



2012-2013 ANNUAL DISCLOSURE AND NOTICE CHECKLIST FOR CALIFORNIA COMMUNITY ASSOCIATIONS

Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the fiscal year:

✓ **Pro Forma Operating Budget**

Civil Code §1365(a)

The association must distribute its “pro forma” operating budget within the “60-day window” to retain its ability to unilaterally increase assessments within the statutory guidelines. If this requirement is not met, the members must approve any increase to the regular assessments.

The budget must contain the following:

- An estimate of revenue and expenses on an accrual basis;
- A summary of the reserves printed in bold type, based on the most recent reserve study (required every three years with an annual update);
- With respect to construction or design defect cases, the summary must also include a separate line item for:
 - (1) funds received from compensatory damage awards or settlements; and
 - (2) expenditure or disposition of funds, including amounts for direct/indirect costs of repair of defects (If the association is required to have a CPA conduct a review of its financial statements, the above information may instead be contained in such review);
- A statement as to whether the board anticipates the levy of one or more special assessments; and
- A basic description of the procedures used to calculate the reserves.

Suggestion: All reports indicate that unemployment will likely remain high through 2013, as well as the rate of defaults and foreclosures. We recommend that community associations consider including a line item for bad debt in their budgets.

✓ **Summary of Pro Forma Operating Budget**

Civil Code §1365(d)

(Alternative to Above) The association may distribute a summary of the operating budget in lieu of the pro forma budget.

The summary budget must give members notice that:

- The complete budget is available for review at the association’s business office or other suitable location within the development; and
- Copies of the complete budget will be provided upon request at no charge to a member within five (5) days of the request.

The above notices must be printed in at least 10-point bold type on the front page of the summary.

✓ **Secondary Addresses Provided by Owners** Civil Code §1367.1(k)

Note: Unlike the other disclosures described below, not only must this notice be distributed within the “60-day window” for distribution of the pro forma operating budget or budget summary, as discussed above, it must be distributed at the same time as the pro forma budget or budget summary.

The association shall notify owners, at the time the association issues the pro forma operating budget, of their right to submit secondary addresses to the association for purposes of collection notices. Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by Section 1367.1 of the California Civil Code to the secondary address provided. The owner’s request shall be in writing and shall be mailed to the association in a manner that shall indicate that the association has received it. The owner may identify or change a secondary address at any time, provided that if a secondary address is identified or changed during the collection process, the association shall only be required to send notices to the requested secondary address from the point that the association receives the request.

Suggestion: Along with this notice, also send a form for owners to fill out if they want to opt out of having their names and mailing addresses given to other members upon request. If the association maintains a list of email addresses, recent case law suggests that the association may be obligated to distribute email addresses and physical addresses upon request, so the form should give the owners the option to keep either or both addresses confidential.

✓ **Assessment and Reserve Funding Disclosure Summary** Civil Code §§1365(a)&(b), 1365.2

The association must distribute an Assessment and Reserve Funding Disclosure Summary in the form prescribed by Civil Code Section 1365.2.5. This disclosure requires more than just a description of the amount of reserves and/or the association’s budget contributions. A summary of, among other things, the components being reserved for, their anticipated remaining life and how much money is currently in reserves allocated to that component must be disclosed. The summary must include notice to members that the full reserve study plan is available upon request, and the association must provide the full reserve plan to any member upon request. The Civil Code also requires that this disclosure include a specified statement regarding the interest rate earned on reserve funds and the assumed inflation rate applied to major component repair and replacement costs.

✓ **Assessment Collection Policy** Civil Code § 1365(e)

Members must receive a description of the policies and practices which the association will apply to enforce payment of assessments within the “60-day window” referenced above unless the association’s governing documents require a narrower window. The failure to adopt and distribute this assessment collection policy may affect an association’s ability to collect delinquent assessments.

This notice 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 § 1367.1(a), a copy of the association’s Assessment Collection Policy must also be distributed with pre-lien notices.

✓ **Insurance Coverages** Civil Code §1365(f)

Within the “60-day window” described above, unless the governing documents require a narrower window, the association must distribute to the members a summary of its property, general liability, earthquake, flood and fidelity insurance policies. The summary should also state:

- The name of the insurer and the type of insurance; and
- The policy limits and deductibles, if any.

To the extent the above information is contained on the policy's declaration page, that page can be distributed in lieu of the summary.

The summary or declaration page must include the statement provided in Civil Code Section 1365(f)(4). This statement must be in at least 10-point boldface type.

Notice of significant changes such as a lapse, decrease in coverage, cancellation or non-renewal shall be provided to the members by first-class mail as soon as reasonably practicable.

During the sixty (60) days prior to the beginning of the fiscal year:

Note: In order to reduce document reproduction and mailing costs, the association may wish to distribute some of the items listed below along with the items listed above in the same mailing, as long as the distribution timeframes for each disclosure are satisfied.

