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Serving HOAs and HOs throughout the State of California

SOUTHCOAST HOMEOWNERS ASSOCIATION PROGRAM – APRIL 26, 2014
BY Beth A. Grimm, Attorney (aka The California Condo Guru)

HELPFUL FORMS: I'm not going into detail with new Notice Statutes or Annual Disclosures or the ability to record a statement with the local recorder's office to get you notice of Trustee Sales because these were discussed at the January program. However, in the Appendices I have provided the following:

1. Notice and Consent form for Emergency Info and Consent to Receive Items by Email [CC 4040] Page 6
2. Sample Notice Policy for HOA [CC 4035-4055] Page 8
3. Form For Soliciting Trustee Notice Of Foreclosure Sale By Lender [CC2924b(f)] Page 9
4. Checklist for Annual Budget Report [CC 4076, 5300] Page 10
5. Checklist for Annual Policy Statement [CC 4078, 5310] Page 12
6. List of other Codes brought into the Davis Stirling Act [CC 4700] Page 13

PRACTICAL APPLICATION OF NEW DS ACT- DAY TO DAY BASIS

BOARD CONFLICTS

DAVIS STIRLING ACT - Conflict of Interest [5350- 5350.]

5350. CONTRACTS INVOLVING DIRECTORS/DIRECTOR CONFLICTS OF INTEREST, INTERESTED DIRECTOR

[Question - What ever happened to good old honesty, morals, and good sense? Answer: It had to be legislated.]

- (a) Notwithstanding any other law, and regardless of whether an association is incorporated or unincorporated, the provisions of Sections 7233 and 7234 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the board or a committee of the board.

[NOTE: CORP CODE 7233/7234 can be found at www.ca.gov – navigate to the Laws and 29 codes-these statutes require disclosure of financial interests. In 7233 see this: “A mere common directorship does not constitute a material financial interest within the meaning of this subdivision. A director is not interested within the meaning of this subdivision in a resolution fixing the compensation of another director as a director, officer or employee of the corporation, notwithstanding the fact that the first director is also receiving compensation from the corporation.” 7234 says basically that interested directors can count toward the quorum even if they can't vote because of their interest.

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

- (1) Discipline of the director or committee member.
- (2) An assessment against the director or committee member for damage to the common area or facilities.
- (3) A request, by the director or committee member, for a payment plan for overdue assessments.
- (4) A decision whether to foreclose on a lien on the separate interest of the director or committee member.
- (5) Review of a proposed physical change to the separate interest of the director or committee member.

- (6) A grant of exclusive use common area to the director or committee member.
- (c) Nothing in this section limits any other provision of law or the governing documents that govern a decision in which a director may have an interest.

[Questions: What happens if more than a majority of board members have a personal or financial interest in a matter before the board? Like when they all vote for stipends for each other? Consider Corp Code on this (above). What about priority with regard to deck replacement, or ... Can they vote on these things? Do you think these restrictions are needed?-Bottom line: use good sense.]

TRANSFER OF COMMON AREA PROPERTY: Facing requests for specific parking assignments, especially with regard to assigning exclusive use spaces when requested for a disability, can get dicey. Does the new law give boards better direction? Some think so. Some aren't sure. Why is that?

ARTICLE 4. Restrictions on Transfer [4600 - 4615]

4600. TRANSFER OF COMMON AREA FOR EXCLUSIVE USE; AFFIRMATIVE VOTE REQUIRED; EXCEPTIONS

(a) Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member.

[Comment: This law was passed so association directors would not give owners the right to expand patios or build decks, etc. or allow encroachments of common area for exclusive use, without association member approval. Also note that 67% approval is required unless the governing documents state a different percentage, so check documents too. Note that there are exceptions noted below. This is an area where owners can complain about privileges granted other owners so beware of violating the voting requirement. It is best to consult with legal counsel if someone wants to use common area.]

