

THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT: How it Affects Housing Cooperatives

The Davis-Stirling Common Interest Development Act, more commonly known as the Davis-Stirling Act, is a California state law that regulates housing cooperatives as well as condominiums and other home owners associations, also known as common interest developments. This Act covers many aspects of governance of housing cooperatives and it is important that co-op boards and managing agents be fully aware of the requirements it imposes. The purpose of the Davis-Stirling Act is to provide legally required guidelines for operations, and to assure transparency for all members on the operations. While co-ops are legally required to comply with the provisions of the Act, they also represent best practices for operations and can significantly improve the way a cooperative runs.

The Davis-Stirling Act was first adopted in 1985. It was the result of an effort to combine the many dispersed regulations in different California codes dealing with common interest developments. In 2012, the State Legislature passed AB 805, which became the new Davis-Stirling Common Interest Development Act, effective January 1, 2014. It is now more coordinated and brings all statutes that govern similar developments together. It is applicable to community apartments, condominiums, planned developments and stock cooperatives. The Davis-Stirling Act is a consumer protection statute with the purpose of protecting members' rights. It does not distinguish different types of cooperative housing and therefore limited equity cooperatives, as well as market rate cooperatives are included. It also does not distinguish the size of the development, so small as well as large developments are all under Davis-Stirling.

This Report provides details on some of the key elements of the Act, but is by no means comprehensive. In an effort to summarize portions of the Act, some details have been left out. Board members and managing agents should read the full Act and if they have questions about the proper implementation, they should consult legal counsel for advice on interpretation. The Report begins with a brief summary of the Chapters of the Act. This is followed with more details on the key sections highlighted in this report: Notification Requirements, Elections, Disclosure to new Purchasers, Reporting Requirements, Finances and Reserves and Assessments. Some forms for reporting to membership required by the Davis Stirling Act are attached in the Appendix. There is an effort to reference sections of the Act that are referred to in the Report to make it easier to refer to the full text.

LEGAL DISCLAIMER

Every effort has been made to provide the most accurate and complete information currently available. However, the authors are not attorneys and this pamphlet should not be construed as legal advice. Nothing provided in this pamphlet should be used as a substitute for the advice of competent legal counsel.

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SUMMARY OF THE DAVIS-STIRLING ACT

Please note, the § symbol stands for Section, and indicates where to find the chapter in the Act.

Chapter 1. General Provisions §4000-4190

This Chapter provides overview of the act, definitions, notification and delivery requirements and approval requirements.

Chapter 2. Application of Act §4200-4202

This Chapter provides a scope for the applicability of this act.

Chapter 3. Governing Documents §4205-4370

This Chapter contains information regarding the declaration, articles of incorporation, and operating rules and the means of amending them.

Chapter 4. Ownership and Transfer of Interests §4500-4650

This Chapter contains information regarding transfer disclosure, transfer fee, restrictions on transfer, and transfer of separate interest.

Chapter 5. Property Use and Maintenance §4700-4790

This Chapter contains information regarding protected uses of US flag (§4705), noncommercial sign (§4710), pets (§4715), roof (§4720), TV antenna (§4725), landscape (§4735), and electric vehicle charging stations (§4745), modification of separate interest, and maintenance. Generally, owner of a separate interest has the right to display noncommercial signs in a member's separate interest and the right to keep at least one pet.

Chapter 6. Association Governance §4800-5405

This Chapter contains guidelines regarding board meeting, election, record inspection, record keeping, annual reports, managing agent and government assistance.

Chapter 7. Finances §5500-5580

This Chapter covers guidelines regarding accounting, use of reserve funds and reserve planning.

Chapter 8. Assessments and Assessment Collection §5600-5740

This Chapter covers establishment and imposition of assessments, assessment payment and delinquency, and assessment collection.

Chapter 9. Insurance and Liability §5800-5810

This chapter covers the insurance and liability of the association and owner of a separate interest.