✓ **Notice of Assessments, Foreclosures and Payment Plans** Civil Code §1365.1

The association must distribute the notice specified in Civil Code Section 1365.1 pertaining to assessments, the association's rights of foreclosure, payments of assessments and meetings and payment plans concerning delinquent assessments.

This notice must include the following language: "An owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise."

With the budget or budget summary, or in any general mailing during the year:

✓ **Notice of Right to Minutes of Board Meetings** Civil Code §1363.05(e)

On an annual basis, the association must notify members of their right to receive copies of the minutes from board of directors' meetings (which does not include executive session meeting minutes).

The notice should state:

- That members have the right to receive approved minutes, an unapproved draft, or a summary of the minutes within thirty (30) days of a board meeting upon the member's request; and
- How and from whom those minutes may be obtained.

✓ **Arbitration/Mediation of CC&Rs Disputes** Civil Code §1369.590

Annually, the association must distribute a summary of Civil Code Section 1369.510, *et seq.* to its members.

Section 1369.510, *et seq.* provides, in part:

- An owner or the association must first offer arbitration, mediation or conciliation prior to litigating an action to enforce the governing documents, in seeking injunctive or declaratory relief, or injunctive or declaratory relief plus damages not exceeding applicable jurisdictional limits (other than with respect to the enforcement of assessments);
- The party initiating arbitration/mediation must send a Request for Resolution to the other parties, which shall include:
 - A brief description of the dispute;
 - A request for alternative dispute resolution;
 - Notice that the responding party has thirty (30) days to accept ADR or it is deemed rejected; and
 - A copy of Section 1369.510, *et seq.*, if the responding party is an owner.

Civil Code §1369.590 requires that associations annually provide members with a summary of the ADR process that specifically states:

“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.”

Additionally, the summary must include a description of the internal dispute resolution process provided pursuant to Civil Code §§1363.810 through 1363.840.

The summary must be provided “either at the time the pro forma budget required by Civil Code Section 1365 is distributed or in the manner prescribed in Section 5016 of the Corporations Code”; Section 5016 provides that it may be included in any notice or report mailed or delivered as part of a newsletter, magazine or other communication regularly sent to members.

Within 120 days after the close of each fiscal year:

✓ **Review of Financial Statement** Civil Code §1365(c)

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 licensed California certified public accountant and distributed to the members within 120 days after the close of each fiscal year.

Note: Some governing documents require an audit (which is a higher 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 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.

The association 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, the association 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. 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 Financial Disclosures/Notices

✓ **Reserve Fund Transfer for Litigation Expenses** Civil Code §1365.5(d)

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.

✓ **Litigation Expenses**

Civil Code §1365.5(d)

Unless the 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 §1366(d)

Notice of an assessment increase or special assessment must be provided by first-class mail to members not less than thirty (30) nor more than sixty (60) days before the increase or assessment is due.

Suggestion: 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 regular assessments based on the beginning of the fiscal year.

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

Civil Code §1365.5(c)

The board may authorize the temporary transfer of moneys from a reserve fund to the association’s general operating fund to meet short-term cash-flow requirements or other expenses, if the board has provided notice of the intent to consider the transfer in a notice of meeting.

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 §1365.5(c)

The board may, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the 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 time limit.

Elections

✓ **Delivery of Election Ballots**

Civil Code §1363.03(e)

Ballots and two 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 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.

✓ **Publish Election Results**

Civil Code §1363.03(g)

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 board meeting and must be available for review by the members. Within 15 days of the election, the board must publicize the tabulated results of the election in a communication directed to all members.

Board and Membership Meetings

✓ Notice of Open Session Board Meetings

Civil Code §1363.05(f)

At least four days before each open session board meeting (other than with respect to emergency Board meetings), the association 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.

✓ Notice of Executive Session Board Meetings

Civil Code §1363.05(f)

At least two 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, in order to avoid a breach of the association's attorney-client privilege, the dissemination of confidential information or the invasion of an owner's privacy.

✓ Emergency Meeting Via Electronic Transmission

Civil Code 1365.05(j)(2)(B)

An emergency meeting of the board held via electronic transmission (*i.e.*, via email) may be held only with the unanimous written consent of all directors, 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 §1363.05(d)

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 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 an owner to provide the previous 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.

Suggestion: If you receive such a request, include 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 Section 1368. 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 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 10 nor more than 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.

✓ Committee Minutes

Civil Code §1365.2(j)(5)

When a committee of the board makes a decision, the committee minutes must be made available to members within 15 days following approval, 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 §1363.05(d)).

Member Discipline

✓ **Schedule of Monetary Penalties** Civil Code §1363(g)

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 assessed 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 (distribution of this policy on an annual basis is recommended).

✓ **Notification to Member** Civil Code §1363(h)

When the board meets to consider or impose discipline upon a member, the board must notify the member in writing, by either personal delivery or first-class mail, at least 10 days prior to the meeting. The member may attend the meeting, which must be held in executive session if requested by the member.

✓ **Notification of Decision** Civil Code §1363(h)

If the board imposes discipline on a member, the board must provide the member a written notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days following the action.

