pursuant to §5300 have lapsed or been cancelled 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 deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in the annual budget report, the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

Member Discipline

✓ **Schedule of Monetary Penalties** **Civil Code §5850**

If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on its members for a violation of the association's governing documents or rules, a schedule of the monetary penalties that may be imposed for those violations pursuant to the policy must be distributed to the members via first class mail or personal delivery when the schedule is first adopted or when revised. This schedule is required to be distributed as part of the Annual Policy Statement.

✓ **Notification to Member** **Civil Code §5855(a)-(b)**

When the board meets to consider or impose discipline upon a member, boards must notify the member in writing at least ten (10) days prior to the meeting pursuant to Civil Code §5855(b). The member may attend the meeting, which must be held in executive session if requested by the member. This notice must be given by either individual delivery (as defined by Civil Code §4040) or personal delivery.

Note: Always schedule disciplinary hearings to take place in executive session, subject to the member's request to hold the hearing in general session.

✓ **Notification of Decision** **Civil Code §5855(c)**

If the board imposes discipline on a member, the board must provide the member a written notification of the disciplinary action within fifteen (15) days following the action. This notice must be given by individual delivery (as defined by Civil Code §4040) or personal delivery.

Elections

✓ Delivery of Election Ballots Civil Code §5115(a)

Ballots and two (2) preaddressed envelopes with instructions on how to return ballots must be mailed by first-class mail or delivered by the association to every member not less than thirty (30) days prior to the deadline for voting. If applicable, the notice of meeting at which the vote will be held may be sent along with the voting materials, provided that the window below for Notice of Membership Meeting is also satisfied.

✓ Publication of Election Results Civil Code §5120(b)

The tabulated results (which means the actual numerical count of votes for each candidate, or count of votes in approval and disapproval of the proposal, as applicable) of the election must be recorded in the minutes of the next open session board meeting and must be available for review by the members. Within fifteen (15) days of the election, the board must publicize the tabulated results of the election in a communication directed to all members. This communication may be given by general delivery as defined by Civil Code §4045.

Board and Membership Meetings

✓ Notice of Open Session Board Meetings Civil Code §§4920, 4930

Unless the governing documents require longer notice, at least four (4) days before each open session board meeting (other than with respect to emergency Board meetings), associations must give notice of the time and place of a board meeting and include the agenda for the meeting. The board can only address the items set forth on the agenda, although there are exceptions for special situations. Notice may be given via electronic means if consent for same is provided by a member. The board shall not take action on any item of business outside of a meeting. This notice may be given by general delivery as defined by Civil Code §4045.

✓ Notice of Executive Session Board Meetings Civil Code §4920

At least two (2) days before a board meeting that will be held solely in executive session, the association must give notice of the time and place of the meeting, even though the executive session meeting is not open to the general membership. There are exceptions for emergencies and other special situations. Notice may be given via electronic means if consent for same is provided by a member. The agenda for the executive session meeting must be included in the notice of meeting, but should be limited to a summary of which of the five executive session topics will be discussed in the meeting, to avoid a breach of the association's executive session privilege, the dissemination of confidential information or the invasion of an owner's privacy. This notice may be given by general delivery as defined by Civil Code §4045. A governing document provision about meeting notice does not apply to a notice of a meeting held solely in executive session unless it specifically states that it applies to an executive session.

✓ Notice of Emergency Meetings Civil Code §§4910, 4923

Notice of an emergency meeting is not required to be given to the membership unless the governing documents specifically state a notice requirement for emergency meetings. An emergency meeting of the board held via electronic transmission (*e.g.*, via email) may be held only with the unanimous advance written consent of all directors to meet electronically, which consents must be filed with the minutes of such meeting. A majority of a quorum of directors present at such emergency meeting held by electronic transmission is required to approve any board action taken in that meeting.

✓ Board Minutes Available

Civil Code §4950(a)

The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes of any meeting of the board, other than executive session, must be available to members within thirty (30) days of the meeting. They must be distributed to any member of the association upon request and upon reimbursement of the association's costs for distribution. A prospective purchaser may request that an owner provide the previous twelve (12) months of general session board meeting minutes. The owner may request that the association deliver the minutes directly to the prospective purchaser or other third party. The notice must also inform members of how and where to make a request for copies of the minutes.

Note: If you receive such a request, include some form of the following statement in your response: "These documents are being provided to you in the limited scope of complying with a request of the owner of the unit/lot for same in accordance with Civil Code §4525, et seq. The delivery of these documents to you shall not constitute establishment of privity between you and the association, and such delivery shall not create any further responsibility for the association with respect to further disclosure of documents to you."