(b) Subdivision (a) does not apply to the following actions: **PERTINENT EXCEPTIONS:**

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association.

(F) To accommodate a disability. NEW SUBSECTIONS ARE HIGHLIGHTED AND IN BOLD

(G) To assign a parking space, storage unit, or other amenity, that is designated in the declaration for assignment, but is not assigned by the declaration to a specific separate interest.

(H) To install and use an electric vehicle charging station in an owner's garage or a designated parking space that meets the requirements of Section 4745, where the installation or use of the charging station requires reasonable access through, or across, the common area for utility lines or meters.

(I) To install and use an electric vehicle charging station through a license granted by an association under Section 4745.

(J) To comply with governing law.

CLARITY IN RECORDS MATTERS

[Questions: What information must boards disclose to members? What about disgruntled members with a grudge who want to criticize a measure or send out damning information about a candidate, or realtor members who want to solicit

neighborhood listings? What can and should a board do to protect the privacy of owners who do not want their addresses or phone numbers distributed, or - the email addressed that they give HOAs to save receiving tons of paper in the mail?]

Answers: Members are entitled to see what is in records review statute, not executive session records. Directors generally get to see everything unless there is a reason to believe they may misuse records or divulge confidential information, in which case get legal help to set up some restrictions properly.]

RECORDS REVIEW - and Timing Conversely Relates To Retention Requirements

Sections related to timing set forth below are important.

5210. TIMEFRAMES FOR RECORDS INSPECTION/RECORD RETENTION

(a) Association records are subject to member inspection for the following time periods:

- (1) For the current fiscal year and for each of the previous two fiscal years.
- (2) Notwithstanding paragraph (1), minutes of member and board meetings are subject to inspection permanently. If a committee has decision making authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently subject to inspection.

(b) When a member properly requests access to association records, access to the requested records shall be granted within the following time periods:

- (1) Association records prepared during the current fiscal year, within 10 business days following the association's receipt of the request.
- (2) Association records prepared during the previous two fiscal years, within 30 calendar days following the association's receipt of the request.
- (3) Any record or statement available pursuant to Article 2 (commencing with Section 4525) of Chapter 4, Article 7 (commencing with Section 5300), Section 5565, or Section 5810, within the timeframe specified therein.
- (4) Minutes of member and board meetings, within the timeframe specified in subdivision (a) of Section 4950.
- (5) Minutes of meetings of committees with decision-making authority for meetings commencing on or after January 1, 2007, within 15 calendar days following approval.
- (6) Membership list, within the timeframe specified in Section 8330 of the Corporations Code. [**Corp Code Says 5 Days-See Below**]

8330 (a) Subject to Sections 8331 and 8332, and unless the corporation provides a reasonable alternative pursuant to subdivision (c), a member may do either or both of the following as permitted by subdivision (b):

- (1) Inspect and copy the record of all the members' names, addresses and voting rights, at reasonable times, upon five business days' prior written demand upon the corporation which demand shall state the purpose for which the inspection rights are requested; or
- (2) Obtain from the secretary of the corporation, upon written demand and tender of a reasonable charge, a list of the names, addresses and voting rights of those members entitled to vote for the election of directors, as of the most recent record date for which it has been compiled or as of a date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be made available on or before the later of ten business days after the demand is received or after the date specified therein as the date as of which the list is to be compiled.

(c) There shall be no liability pursuant to this article for an association that fails to retain records for the periods specified in subdivision (a) that were created prior to January 1, 2006.

5220. MEMBER MAY OPT OUT OF SHARING NAME, ADDRESS. A member of the association may opt out of the sharing of that member's name, property address, and mailing address by notifying the association in writing that the member prefers to be contacted via the alternative process described in subdivision (c) of Section 8330 of the Corporations Code. This opt out shall remain in effect until changed by the member. [**See Form in Attachments.**]

5240. RECORDS PROVISIONS IN DAVIS STIRLING SUPERSEDE CORPORATIONS CODE CONFLICTING PROVISIONS [Any conflict is resolved in (a).]