Rule Adoption, Change and Reversal

✓ **Notice of Intention to Adopt or Change Rule** Civil Code §1357.130(a)

For certain kinds of operating rule changes set forth in Civil Code Section 1357.120, the board must provide written notice of a proposed rule change to the members at least 30 days before making the rule change. 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 30 days, the board must meet to decide whether to adopt the rule change after consideration of any comments made by members.

✓ **Notice of Rule Adoption or Rule Change** Civil Code §1357.130(c)

As soon as possible after making a rule change, but not more than 15 days after making the rule change, the board must deliver notice of the rule change to every member.

✓ **Request for Meeting to Consider Rule Reversal** Civil Code §1357.140(b)

Five percent of the membership may call a special meeting of the members to vote on reversal of a rule change if request is sent within 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.

✓ **Notice of Rule Reversal Vote** Civil Code §1357.140(g)

If the membership votes on a rule reversal, the board must provide notice of the results of the member vote within 15 days after the close of voting.

✓ **Notice of Amendment to CC&Rs** Civil Code §1355(b)

If the membership votes to amend the CC&Rs, the board is required to distribute a copy of the amendment by first-class mail postage prepaid or personal delivery to all owners "immediately" upon recordation.

Suggestion: 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 this information with the Secretary of State's office every other year, up to five months prior to the anniversary date of the initial filing.

✓ Registry / Statement of CID Association Civil Code §1363.6

All associations, whether incorporated or not, must file a form provided by the Secretary of State every other year, either with the above Statement of Officers' Names (or for an unincorporated association, every other July) or within 60 days of change in an on-site or management address.

Construction Defects

✓ Disclosure of Construction Defect Issues Before Suit Civil Code §§1368.5, 1375(k)(1)(D)

At least thirty (30) days before an association files a lawsuit for construction defects, it must provide notice to all owners of the defect issues, schedule a membership meeting to discuss the claims and the available options (with notice of meeting provided at least 15 days in advance), including any settlement offer from the builder. If the board rejects a settlement offer from the developer, the board must hold a member meeting to discuss same no less than 15 days before the association commences an action for damages against the respondent.

✓ Disclosure of Construction Defect Settlement Civil Code §1375.1

Upon settling a construction defect claim with the builder, 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.

Miscellaneous Disclosures/Notices

✓ Escrow/Sale of Unit Civil Code §§1368(a)&(b), 1368.2

Within ten (10) days of written request from an owner, an association 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 Section 1365, 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, 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 Section 1368.2. *Contact our office at info@sghoalaw.com if you would like a copy of the 1368.2 form.*
- The disclosure documents required under subsection (a) of Civil Code Section 1368 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 for the procurement, preparation, reproduction and delivery of the documents requested; no additional fees may be charged for electronic delivery of the documents requested.

- 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.
- 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 and its applicability.
- 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 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 1368.2 form with the delivery of the requested documents.

Suggestion: If the selling owner designates a third party for delivery of any documents, such as the prospective purchaser, include 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 Section 1368. 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 §1365.2(c)(4)&(5)

The association may request that the member reimburse the association for the direct and actual cost of copying and mailing the requested documents. In addition to the direct and actual costs of copying and mailing, the association may bill the requesting member an amount, not to exceed \$10 per hour and \$200 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 the copying, redaction and mailing costs, as may be applicable, and the member must agree to pay and then actually pay those costs before the association copies and sends the requested documents.

✓ **Architectural Guidelines and Procedures** Civil Code §1378(c)

An association must annually provide its members with notice of any requirements for association approval of physical changes to property. 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.

✓ **Notice of Temporary Relocation for Pest Control; Relocation Costs** Civil Code §1364(c)&(d)

The association must give notice of the need to temporarily vacate a separate interest for the prompt, effective treatment of wood-destroying pests or organisms to the occupants and/or the owners of the separate interest not less than 15 days nor more than 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 treatment, the anticipated date and time of termination of 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 and maintenance to areas of the development for which the association is responsible, are to be born by the owner of the separate interest affected.

✓ **Disclosure Documents Index** Civil Code §1363.005

Upon request of any member, the Association must provide an index in the form provided in Civil Code § 1363.005, which lists a series of disclosures that the Association is required to make and the reference to the corresponding Civil Code section. *Contact our office at info@sghoalaw.com if you would like a copy of this index.*

✓ **Transmission of Documents**

Civil Code §1350.7(a)(3)

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, retrieval and review, and that may thereafter be rendered into a clearly legible form.** *Contact our office at info@sghoalaw.com if you would like a consent form for receipt of documents via electronic means.*

PLEASE NOTE that this 2012-2013 Annual Disclosure and Notice Checklist for California Community Associations is NOT intended to be used as a reference tool for annual disclosures and/or notices that will be required pursuant to the restated Davis-Stirling Act where compliance will become mandatory for all California community associations as of January 1, 2014.

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 regarding the above described disclosures and notices.