✓ Financial Review between Board Meetings

Civil Code §5501

The monthly financial review requirements of Civil Code §5500 may be met when every individual member of the board, or a subcommittee of the board consisting of the treasurer and at least one other board member, reviews the documents and statements described in §5500 independent of a board meeting, so long as the review is ratified at the open session board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting.

Note: Corporate governance will require the formation of a committee, by Board motion and approval, prior to delegating the financial review to a committee. Therefore, the entire Board must review the financials until a committee for this purpose is formed.

✓ Notice of Membership Meeting

Corporations Code §7511

Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting must be given not less than ten (10) nor more than ninety (90) days before the date of the meeting to each member who, on the record date for notice of the meeting, is entitled to vote. The Davis-Stirling Act does not specify how this notice shall be delivered, so the requirements for same are subject to Corporations Code §7511. We recommend sending this notice to the members via U.S. Postal Service by first class mail.

✓ Committee Minutes

Civil Code §5210

When a committee of the board makes a decision, the committee minutes must be made available to members within fifteen (15) days following approval of such minutes, excepting minutes of any litigation/legal, personnel, discipline/enforcement or other committees of the board which are formed to address executive session board meeting topics (in accordance with Civil Code §4950(a)).

Rule Adoption, Change and Reversal

✓ Notice of Intention to Adopt or Change Rule

Civil Code §4360(a)

For certain kinds of operating rule changes set forth in Civil Code §4355, the board must provide written notice of a proposed rule change to the members at least thirty (30) days before making the rule change. Please note that effective January 1, 2019, this notice requirement shall be reduced to twenty-eight (28) days. The notice must include the text of the proposed rule change and a description of the purpose and effect of the proposed rule change. However, exceptions apply for emergencies. After thirty (30) days, the board must meet to decide whether to adopt the rule change after consideration of any comments made by members. This notice may be given by general delivery as defined by Civil Code §4045.

✓ **Notice of Rule Adoption or Rule Change** Civil Code §4360(c)

As soon as possible after making a rule change, but not more than fifteen (15) days after making the rule change, the board must deliver notice of the rule change to every member. This notice may be given by general delivery as defined by Civil Code §4045.

✓ **Request for Meeting to Consider Rule Reversal** Civil Code §4365(b)

Five percent (5%) of the membership may call a special meeting of the members to vote on reversal of a rule change if the request is sent within thirty (30) days after notice of a rule adoption or change from the board. The board is obligated to provide notice of the special meeting to the members. The Davis-Stirling Act does not specify how this notice shall be delivered, so the requirements for same are subject to Corporations Code §7511. We recommend sending this notice to the members via U.S. Postal Service by first class mail.

✓ **Notice of Rule Reversal Vote** Civil Code §4365(g)

If the membership votes on a rule reversal, the board must provide notice of the results of the member vote within fifteen (15) days after the close of voting. This notice may be given by general delivery as defined by Civil Code §4045.

✓ **Notice of Amendment to CC&Rs** Civil Code §§4270, 4275

If the membership votes to amend the CC&Rs, the board is required to provide notice of the vote results pursuant to Civil Code §5120(b). The Davis-Stirling Act states that an amendment is effective upon recordation with the county recorder, provided the requisite number of members approve it and that fact is certified by an officer. If a court petition to amend the CC&Rs is successful pursuant to Civil Code §4275, the association will be required to send, by individual delivery (pursuant to Civil Code §4040), a copy of the recorded amendment to all members "within a reasonable time after the amendment is recorded." SwedelsonGottlieb recommends providing a copy of all recorded amendments, whether the result of a petition or not, via individual delivery to the members as soon as possible after recordation.

Note: Immediately send copies of any certified amendments to the Bylaws as well.

Corporate Disclosures

✓ **Statement of Officers' Names, Addresses / Agent for Service of Process** Corp. Code §8210

All incorporated associations must file a Statement of Information, form SI-100, with the Secretary of State's office every other year, within ninety (90) days of the anniversary date of its filing articles of incorporation.

✓ **Registry / Statement of CID Association** Civil Code §5405

All associations, whether incorporated or not, must file a Statement by Common Interest Development Association, form SI-CID, with the Secretary of State every other year (or for an unincorporated association, every other July) with the above Statement of Information and within sixty (60) days of a change in address for an on-site office, responsible officer, or management company.