(a) As applied to an association and its members, the provisions of this article are intended to supersede the provisions of Sections 8330 and 8333 of the Corporations Code to the extent those sections are inconsistent.

BOARDS MODIFYING DOCUMENTS TO CHANGE CODE NUMBERS –ouch! Watch Out.

The laws apply to all HOAs even if the documents refer to the pre-2013 codes. The law allows boards to correct the code numbers and re-record the documents. But it is not advised to do this without legal advice.

4235. CORRECTION OF STATUTORY CROSS-REFERENCE

(a) Notwithstanding any other provision of law or provision of the governing documents, if the governing documents include a reference to a provision of the DS CID Act that was repealed and continued in a new provision by the act that added this section, the board may amend the governing documents, solely to correct the cross-reference, by adopting a board resolution that shows the correction. Member approval is not required in order to adopt a resolution pursuant to this section.

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

[Note: A board may (but is not required to) adopt a resolution and record it with a set of documents “solely to correct a cross reference”. People interpret this to mean that a board may insert the new statute numbers into the CC&Rs and re-record them. However, if a board does that, arguments may occur over rights that were established upon the “effective” [which is the “recorded”] date of the CC&Rs or restrictions that were not otherwise retroactive, such as lease limitation restrictions or grandfathered alterations or pets.]

QUESTIONS: What is the alternative to the right of boards to “Fiddle” With Documents. Is there a way to let your owners and the “public” out there (like realtors, lenders, insurers and buyers) know that you are hip to the new Davis Stirling Act without altering existing governing documents? Is it important?

Answers: This is a better way to notify owners of the applicability of the new laws relating to rules, policies, CC&Rs and Bylaws. Use of “Resolutions” and “Smart Conversion Charts”. Can you record a “Resolution”? Are the recorders’ offices receptive? Need to incorporate the words “Amendment” to referenced previously recorded documents and or clerks don’t recognize it. Don’t record Resolutions for Bylaws or Rules.

ELECTIONS – RULE SETTING / QUALIFICATIONS / RELATIONSHIP RULE

Setting Election Rules and Handing Important Elections in Light of the New Cases. What practical changes should you consider to avoid running afoul *Wittenberg* thinking incentives vs information vs advocacy.

Quote from Sept 2013 E-News archived on website:

“Perhaps you have heard about the *Wittenberg* case decided in June this year. If not, you will. An HOA in Southern California was sued by owners who wanted to void an election. The complaint was that the election was unfair and that they could not get “equal access” to association resources to express opposing views. The Board did provide communications informing owners of the various views during the 3 very closely consecutive elections (lumped together and considered as if they were one by the appellate court), but denied free use of the clubhouse and the right to hold a gathering in the green-space to tout personal opinions during the course of the elections and did not allow members to post messages on community association boards or the newsletter. The reason there were 3 elections is because it took 3 to get to where the board could get over 50% approval (if not the 75% required in the CC&Rs) to seek court approval to

lower the voting percentage and accept the amendment under Civil Code Section 1356. The elections involved a proposed CC&R amendment. The HOA won at trial but lost on appeal. The trial court deemed the Board's communications to be "informational" and found that did not trigger the "equal access" provisions of the California HOA elections law. The appellate court reading the same communications found them to constitute "advocacy" and therefore, reversed and said they did trigger "equal access".

FRIARS VILLAGE CASE: Adding a "Relationship Rule" to the Rules (When one does not exist in the bylaws or CC&Rs) - Quote from October 2013 E-News archived on website:

The 4th District Appellate Court in California has proved it can and will interpret the California HOA elections law. In simple terms, unless this case is appealed to the California Supreme Court (and we know how reluctant the Supremes are to take on HOA issues after the recent attempt to get review of the Wittenberg decision), the Friars Village HOA case provides us all with a rather clear interpretation that boards may add qualifications to election rules that do not appear in the governing documents if they believe (and can articulate if challenged) the benefit to the community. Although in the past I have taken the position that boards have to stick to what is already in the governing documents and not expand on the qualifications, I am changing my tune.