Chapter 10. Dispute Resolution and Enforcement §5850-5985

This Chapter covers types of required measures for internal dispute resolution, imposing penalties and other means of enforcement, options for legal action.

Chapter 11. Construction Defect Litigation §6000-6150

This Chapter covers the procedures for filing a claim against a builder, developer, or general contractor for defects in the design or construction. It includes notification requirements, means of dispute resolution, and filing a Civil Action.

NOTIFICATION REQUIREMENTS

A cooperative is legally required to notify members about key decisions made by the board, and other important issues. This section explains what notices are required and how they are to be delivered.

Individual Delivery

Some notices require that each member receive a copy of the notice, and the Act will indicate that it must be delivered by “*individual delivery*” or “*individual notice*”. In this case, one of the following delivery methods shall be used:

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. Email, facsimile, or other electronic means only if the recipient has consented in writing to that method of delivery. The recipient may revoke the consent in writing.

The following documents or notices require an individual delivery:

1. Amendment to governing document due to construction activities (§ 4230(c))
2. Amendment to declaration (§ 4275(g))
3. Temporary removal of occupants for a period of time that is needed for an effect treatment of wood-destroying pest or organisms, (§ 4785(c))
4. The association shall make association records available for inspection and copying by a member of the association or the member’s designated representative within a specific timeframe. The association may satisfy the request by delivering copies of the specifically identified records to members by individual delivery. (§5260)
5. For any fiscal year in which the gross income to the association exceeds \$75,000, a review of the financial statement of the association shall be prepared. A copy of the review of the financial statement shall be distributed to the member within 120 days after the close of each fiscal year, by individual delivery (§5305)
6. For both Annual Budget Report and Annual Policy Statement, when a report is prepared, the association shall deliver the full report or a summary of the report to all members by individual delivery. (§5310-20)

7. The association shall provide individual notice to the member of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due. (§5615)
8. If any of the policies described in the annual budget report (§5300) have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limit or an increase in the deductible, as to any of those policies, the association shall as soon as reasonably practicable, provide an individual notice (§5810)
9. Any new or revised monetary penalty that is adopted after the annual policy statement (§5310) has been prepared may be included in a supplement that is delivered to the member individually (§5850(b))
10. When the board is to meet to consider or impose discipline upon a member, or to impose a monetary charge as a means of reimbursing the association for costs incurred by the association in the repair of damage to common area and facilities caused by a member or the member's guest or tenant, the board shall notify the member in writing at least 10 days prior to the meeting using individual or personal delivery (§5855 (a))
11. If the board imposes discipline on a member or imposes a monetary charge on the member for damage to the common area and facilities, the board shall provide the member a written notification of the decision by individual or personal delivery (§5855(c))

General Delivery/ Notice

Some notices can be distributed without individual copies going to each member, and the Act will indicate that these can be distributed by “*general delivery*” or “*general notice*”. These documents may be provided by one of more of the following methods:

1. Any method provided for individual notice, as described above;
2. Inclusion in a billing statement or newsletter
3. Posting the printed document in a prominent location that is accessible to all members, if a location has been designated for the posting of general notices by the association, it shall be mentioned in the annual policy statement
4. By inclusion in the programming if the association broadcasts television programming for the purpose of distributing information on association business to its members

If a member requests to receive general notices by individual delivery, all general notices to that member given under this section shall be delivered by individual delivery. This option shall be described in the annual policy statement. To cancel prior request for individual delivery of general notices, a writing notice to the association shall be delivered

The following documents or notices require a general delivery:

1. If the board plans to change any rules that affect the members, they must provide general notice of a proposed rule change at least 30 days before making the rule change. The notice shall include the text of the proposed rule change a description of the purpose and effect of the proposed rule change. (§4360(a))
 - a. Notice is not required if the board determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the association.

