

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN SENATE JUNE 17, 2009

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 1, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 899

**Introduced by Assembly Member Torres
(Coauthor: Assembly Member Eng)**

February 26, 2009

An act to amend Sections 1350.7 and 1365.2.5 of, and to add Section 1363.005 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 899, as amended, Torres. Common interest developments: disclosures.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. Under existing law, a common interest development is managed by an association pursuant to the provisions of the governing documents of the development. Existing law requires an association to provide specified disclosure documents to its members. Existing law allows the required disclosure documents to be delivered electronically.

This bill would provide that a document that uses an electronic record to provide or make available the document satisfies the writing requirement, as provided. This bill would also require an association to distribute annually to its members a Disclosure Documents Index, as specified.

Existing law requires an association to distribute to its members a pro forma operating budget for each fiscal year, as specified. Existing law also requires an association to distribute, with the pro forma operating budget, an Assessment and Reserve Funding Disclosure Summary containing specified information regarding the association’s assessments and reserves.

This bill would require that Assessment and Reserve Funding Disclosure Summary to 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.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1350.7 of the Civil Code is amended to
 2 read:
 3 1350.7. (a) This section applies to delivery of a document
 4 listed in Section 1363.005 or to the extent the section is made
 5 applicable by another provision of this title.
 6 (b) A document shall be delivered by one or more of the
 7 following methods:
 8 (1) Personal delivery.
 9 (2) First-class mail, postage prepaid, addressed to a member at
 10 the address last shown on the books of the association or otherwise
 11 provided by the member. Delivery is deemed to be complete on
 12 deposit into the United States mail.
 13 (3) E-mail, facsimile, or other electronic means, if the recipient
 14 has agreed to that method of ~~delivery as provided in subdivision~~
 15 ~~(e)~~ *delivery. The agreement obtained by the association shall be*
 16 *consistent with the conditions for obtaining consumer consent*
 17 *described in Section 20 of the Corporations Code. If a document*
 18 *is delivered by electronic means, delivery is complete at the time*
 19 *of transmission.*
 20 (4) By publication in a periodical that is circulated primarily to
 21 members of the association.
 22 (5) If the association broadcasts television programming for the
 23 purpose of distributing information on association business to its
 24 members, by inclusion in the programming.

1 (6) A method of delivery provided in a recorded provision of
2 the governing documents.

3 (7) Any other method of delivery, provided that the recipient
4 has agreed to that method of delivery.

5 (c) A document may be included in or delivered with a billing
6 statement, newsletter, or other document that is delivered by one
7 of the methods provided in subdivision (b).

8 (d) For the purposes of this section, an unrecorded provision of
9 the governing documents providing for a particular method of
10 delivery does not constitute agreement by a member of the
11 association to that method of delivery.

12 ~~(e) For a document delivered pursuant to paragraph (3) of~~
13 ~~subdivision (b) and in compliance with Section 20 of the~~
14 ~~Corporations Code, the use of an electronic record to provide or~~
15 ~~make available the document satisfies the requirement that the~~
16 ~~document be delivered in writing.~~

17 SEC. 2. Section 1363.005 is added to the Civil Code, to read:

18 1363.005. ~~(a) The association shall, at the request of any~~
19 ~~member, distribute to those members, subject to to the member,~~
20 ~~in the manner described in Section 1350.7, the following~~
21 Disclosure Documents Index:

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

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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)

~~(b) Notwithstanding any provisions to the contrary in the sections referenced in the above index, the documents listed may be delivered by e-mail pursuant to paragraph (3) of subdivision (b) of Section 1350.7 of the Civil Code.~~

SEC. 3. Section 1365.2.5 of the Civil Code is amended to read:
1365.2.5. (a) The disclosures required by this article with regard to an association or a property shall be summarized on the following form:

~~Assessment and Reserve Funding Disclosure Summary~~

Assessment and Reserve Funding Disclosure Summary For the Fiscal Year Ending _____

For the Fiscal Year Ending _____

(1) The regular assessment per ownership interest is \$_____ per _____. Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page _____ of the attached summary.

1 (2) Additional regular or special assessments that have already
2 been scheduled to be imposed or charged, regardless of the purpose,
3 if they have been approved by the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

15 Note: If assessments vary by the size or type of ownership
16 interest, the assessment applicable to this ownership interest may
17 be found on page ____ of the attached report.

18 (3) Based upon the most recent reserve study and other
19 information available to the board of directors, will currently
20 projected reserve account balances be sufficient at the end of each
21 year to meet the association’s obligation for repair and/or
22 replacement of major components during the next 30 years?

23 Yes _____ No _____

24 (4) If the answer to (3) is no, what additional assessments or
25 other contributions to reserves would be necessary to ensure that
26 sufficient reserve funds will be available each year during the next
27 30 years that have not yet been approved by the board or the
28 members?

Approximate date assessment will be due:	Amount per ownership interest per month or year:
	Total:

1 (5) All major components are included in the reserve study
2 and are included in its calculations.

3 (6) Based on the method of calculation in paragraph (4) of
4 subdivision (b) of Section 1365.2.5, the estimated amount required
5 in the reserve fund at the end of the current fiscal year is \$____,
6 based in whole or in part on the last reserve study or update
7 prepared by ____ as of ____ (month), ____ (year). The projected
8 reserve fund cash balance at the end of the current fiscal year is
9 \$____, resulting in reserves being ____ percent funded at this date.
10 If an alternate, but generally accepted, method of calculation is
11 also used, the required reserve amount is \$____. (See attached
12 explanation)

13
14 (7) Based on the method of calculation in paragraph (4) of
15 subdivision (b) of Section 1365.2.5 of the Civil Code, the estimated
16 amount required in the reserve fund at the end of each of the next
17 five budget years is \$____, and the projected reserve fund cash
18 balance in each of those years, taking into account only assessments
19 already approved and other known revenues, is \$____, leaving the
20 reserve at ____ percent funding. If the reserve funding plan
21 approved by the association is implemented, the projected reserve
22 fund cash balance in each of those years will be \$____, leaving the
23 reserve at ____ percent funding.

24
25 Note: The financial representations set forth in this summary are based on the
26 best estimates of the preparer at that time. The estimates are subject to change.
27 At the time this summary was prepared, the assumed long-term before-tax
28 interest rate earned on reserve funds was ____ percent per year, and the assumed
29 long-term inflation rate to be applied to major component repair and
30 replacement costs was ____ percent per year.

31
32 (b) For the purposes of preparing a summary pursuant to this
33 section:

34 (1) “Estimated remaining useful life” means the time reasonably
35 calculated to remain before a major component will require
36 replacement.

37 (2) “Major component” has the meaning used in Section 1365.5.
38 Components with an estimated remaining useful life of more than
39 30 years may be included in a study as a capital asset or disregarded
40 from the reserve calculation, so long as the decision is revealed in

1 the reserve study report and reported in the Assessment and
2 Reserve Funding Disclosure Summary.

3 (3) The form set out in subdivision (a) shall accompany each
4 pro forma operating budget or summary thereof that is delivered
5 pursuant to this article. The form may be supplemented or modified
6 to clarify the information delivered, so long as the minimum
7 information set out in subdivision (a) is provided.

8 (4) For the purpose of the report and summary, the amount of
9 reserves needed to be accumulated for a component at a given time
10 shall be computed as the current cost of replacement or repair
11 multiplied by the number of years the component has been in
12 service divided by the useful life of the component. This shall not
13 be construed to require the board to fund reserves in accordance
14 with this calculation.