Questions: Do you still think that husbands and wives can serve on the same board? Do you think they should? In light of the Friars Village case, may you add a relationship qualification to the rules? What about adding "good standing" qualifications that aren't in the Bylaws or CC&Rs? When can adding qualifications backfire?

Answer: Use good sense, imagine from a judge's perspective. And get legal advice.

The Threat to Collections Due to the Huntington and the Diamond Cases. What can boards expect in the future with regard to "no cost" collections. Are they working? What is causing hangups? Just how complicated are they? Will there really be such a thing? Do practices need to be changed? What about contracts with no cost collections providers? What should you look for?

Huntington: From E-News Archives January 2014

The Push Pull of HOA Collections. As if California HOAs are not dealing with enough with the relocated and revised Davis Stirling Act, there is a very new Superior Court of Appeals opinion in Orange County courts rendered just a few weeks ago that required an HOA to accept partial payments and forego foreclosure in a delinquent assessment situation, even when the partial payments do not pay off the balances due (consideration was whether the payments brought the total assessments due below \$1800.00. Few other than educated and experienced practitioners fully understand the negative impact on collections of HOA delinquencies in California, and the ultimate fallout. Right or wrong, it's another strike against the HOAs. Lots of people are affected. While owners might think it is beneficial for all; it really only benefits those in delinquency, and like a lot of legislation, leaves more of the burden on the owners that do pay what is owed. Why? Because there is a cost that has to flow to someone and the honest owners always seem to end up at the bottom of the food chain. The case's legal reach for now is Orange County courts, but the domino effect is touching debtors and HOAs all over the state.

APPENDICES

ATTACHMENT 1 - SAMPLE CONSENT FORM -EMAIL CONSENT - [PER PREVIOUS SECTION 1350.7 (2013) AND NEW SECTION 4040 (2014) OF THE CIVIL CODE] /COMBINED WITH EMERGENCY INFORMATION REQUEST

Comment: this form is a sample of a combined form – it should be modified to fit the association needs. The thought behind combining the email consent/opt out choices with the request for emergency contact information is that Boards may be able to get important contact information returned, in addition to the email choices.

EMERGENCY CONTACT INFORMATION/MEMBER EMAIL CONSENT/OPT OUT OPTIONS

To Members: by signing this form, you will be (1) providing important contact information to be used in case of emergency and (2) saving the association printing and mailing costs by agreeing to accept email notices instead of mailed notices for items that would otherwise be provided by mail (those specifically named below). It is up to you to notify the association whenever your email address changes, and to settle with other owners of your unit or lot on one email address for communications related to your property.

Please complete the information below (PLEASE PRINT CLEARLY):

Homeowner Name(s): _____
Email address: _____
Mailing Address: _____
Property Address: _____
Telephone: Day: _____ Eve: _____

If home is rented, also provide the tenant contact information:

Tenant Name(s): _____
Email address: _____
Mailing Address: _____
Property Address: _____ / _____
Telephone: Day: _____ Eve: _____

CONSENT TO RECEIVE DOCUMENTS AND NOTICES VIA EMAIL

Please be informed that:

1. It is up to you to settle with other owners (if any) of your Unit/Lot on **one email address** for communications related to your property, although you are entitled to have mailed notices go to a secondary mailing address.
2. You have the right to request that the documents also be transmitted in paper or other non-electronic form if you wish (see below); and
3. The consent applies to all of the items listed on page 2; and
4. The items will be sent to the Owner/Member at the email address provided below.