2. The board shall deliver a general notice not more than 15 days after making a rule change. (§4360(c))
3. Members representing 5% or more of the association may call a special vote of the members to reverse a rule change. The board shall provide general notice of the results of the member vote no more than 15 days after the close of voting. (§4365(g))
4. Members must receive notice of the time and place of a board meeting at least four days before the meeting, or the period stated in its governing documents, except in the case of an emergency meeting. (§4920)
5. Within 15 days of an election, the board shall give general notice of the tabulated results of the election. (§4360(a))
6. When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the association shall provide general notice of that decision and of the availability of an accounting of those expenses. (§5520(a))

Complete delivery (§4055)

1. 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.
2. If the association or a member has consented to receive information by electronic delivery, and the information is required to be in writing, that requirement is satisfied if the information provided in an electronic record is 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.

OPERATING RULES

Operating rule refers to a regulation adopted by the board of directors of the association that applies to the management and operation or the conduct of the business and affairs of the association. For full discussion on operating rules, please refer to §4340- 4370.

An operating rule is valid and enforceable only if all of the following requirements are satisfied:

1. The rule is in writing.
2. The rule is within the authority of the board conferred by law or by the legal documents of the association
3. The rule is not inconsistent with the law and the legal documents of the association.
4. The rule is adopted, amended and repealed in good faith and in substantial compliance with the requirements of this article.
5. The rule is reasonable

A rule change occurs when there is an adoption, amendment, or repeal of an operating rule by the board. In order to assure that the members are aware of proposed changes in the rules and have an opportunity to voice their concerns, a proposed rule change regarding one or more of the following issues require a notification before and after making a rule change, and members representing 5% or more of an association may call a special vote of the members to reverse a rule change.

1. Use of the common area or of an exclusive use common area.
2. Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest
3. Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties
4. Any standards for delinquent assessment payment plans
5. Any procedures adopted by the association for resolution of disputes
6. Any procedures for reviewing and approving or disapproving a proposed physical change to a member's separate interest or to the common area
7. Procedure for elections

Notification

1. A decision on a proposed rule change shall be made at a board meeting, after consideration of any comments made by association members.
2. The board shall provide general notice at least 30 days before making the rule change.
3. The notice shall include the text of the proposed rule change and a description of the purpose and effect of the proposed rule change.
4. After making a rule change, the board shall deliver general notice of the rule change.

Emergency Rule Change Notification

1. If the board determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the association, a notice of a proposed emergency rule change is not required.
2. After an emergency rule change was made, a general notice shall be issued including the text of the rule change, a description of the purpose and effect of the rule change, and the date that the rule change expires.
3. An emergency rule change is effective for 120 days, unless the rule change provides for a shorter effective period.

Special Vote

1. Members of an association owning 5% or more of the separate interests may call a special vote of the members to reverse a rule change (does not apply to an emergency rule change)
2. A special vote may be called by delivering a written request to the association.
3. The written request may not be delivered more than 30 days after the association gives general notice of the rule change.
4. Not less than 35 days nor more than 90 days after receipt of a proper request, the association shall hold a vote of the members on whether to reverse the rule change.
5. A member request to copy or inspect the membership list for the purpose of signature collection to call a special vote under this section may not be denied on the grounds that the purpose is not reasonably related to the member's interests as a member.

6. After the close of voting, the board shall provide general notice of the results of the member vote as soon as possible, but not more than 15 days.

The rule change may be reversed by the affirmative vote of a majority of a quorum of the members, or if the legal documents require a greater percentage, by the affirmative vote of the percentage required.

A rule change reversed under this section may not be readopted for one year after the date of the vote reversing the rule change. Nothing in this section precludes the board from adopting a different rule on the same subject as the rule change that has been reversed.

The above notification and special vote guidelines do not apply to the following actions by the board:

1. A decision regarding maintenance of the common area
2. A decision on a specific matter that is not intended to apply generally
3. A decision setting the amount of a regular or special assessment
4. A rule change that is required by law, if the board has no discretion as to the substantive effect of the rule change.
5. Issuance of document that merely repeats existing law or the governing documents

DISCLOSURE TO NEW PURCHASERS

It is legally the responsibility of the *owner* of separate interest to disclose information to prospective purchaser before the transfer of the title or the execution of a real property sales contract. (§4525) This is often done by the co-op or the property management.

