



2011/2012 ANNUAL DISCLOSURE CHECKLIST

30 - 90 Days Prior to Beginning of the Association's Fiscal Year

Unless your Association's governing documents impose more stringent requirements, the following must be distributed to all members:

- ❑ A *pro forma* operating budget, which must include: [*Civil Code* § 1365(a)]
 - Estimated revenue and expenses on an accrual basis
 - Summary of the Association's reserves based upon the most recent reserve study, **based only on assets held in cash or cash equivalents**, printed in **boldface type**, which must include the following:
 - For each major component, its current estimated replacement cost, estimated remaining life and estimated useful life.
 - Estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.
 - Amount of cash reserves actually set aside for that purpose and the percentage of the estimated amount this represents.
 - If a compensatory damage award or settlement is received in connection with a construction or design defect case, the expenditure or disposition of such funds (if the Association is required to have a CPA review its financial statement, this information may instead be included in the review).
 - The current deficiency in reserve funding expressed on a per unit basis calculated by subtracting the current amount of accumulated cash reserves actually set aside to repair, replace and restore major components from the current estimate of the amount of cash reserves necessary for that purpose and then dividing the result by the number of separate interests within the Association. (However, if the assessments of the Association are calculated by size, type of ownership or some other calculation, then the same equations should be used.)

- Whether the Board of Directors of the Association has determined to defer repairs or replacement of any major component with a remaining life of thirty (30) years or less, including a justification for the deferral.
- 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.
- Statement as to whether the Board has determined or anticipates levying a special assessment(s) to repair, replace, or restore any major component or to provide adequate reserves therefor. If such special assessment is anticipated, the estimated amount, commencement date, and duration of the assessment.
- Statement as to the mechanism(s) by which the board of directors will fund reserves to repair or replace major components, including assessments, borrowing, use of assets, deferral of selected replacement or repairs, or alternative mechanisms.
- General statement of procedures used to calculate and establish reserves. The report shall include reserve calculations made using the formula described in paragraph 4 of subdivisions (b) of Section 1365.2.5, and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

NOTE: Although not required by law, due to the continuing problem of delinquencies which confronts associations in this economic climate, we strongly advise adding a line item to the budget stating the association's losses from "bad" or uncollectible debt from the previous year. This will greatly assist the association and members in realistically estimating the association's needs during the upcoming year.

Notwithstanding a contrary provision in the governing documents, a copy of the operating budget shall be annually distributed not less than **30** days nor more than **90** days prior to the beginning of the association's fiscal year.

In lieu of the *pro forma* operating budget, the Association may distribute a summary of the budget with a written notice (in at least 10-point **boldface type**) that the *pro forma* operating budget is available for review (if a member requests a copy, it must be provided, at the Association's expense, within 5 days). [*Civil Code* § 1365(d)]

NOTE: If the *pro forma* operating budget (or summary thereof) is not distributed within the 30-90 day period prior to the beginning of the Association's fiscal year, the Association may not increase assessments without approval of a majority of the members.

NOTE: The *pro forma* operating budget, or the summary of the budget, shall be accompanied by the "**Assessment and Reserve Funding Disclosure Summary Form,**"

exactly as this Form is set forth in Civil Code § 1365.2.5(a). Please also note that this Section was recently amended to include the assumed long-term interest rate earned on reserve funds, as well as the assumed long-term inflation rate on major component repair and replacement costs. [Civil Code § 1365.2.5(a)(7).]