I, the undersigned owner, request that ____ [ASSOCIATION NAME] _____ to provide notices of the items listed on page two via email **as an alternative to mailed paper documents and notices.**

I certify that I am an owner of the lot or unit described below and that all owners of the property at the address listed below have authorized me to provide this written consent to use the following email address for communications on behalf of any owners collectively. The email address is:

[TYPE OR PRINT EMAIL ADDRESS CLEARLY PLEASE]

This consent shall remain in effect until revoked in writing. I understand that my signature must be authentic and I may either return this signed document to the association by mail or hand delivery or may affix an authenticated digital signature to it and return it by email as a PDF file. If the email address changes, I understand it is my obligation to provide a new one.

CONSENT TO OPT OUT OF MAILING LIST

_____ If I have checked this box, I also want to “opt out” of having my name and address published on a list that is made available to members.

Dated: _____
[Owner Signature]
Printed Name: _____
Property Address: _____
City/State/Zip: _____

THE FOLLOWING ARE THE DOCUMENTS I AGREE MAY BE SENT BY EMAIL: [ALL ARE ANNUAL DISCLOSURE NOTICES]

ANNUAL BUDGET REPORT-FINANCIAL INFORMATION (Section 5300 and as noted)

- (1) Pro forma operating budget
- (2) A summary of the association's reserves per CC Section 5565.
- (3) A summary of the reserve funding plan per (5)(b) of Section 5550 or summary form per Section 5570.
- (4) A statement regarding any deferred maintenance.
- (5) A statement as to whether the board anticipates special assessments to pay for obligations regarding major components or to fund reserves.
- (6) A statement as to the funding plan for the reserves.
- (7) A general statement addressing the procedures used for the reserve study.
- (8) A statement as to whether the association has any outstanding loans with an original term of more than one year.
- (9) A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies.

ANNUAL POLICY STATEMENT (Civil Code Section 5310 and 5320 as noted)

- (1) The name and address of the person designated to receive official communications to the association, per Section 4035.
- (2) A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses per Section 4040.
- (3) The location, if any, designated for posting of a general notice, Section 4045 (a)(3).
- (4) Notice of a member's option to receive general notices by individual delivery, pursuant to 4045 (b).
- (5) Notice of a member's right to receive copies of meeting minutes, Section 4950(b).
- (6) The statement of assessment collection policies required by Section 5730.
- (7) A statement describing the association's policies and practices in enforcing lien rights and legal remedies for collection of delinquent assessments per Section 5850.
- (8) A Discipline policy, if any, including any reimbursement or fine penalties per Section 5850.
- (9) A summary of dispute resolution procedures, pursuant to Sections 5920 and 5965.
- (10) A summary of requirements for association approval of a physical change to property, per Section 4765.
- (11) The mailing address for overnight payment of assessments, pursuant to Section 5655.
- (12) Any other information for all owners that is required by law or the governing documents or that the board determines to be appropriate for inclusion.

Comment: I do not suggest using this consent form without advice from the association's attorney. Attorneys have differing opinions on what is acceptable and advisable under the statute.

ATTACHMENT 2

[SUGGESTED] NOTICE POLICY FOR AN HOA - THE BELOW POLICY NEEDS TO BE COMPLETED – COMPLETE ALL HIGHLIGHTED AREAS. It does not require a pre-board-approval-comment period. Just finalize it and include it with the annual package or if not that time of year, approve it and send it to members and send it out with the next annual disclosure package.

ASSOCIATION
POLICY ON NOTICES: (All Code Numbers Refer to the Civil Code]

[4035(a)] Any document from an Owner to the Association document shall be delivered to: _____, the person/company designated to receive documents on behalf of the association.

[4035 (b)] A document delivered pursuant to this section may be delivered by any of the following methods:

- (1) By e-mail, facsimile, or other electronic means to: _____
- (2) By personal delivery to: _____ [Owner may request a written receipt acknowledging delivery of the document.]
- (3) By first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service center to the address above in 4035(a) .