Construction Defects

✓ **Disclosure of Construction Defect Issues Before Suit** Civil Code §§6150, 6000

At least thirty (30) days before an association files a lawsuit for construction defects, it must provide notice to all owners of that a membership meeting will take place to discuss the claims and the available options at a set time and date included in the notice. When the association receives a settlement offer from the developer or contractor during the pre-litigation meetings, and rejects said offer, the board must hold a meeting of members to discuss same. Notice of this meeting must be sent to each member no less than fifteen (15) days before the association commences an action for damages against the respondent (the developer) and must contain the complete text of the settlement offer, a list of options that are available to address the problems, and a plan for payment thereof. The Davis-Stirling Act does not provide that this notice must be delivered by individual delivery (as defined in Civil Code §4040) or general delivery (as defined in Civil Code §4045), so we recommend sending this notice to the members via U.S. Postal Service by first class mail.

✓ Disclosure of Construction Defect Settlement

Civil Code §6100

Upon settling a construction defect claim with the developer, the association must inform the members as soon as reasonably practicable of the following:

- What will be repaired;
- An estimate when the defects will be repaired; and
- Any defects that may not be repaired.

The Davis-Stirling Act does not provide that this notice may be delivered by individual delivery (as defined in Civil Code §4040) or general delivery (as defined in Civil Code §4040), so we recommend sending this notice to the members via U.S. Postal Service by first class mail.

Miscellaneous Disclosures/Notices

✓ Escrow/Sale of Unit **Civil Code Updated*

Civil Code §§4525, 4528, 4530, 5376

Within ten (10) days of written request from an owner, an association (or its managing agent if contracted to do so) must provide the owner (or owner's agent/escrow) with a copy of various documents and information so that the owner may satisfy certain disclosure obligations to a prospective buyer. Among the documents and information to be provided by the selling owner are the governing documents, the last financial records provided to members pursuant to Civil Code §§5300 and 5310, and a statement of unpaid fines and other monetary penalties, as well as a copy or summary of any notices of alleged violations of the governing documents that remain unresolved at the time of making the disclosure to the prospective buyer.

Note: The failure to notify the buyer through escrow of any violations may preclude the association's ability to enforce the governing documents relating to those violations against the new owner.

- An association is required to provide the selling owner, upon receipt of a written request and prior to processing the request, a written or electronic estimate of the fees that will be charged for providing the requested documents; this billing disclosure must be provided on the form included in Civil Code §4528. *Contact our office at info@sghoalaw.com if you would like a sample copy of this form.*
- The disclosure documents required under Civil Code §4525 may be maintained in electronic form, and may be posted on the association's website; an owner has the option of receiving the documents electronically or by hard copy.
- The association may collect a reasonable fee from the seller for the procurement, preparation, reproduction and delivery of the documents requested; no additional fees may be charged for electronic delivery of the documents requested. Be sure to comply with the limits on cancellation fees and provisions for refunds in connection with these documents as set forth in Civil Code §4530.
- The association may not withhold delivery of the requested documents for any reason or subject to any condition, except the payment of the fees permitted.

- The association may not bundle and deliver the documents responsive to a request under Civil Code §4525 with any other documents.
- An association may contract with any person or entity to facilitate compliance with the document requirements on behalf of the association.
- The owner of a separate interest is required to provide notice to a prospective buyer of any provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, with a statement describing the prohibition.
- If requested by an owner, a copy of the minutes of the meetings (excluding meetings held in executive session) of the association's board of directors conducted over the previous twelve (12) months, that were approved by the association's board of directors, must be provided to the owner or, at the owner's direction, directly to the prospective purchaser or other third party. The association can charge a reasonable fee to the owner for the minutes, based on the actual costs for providing the minutes.
- The association is required to provide to a recipient authorized by the selling owner a copy of the completed form detailed in Civil Code §4528 with the delivery of the requested documents.

Note: If the selling owner designates a third party for delivery of any documents, such as the prospective purchaser, include some form of the following statement: "These documents are being provided to you in the limited scope of complying with a request of the owner of the unit/lot for same in accordance with Civil Code §4525, et seq. The delivery of these documents to you shall not constitute establishment of privity between you and the association, and such delivery shall not create any further responsibility for the association with respect to further disclosure of documents to you."

✓ Notice of Document Request Costs

Civil Code §5205(f)-(h)

Associations may request reimbursement from the member for document production for the direct and actual cost of copying, mailing or providing the documents in electronic format. In addition, the association may bill the requesting member an amount, not to exceed \$10 per hour and \$200 total per written request, for time actually and reasonably involved in redacting enhanced records of the association. The association must inform the member of the amount of these costs, as may be applicable, and the member must agree to pay those costs before the association produces and sends the requested documents.