Required information includes:

1. A copy of all governing documents
2. Any restriction in the governing documents limiting the occupancy (such as seniors only)
3. A copy of the most recent annual documents distributed;
4. A written statement with 1) the amount of the association's current regular and special assessments and fees, 2) any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and 3) any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. This statement shall include information on late charges, interest, and costs of collection;
5. A copy or a summary of any notice previously sent to the owner that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request;
6. Any change in the association's current regular and special assessments and fees which have been approved by the board, but have not become due and payable as of the date disclosure;
7. If there is a 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, a statement describing the prohibition and its applicability;
8. Per prospective purchaser's request, a copy of the minutes of board meetings, excluding meetings held in executive session, conducted over the previous 12 months that were approved by the board.

ELECTIONS

Cooperatives are democratic organizations, and must hold elections, with each household having one vote. This section covers elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area shall be held by secret ballot in accordance with the procedures set forth in this article. If there is a conflict between this article and other state law relating to elections or the Associations governing documents, the provisions of this article shall prevail. For full details on elections, see §5100-5145.

Adopting Election Rules

An association must adopt Election Rules, and notify membership of such rules that do all of the following:

1. Ensure equal access to association media to any candidate and may not edit any content from these communications.
2. Ensure equal access to the common area meeting space during a campaign, at no cost, to all candidates.
3. Specify the qualifications for candidates for the board and procedures for the nomination of candidates, consistent with the governing documents. Nomination procedures must allow any member to nominate him or herself for election to the board.
4. Specify the qualifications for voting and the voting period for elections, including the times at which polls will open and close.
5. Specify a method of selecting one or three independent third parties as inspector of elections by appointment by the board or by election by the members of the association.
6. Allow the inspector to appoint and oversee additional persons to verify signatures and to count and tabulate votes, provided that the persons are independent third parties.

Inspector of Elections

The association shall select an independent third party or parties as an Inspector of Elections.

The number of inspectors of elections shall be one or three.

1. An independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public.
2. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person or business entity who is currently employed or under contract to the association for any compensable services unless expressly authorized by rules of the association.
3. The inspector or inspectors of elections shall do all of the following:
 - a. Determine the number of memberships entitled to vote and the voting power of each.
 - b. Determine the authenticity, validity, and effect of proxies, if any.
 - c. Receive ballots.
 - d. Hear and determine all challenges and questions arising in connection with the right to vote.
 - e. Count and tabulate all votes.
 - f. Determine when the polls shall close, consistent with the governing documents.

- g. Determine the tabulated results of the election.
- h. Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

Voting Procedure

1. Ballots and two preaddressed envelopes with instructions on how to return ballots shall 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. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The procedures shall include:
 - a. The ballot is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.
 - b. The second envelope is addressed to the inspector of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector of Elections. The member may request a receipt for delivery.
2. If a quorum is required by the governing documents, each ballot received by the Inspector of Elections shall be treated as a member present at a meeting for purposes of establishing a quorum.
3. If cumulative voting is allowed in the governing documents, it is allowed under these procedures.
4. In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.

Counting Ballots

1. All votes shall be counted by the Inspector of Elections, in public at a properly noticed open meeting of the board or members. Any candidate or other member of the association may witness the counting and tabulation of the votes. No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. The inspector of elections, or the designee of the inspector of elections, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector of elections, it shall be irrevocable.

The tabulated results of the election shall be promptly reported to the board and shall be recorded in the minutes of the next meeting of the board and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Section 4045 of the tabulated results of the election.

Ballot Retention

The sealed ballots shall be at a location designated by the Inspector until after the tabulation of the vote, and for one year after, when the period for challenging the election has expired, and then transferred to the association. If there is a challenge to the election process, the inspector of elections shall, upon written request, make the ballots available for inspection and review by an association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

Campaign-Related Information

Association funds shall not be used for campaign purposes in connection with election except to the extent necessary to comply with duties of the association imposed by law. "Campaign purposes" includes, but is not limited to, the advocating the election or defeat of any candidate or prominently featuring the name of any candidate on a communication from the association or its board, excepting the ballot or ballot materials.