[4040(a)] Any document required to be delivered to Owners by "individual delivery" or "individual notice," shall be delivered by one of the following methods:

(1) 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.

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

(b) Upon receipt of a request by a member, pursuant to Section 5260, 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:

- (1) The Annual Budget Review documents to be delivered to the member pursuant to Section 5300.
- (2) The Collection Policy, Lien and Foreclosure related documents to be delivered to the member pursuant to Section 5650 and Section 5710.
- (3) The Annual Policy Statement disclosures pursuant to 5310.

[4045(a)] All notices to be provided by "general delivery" or "general notice," shall be provided by one or more of the following methods:

- (1) Any method provided for delivery of an individual notice pursuant to Section 4040.
- (2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.
- (3) Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to Section 5310.
- (4) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

If a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to Section to the address provided by the Owner.

[4050(a)-(c)] If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail. If a document is delivered by electronic means, delivery is complete at the time of transmission.

[4055] If the association or a member has consented to receive information by electronic delivery, the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient 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.

ATTACHMENT 3– FORM FOR SOLICITING TRUSTEE NOTICE OF FORECLOSURE SALE BY LENDER

Comment: Homeowner Associations in California are entitled by legislation to record a notice that will require lenders and/or trustees conducting foreclosure sales of properties in an HOA give notice to the HOA when the property is sold. The purpose of this law is to make sure that HOAs can get notice of the sale in a timely way – a much better alternative than having to try and follow the sale or keep track of the extensions of time for the sale. THE FORM:

REQUEST FOR NOTICE UNDER CIVIL CODE SECTION 2924B

By _____ Homeowners Association **(use legal name)**

In accordance with Section 2924b(f) of the California Civil Code, request is hereby made that a copy of any Trustees' Deed or other Deed resulting from the sale under the a deed of trust or mortgage recorded against any of the properties described by the Parcel/APN numbers listed on Exhibit A, which is attached hereto and incorporated herein, be mailed to ____[HOA NAME]____, which is a common interest development homeowners association at: _____[ADDRESS], within 15 days of recording said Trustee's Deed, Certificate of Sale, or other form of Deed upon sale.

NOTICE: It is understood that a copy of said deed will be sent only to the address contained in this recorded request, which is for the Homeowners Association making the request, and that if the address changes, a new request must be recorded.

Signature _____

Printed Name: _____

Title: _____

Authorized by and on Behalf of

[Proper Legal HOA NAME]

[SIGNATURE MUST BE NOTARIZED]

[Exhibit identifying the parcel numbers or legal descriptions of the property must be affixed.]

ATTACHMENT 4 – ANNUAL DISCLOSURES – ANNUAL BUDGET REPORT

CHECK LIST FOR ANNUAL BUDGET REPORT - (PT. 1 OF THE ANNUAL DISCLOSURE PACKAGE) - Civil Code Section 5300

The association shall distribute an Annual Budget Report 30 to 90 days before the end of its fiscal year to Members by delivery pursuant to Section 5.5(b) which includes all of the following information:

___A pro forma operating budget, showing the estimated revenue and expenses on an accrual basis.

___A summary of the association's reserves, prepared pursuant to Section 5565.

___A summary of the reserve funding plan adopted by the board, as specified in paragraph (5) of subdivision (b) of Section 5550. The summary shall include notice to members that the full reserve study plan is available upon request, and the association shall provide the full reserve plan to any member upon request.

___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 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.

___A statement as to whether the board, consistent with the reserve funding plan adopted pursuant to Section 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 therefor. If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment.

___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 assets, deferral of selected replacements or repairs, or alternative mechanisms.

___A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain. The statement shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (b) of Section 5570, and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

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

___A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies. 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 summary distributed pursuant to this paragraph shall contain, in at least 10-point boldface type, the following statement:

"This summary of the association's policies of insurance provides only certain information, as required by Section 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."