✓ Notice of Temporary Relocation for Repair, Maintenance or Pest Control; Relocation Costs

Civil Code §§4775(b), 4785(a)-(c)

Associations must give notice of the need to temporarily vacate a separate interest for repair or maintenance of areas within the responsibility of the association or the prompt, effective treatment of wood-destroying pests or organisms, to the occupants and/or the owners of the separate interest not less than fifteen (15) days nor more than thirty (30) days prior to the date of relocation. The notice must state the reason for the relocation, the date and time of the beginning of repair, maintenance or treatment, the anticipated date and time of termination of repair, maintenance or treatment, and that the occupants will be responsible for their own accommodations during the relocation. The costs of such temporary relocation, or a temporary relocation of an occupant and/or owners of a separate interest related to the association's performance of repair, maintenance or treatment to areas of the development for which the association is responsible, are to be borne by the owner of the separate interest affected. Notice by the association shall be deemed complete upon either: (1) personal delivery of a copy of the notice to the occupants, and if an occupant is not the owner, individual delivery (pursuant to Civil Code §4040) of a copy of the notice to the owner; or (2) individual delivery (pursuant to §4040) to the occupant at the address of the separate interest, and if the occupant is not the owner, individual delivery (pursuant to Civil Code §4040) of a copy of the notice to the owner.

✓ Transmission of Documents

Civil Code §§4040, 4045

Any document may be sent by e-mail, facsimile, or other electronic means if the recipient has agreed to that method of delivery, only if such delivery creates a record that is capable of retention at the time of receipt; an electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store

the electronic record. *Contact our office at info@sghoalaw.com if you would like a sample consent form for receipt of documents via electronic means.*

✓ **Owner Information**

Civil Code §4041

Associations must solicit annually from each owner written notices of all of the following information: (1) any addresses to which notices from the association are to be delivered; (2) any alternate or secondary addresses to which notices from the association are to be delivered pursuant to Civil Code §4040(b); (3) the name and address of any legal representative, including any person with power of attorney, who can be contacted in the event of the owner's extended absence from the separate interest; and (4) whether the owner's separate interest is owner-occupied, rented out, developed but vacant, or undeveloped land. If an owner does not provide any contact information, that owner's last address provided, or if none, the property address is deemed the address to which the association shall deliver notices. At least thirty (30) days prior to the date when an association discloses the Annual Budget Report pursuant to Civil Code §5300, it must enter all information an owner provides pursuant to Civil Code §4041 into its books and records.

Management Disclosures

The following are disclosures that managers and management companies are statutorily required to disclose to association board of directors.

✓ **Annual Management Disclosures**

Business & Professions Code §11504

Managers who provide or will provide management services to a common interest development association must disclose to that association's board of directors the following information annually:

- (a) Whether the manager has met the requirements to qualify as a "Certified Common Interest Development Manager.
- (b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.
- (c) The location of the manager's primary office.
- (d) Prior to entering into or renewing a contract with an association, a manager must disclose to the board whether the manager's fidelity insurance (or the management company's fidelity insurance) covers the association's operating and reserve funds for the current year.
- (e) Whether the manager possesses an active real estate license.
- (f) The information required in Civil Code §5375 (see below).
- (g) Whether the manager receives a referral fee or other monetary benefit from a third-party provider distributing documents for the association's annual budget report.
- (h) A written statement that the disclosure and documents provided to a member or potential member pursuant to Civil Code §§4528 and 5300 are the property of the association and not its manager or the management company.

✓ **Prospective Management Disclosures**

Civil Code §5375

Within ninety (90) days before entering into a management agreement with an association, a manager or management company must provide the board with a written statement containing the following information:

- (a) The names and business addresses of the owners, partners, shareholders, directors, and officers of the management company as applicable.
- (b) Whether the persons listed in above hold any relevant licenses (e.g., architectural design, construction, engineering, real estate, accounting, etc.), and if so, the type of license held, the name of the person holding the license, and the dates such license is valid.
- (c) Whether the persons listed above hold any relevant professional certifications or designations, including, but not limited to, a professional common interest development manager, and if so, the type of certification/designation, the name of the person holding such designation/certification, and the dates for which the certification/designation is valid.
- (d) Disclosure of any business or company in which the manager or management company has any ownership interests, profit-sharing arrangements, or other monetary incentives provided to the management firm or managing agent.
- (e) Whether the manager or management company receives a referral fee or other monetary benefit from a third-party provider distributing documents pursuant to Civil Code §§4528 and 4530.

✓ **Potential Conflict of Interest Disclosures**

Civil Code §5375.5

When presenting a bid for service to an association's board of directors, managers and management companies must disclose, in writing, the following:

- 1. Any referral fee or other monetary benefit that could be derived from a business or company providing products or services to the association.
- 2. Any ownership interests or profit-sharing arrangements with services providers recommended to, or used by, the association.

This Disclosure and Notice Checklist is informational in nature only and does not constitute legal advice by SwedelsonGottlieb. Consult an attorney if you have questions or concerns regarding the above described disclosures and notices and your association's compliance with same.