Judicial Enforcement

1. A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by the association, within one year of the date the cause of action accrues. Upon a finding that the election procedures of this article, or the adoption of and adherence to rules provided by Chapter 3, Article 5 (commencing with Section 4340) were not followed, a court may void any results of the election.
2. A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.
3. A cause of action under Sections 5100 to 5130, inclusive, with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

FINANCES & RESERVES

This section covers finances regarding accounting, use of reserve funds and reserve planning. Please refer to §5500-5570 for full discussion.

Accounting

Unless the governing documents impose more stringent standards, the board shall do all of the following This section covers finances regarding accounting, use of reserve funds and reserve planning. Please refer to §5500-5570 for full discussion.

1. Review a current reconciliation of the association's operating accounts and reserve accounts on at least a quarterly basis.
2. Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

3. Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.
4. Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

Use of Reserve Funds

The definition of “Reserve accounts” for this act is: funds that have been set aside for repair or replacement, or funds received from compensatory damages. (§4177)

1. The withdrawal of moneys from the association’s reserve accounts requires at least two persons’ signatures, one of whom must be a director.
2. The board of directors may not spend reserve funds for any purpose other than the repair, replacement, or maintenance of major components, or litigation involving these purposes.
 - a. When the decision is made to use reserve funds to pay for litigation, the association shall provide general notice of that decision and of the availability of an accounting of those expenses
3. 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 board meeting notice
 - a. The notice shall include why the transfer is needed, some of the options for repayment and whether a special assessment may be considered
 - b. The board must issue a written finding, recorded in the board’s minutes, explaining why that the transfer is needed and describing when and how the moneys will be repaid to the reserve fund.
 - c. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, however, may temporarily delay the restoration by making a finding supported by documentation that it would be in the association’s best interest.
 - d. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

Reserve Planning

1. At least once every three years, the board of directors shall cause to be conducted a visual inspection of the accessible areas of the major components that the association is obligated to repair, replace or maintain as part of a study of the reserve account requirements. This is commonly referred to as the Capital Reserve Study.
2. The board shall review this study annually and make necessary adjustments to the reserve account requirements.
3. That study shall:
 - a. Identify the major components that the association is obligated to fix that have a remaining useful life of less than 30 years.
 - b. Identify the remaining useful life of the components identified above in the study.
 - c. Estimate the cost to fix the components identified

- d. Estimate the total annual amount necessary to fund the identified major components during and at the end of their useful life.
 - e. Provide a **reserve funding plan** that indicates how the association plans to fund the amount necessary for the repair and replacement of all major components with an expected remaining life of 30 years or less.
 - i. A reserve funding plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan.
 - ii. The plan shall be adopted by the board at an open meeting before the membership of the association
4. The summary of the association's reserves which shall be included in the annual budget report, shall be based on the most recent review or study and based only on assets held in cash or cash equivalents. It shall also be printed in boldface type, and shall include all of the following
- a. The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
 - b. As of the end of the fiscal year for which the study is prepared:
 - i. The current estimate of the amount of cash reserves necessary to repair, replace, or maintain the major components.
 - ii. The current amount of accumulated cash reserves actually set aside to repair, replace, or maintain major components
 - iii. The percentage that the amount determined for purposes in (ii) equals the amount determined for purposes of clause (i).
 - iv. The current deficiency in reserve funding expressed on a per unit basis.
5. The disclosures required by this section under "reserve planning" shall be summarized on the form in Appendix A. This form shall accompany each annual budget report or summary annual budget report.

ASSESSMENTS AND ASSESSMENT COLLECTION

An association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this act, and shall not impose or collect an assessment that exceeds the amount necessary to cover the costs for which it is levied.