___The Assessment and Reserve Funding Disclosure Summary Form, prepared pursuant to Section 1365.2 (2013) / 5570 (2014), shall accompany each Annual Budget Report or summary of the annual budget report that is delivered.

**

DELIVERY OF ANNUAL BUDGET REPORT (5320). When the report is prepared the association shall deliver one of the following documents to all members, by individual delivery pursuant to Article V, Section 5.5(a).

(1) The full report.

(2) A summary of the report. The summary shall include a general description of the content of the report. Instructions on how to request a complete copy of the report at no cost to the member shall be printed in at least 10-point boldface type on the first page of the summary.

(b) Notwithstanding subdivision (a), if a member has requested to receive all reports in full, the association shall deliver the full report to that member, rather than a summary of the report.

Notice Required: Individual delivery is required by CC Sec. 5320 and the method must be pursuant to CC Sec 4040 by (1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the recipient at the address last shown on the books of the association or (2) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery and the consent has not been revoked, in writing, by the recipient.

If the member has sent a written request pursuant to CC Sec. 5260, identifying a secondary address for delivery of collection-related notices, the association shall deliver an additional copy of those notices to the secondary address identified in the request:

Notices relating to imposition of and collection of assessments must be sent pursuant to Chapter 8 of the Civil Code as governed by the series of codes in CC Sec. 5600, 5650, and 5710, which should be reflected in the Association's Collections Policies.

ATTACHMENT 5 ANNUAL DISCLOSURES - ANNUAL POLICY STATEMENT

ANNUAL POLICY STATEMENT CHECKLIST-(Part II of the Annual Disclosure Package)

Delivery to members must be made not less than 30 nor more than 90 days before the end of the fiscal year. The Annual Policy Statement shall include all of the following information:

- ___The name and address of the person designated to receive official communications to the association.
- ___A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses.
- ___The location, if any, designated for posting of the Association's general notice.
- ___Notice of a member's option to receive general notices by individual delivery.
- ___Notice of a member's right to receive copies of meeting minutes.
- ___The statement of assessment collection including lien and foreclosure notices and procedures.
- ___A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.
- ___A statement describing the association's discipline policy, if any, including any schedule of penalties for violations of the governing documents.
- ___A summary of dispute resolution procedures, including IDR or Meet and Confer requirements of Civil Code (CC) Sec. 5920 and the ADR (Alternative Dispute Resolution) Requirements pursuant to CC Sec. 5965.
- ___A summary of Architectural Procedures for association approval of a physical change to property.
- ___The mailing address for overnight payment of assessments.
- ___Any other information that is required by law or the governing documents or that the board determines to be appropriate for inclusion.
- ___The Annual Policy Statement shall also include the Collections Notice in at least 12-point type set forth in CC Sec. 5370.

Individual delivery is required by CC Sec. 5320 and the method must be pursuant to CC Sec 4040 by (1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the recipient at the address last shown on the books of the association or (2) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery and the consent has not been revoked, in writing, by the recipient.

If the member has sent a written request pursuant to CC Sec. 5260, identifying a secondary address for delivery of collection-related notices, the association shall deliver an additional copy of those notices to the secondary address identified in the request.

Other Code Sections Brought Into Davis Stirling Act

4700. PROVISIONS FROM OTHER CODES RE REAL ESTATE SIGNS, SOLAR ENERGY SYSTEMS, MODULAR HOMES, RACIAL RESTRICTIONS, ACCOMMODATE A DISABILITY, AND DAY CARE

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

- (a) Sections 712 and 713, relating to the display of signs.
- (b) Sections 714 and 714.1, relating to solar energy systems.
- (c) Section 714.5, relating to structures that are constructed offsite and moved to the property in sections or modules.
- (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the Government Code, relating to racial restrictions.
- (e) Section 12927 of the Government Code, relating to the modification of property to accommodate a disability.
- (f) Section 1597.40 of the Health and Safety Code, relating to the operation of a family day care home.