- ❑ Notification of member's right to have copies of the minutes of Board meetings, and how and where they may be obtained (this may be sent at the time of any general mailing to the membership but must be sent annually). Minutes, proposed minutes or summary minutes of all open meetings, as well as agendas for all open and executive session meetings, must be distributed to any member upon request and reimbursement of the Association's copying and mailing costs. [Civil Code § 1363.05(e); 1365.2(a)(1)(H) *[added by Senate Bill 563, effective Jan. 2012].*]
- ❑ Summary of the provisions of Civil Code § 1369.510-590, which must include a description of the Association's IDR policy as required by Civil Code § 1363.850, as well as the following language:

"Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

- ❑ The Association's policies and practices in enforcing lien rights or other legal remedies for member's default in payment of assessments. [Civil Code § 1365(e)]
- ❑ The members' right to submit secondary addresses to the Association pursuant to Civil Code § 1367.1(k).
- ❑ Summary of the Association's property, general liability, and earthquake and flood and fidelity insurance policies, which must include the following about each policy [Civil Code § 1365(f)]:
 - Name of the insurer
 - Type of insurance
 - Policy limits
 - Deductible amounts, if any

Summary must contain statement set forth in Civil Code § 1365(f)(4) in at least 10-point **boldface type**.

If this information is specified in the policy's declaration page, the Association may distribute that page to its members in lieu of the above summary.

This may be sent at the time of any general mailing to the membership, but must be sent annually.

- ❑ Procedure for obtaining Association approval for physical changes to property (i.e., architectural approval). [Civil Code § 1378(c)]

Within 60 Days Preceding the Beginning of Association's Fiscal Year

- ❑ Notice of Assessments, Foreclosure, and Payment Plans, as set forth in Civil Code § 1365.1(b), printed in at least 12-point type.

Within 120 Days After Close of Fiscal Year [Civil Code § 1365(c)]

- ❑ If the Association's gross income exceeds \$75,000 in any fiscal year, a review, prepared by a CPA, of the Association's financial statement.
- ❑ If the Association's gross revenues or receipts is \$10,000 or more, a notification that the member has a right to receive a financial report. Upon written request of a member, the Board must send the Association's most recent annual report to the requesting member.

As Necessary

- ❑ **Insurance.** Notice must be given to all owners by first-class mail if any insurance policies have lapsed or been canceled and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible. [Civil Code § 1365(f)(2)]
- ❑ **Increase in Assessments.** Notice of an increase in regular or special assessments must be given to all owners by first-class mail not less than 30 nor more than 60 days prior to the increased assessment becoming due. [Civil Code § 1366(d)]
- ❑ **Escrow.** Within 10 days of an Owner's written request, copies of the following must be provided (the Association may charge a reasonable fee to prepare and reproduce the requested items). The Owner has the option of receiving such information by electronic transmission or machine readable storage media, if the Association maintains same in electronic form: [Civil Code § 1368(a) and (b)]. At the time these documents are delivered, the Association must also provide the recipient (as authorized by the Owner) a completed form as required by Civil Code § 1368.2

- Association's governing documents, including any operating rules (including election rules) and Articles of Incorporation or, if not incorporated, a statement to that effect.
 - Association's *pro forma* operating budget [Civil Code § 1365(a)].
 - A review, prepared by a CPA, of the Association's financial statement, if any.
 - Association's policies and practices in enforcing lien rights or other legal remedies for member's default in payment of assessments [Civil Code § 1365(d)].
 - Summary of the Association's property, general liability, earthquake and flood and fidelity insurance policies [Civil Code § 1365(f)].
 - Amount of the Association's regular and special assessments and fees, any unpaid assessments levied on the owner's unit, and any unpaid monetary fines or penalties levied upon the owner's unit.
 - A copy or summary of any notice sent to the owner pursuant to Civil Code § 1363(h) re violations of the governing documents that remain unresolved.
 - Disclosure regarding settlement in construction defect case [Civil Code § 1375.1].
 - Any change in the Association's current regular and special assessments and fees which have been approved, but have not become due.
 - If the Association's governing documents include age restrictions that differ in any way from the requirements of Civil Code Section 51.3, a statement that the restriction is enforceable only to the extent permitted by Section 51.3 together with a copy of that Section.
 - If the Association's governing documents include prohibitions on leasing or rental of separate interests, a statement describing the prohibition and its applicability [Civil Code § 1368(a)(9), *effective Jan. 2012*]
 - If requested, copies of minutes of meetings of the Board (except meetings in executive session) for the preceding 12 months [Civil Code § 1368(a)(10), *effective Jan. 2012*]
- ☐ **Fines.** If the Association adopts, or has adopted, or changes a policy imposing any monetary penalty or fee on members for violation of the governing documents or rules and regulations, a schedule of the monetary penalties must be distributed to all members via personal delivery or first-class mail. [Civil Code § 1363(g)]
- ☐ **Litigation Expenses.** If the Board decides to use reserve funds to pay for litigation, the Association must, in its next regular mailing, notify the members of its decision and that an accounting of those expenses is available. Unless the governing documents impose more stringent requirements, such accounting must be done at least on a quarterly basis. [Civil Code § 1365.5(d)]
- ☐ **Annual Statement of Corporation.** An incorporated Association must file an annual statement with the Secretary of State which must include the following: [Civil Code § 1363.5, Corporations Code § 1502]
- Identify the corporation as an association formed to manage a common interest development under the *Davis-Stirling Common Interest Development Act*.
 - The business office of the Association and, if the office is not on-site, the 9-digit ZIP code, front street, and nearest cross street for the development.

- Name and address of the Association's managing agent, if any, and whether the managing agent is certified pursuant to Business and Professions Code § 11502.

Construction Defect Litigation

- At least thirty (30) days before filing a construction defect lawsuit, notice must be given to all members, which must include the following: [Civil Code § 1368.5(a)]
 - Notice of a meeting to discuss problems that may lead to filing of a lawsuit.
 - Options available to address the problems.
 - Time and place of the meeting.
- As soon as practicable after settling a construction defect case, the Association must disclose the following in writing to members of record: [Civil Code § 1375.1(a)]
 - General description of the defects that will be corrected or replaced.
 - Estimate of when the defects will be corrected or replaced.
 - Status of claims for defects which may not be corrected or replaced.

Litigation

- As soon as reasonably practicable, notice must be sent to all members of pending litigation involving the Association, which should include:
 - Description of lawsuit.
 - Whether Association is a plaintiff or defendant, or both.
 - Whether the Association's insurance company is defending and/or indemnifying the Association.
 - Whether the Association anticipates the levying of a special assessment to fund the litigation.

Disclosure Documents Index: Added by New Law Effective January 1, 2010

- At the request of a member, the Disclosure Documents Index, which is set forth below, must be provided in the manner described in Civil Code § 1350.7. [Civil Code § 1363.005]

Disclosure Documents Index		
Item	Description	Reference Code
1	Assessment and Reserve Funding Disclosure Summary (form)	Civil Code Sec. 1365.2.5
2	Pro Forma Operating Budget or Pro Forma Operating Budget Summary	Civil Code Sec. 1365(a)
3	Assessment Collection Policy	Civil Code Sec. 1365(e) and 1367.1(a)
4	Notice/Assessments and Foreclosure (form)	Civil Code Sec. 1365.1
5	Insurance Coverage Summary	Civil Code Sec. 1365(f)
6	Board Minutes Access	Civil Code Sec. 1363.05(e)
7	Alternative Dispute Resolution (ADR) Rights (summary)	Civil Code Sec. 1369.590
8	Internal Dispute Resolution (IDR) Rights (summary)	Civil Code Sec. 1363.850
9	Architectural Changes Notice	Civil Code Sec. 1378(c)
10	Secondary Address Notification Request	Civil Code Sec. 1367.1(k)
11	Monetary Penalties Schedule	Civil Code Sec. 1363(g)
12	Reserve Funding Plan (summary)	Civil Code Sec. 1365(b)
13	Review of Financial Statement	Civil Code Sec. 1365(c)
14	Annual Update of Reserve Study	Civil Code Sec. 1365(a)