Assessment Approval Requirements

1. Annual increases in regular assessments for any fiscal year shall not be imposed unless the board has complied with that fiscal year's Annual Budget (§5300), or has obtained the approval of members, at a member election (§4070).
2. The board may not impose a regular assessment that is more than 20% greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of members, pursuant to §4070.

Emergency Exception to Assessment Approval Requirements

Assessments may increase if necessary for emergency situations, which include any one of the following:

1. An extraordinary expense required by an order of a court.
2. An extraordinary expense necessary to repair any part of the property for which the association is responsible where a threat to personal safety on the property is discovered.
3. An extraordinary expense necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual budget report. Prior to the imposition or collection of an assessment under this subdivision,
 - a. The board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process
 - b. The resolution shall be distributed to the members with the notice of assessment.

Notice of Assessment Increase

The association shall provide individual notice (§4040) to the members of any increase in the assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due.

Property Tax Value as Basis for Assessments

1. An association shall not levy assessments on separate interests based on the taxable value of the separate interests unless the association, on or before December 31, 2009, in accordance with its governing documents, levied assessments on those separate interests based on their taxable value, as determined by the county tax assessor.
2. An association that is responsible for paying taxes on the separate interests within the common interest development may levy that portion of assessments on separate interests that is related to the payment of taxes based on the taxable value of the separate interest, as determined by the tax assessor.

Debt and Delinquency

This Section of Davis Stirling Act covers procedures for declaring an owner of a separate interest delinquent on assessments and other fees owed to the association. These are measures normally handled by a management agent, and the board should instruct that party to read and follow these procedures carefully. We do not attempt summarize these sections as there are critical details that must be observed. Following are a few key points that may help to understand what is covered in this section.

1. Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due, unless the legal documents provide a longer time period, in which case the longer time period shall apply. If an assessment is delinquent, the association, there are specific procedures that must be followed (§5650)

Assessments & Assessment collection

1. If an owner of a separate interest disputes the sum levied by the association, they may pursue dispute resolution and the amount in dispute does not exceed the allowed limits may commence an action in small claims court. (§5658). The offer of dispute resolution must be offered by the association.
2. If an association decides to record a lien upon the separate interest of the owner of record collect a debt that is past due, the association shall notify the owner of record in writing by certified mail at least 30 days prior to filing. Details of the form of notice in §5660.
3. An owner may submit a written request to meet with the board to discuss a payment plan for the debt. The association shall provide the owners the standards for payment plans, if any exists. Details of meeting requirements and payment plans are in §5665.
4. The decision to record a lien for delinquent assessments shall be made only by the board and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the directors in an open meeting. The board shall record the vote in the minutes of that meeting. (§5673)
5. When a lien is recorded, the owner of the separate interest must be notified. Provisions for this notice are in §5675.
6. Thirty days following the recording of a lien, the lien may be enforced in any manner permitted by law, including foreclosure (§5700-20).
7. There are some fees levied by an association that may not be recorded as a lien (§5725).
8. The annual policy statement, prepared pursuant to Section 5310, must include a specific notice, on Assessments, Foreclosure, Payments and Payment Plans (§5730). This notice is included in **Appendix B**.

Appendix A: Assessment and Reserve Funding Disclosure Summary

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.

(2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, 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:	

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 report.

(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association’s obligation for repair and/or replacement of major components during the next 30 years? Yes _____ No _____

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

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

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

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570, the estimated amount required in the reserve fund at the end of the current fiscal year is \$_____, based in whole or in part on the last reserve study or update prepared by _____ as of _____ (month), _____ (year). The projected reserve fund cash balance at the end of the current fiscal year is \$_____, resulting in reserves being _____ percent funded at this date. If an alternate, but generally accepted, method of calculation is also used, the required reserve amount is \$_____. (See attached explanation)

(7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next five budget years is \$_____, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is \$_____, leaving the reserve at _____ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be \$_____, leaving the reserve at _____ percent funding. Note: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change. At the time this summary was prepared, the assumed long-term before tax interest rate earned on reserve funds was _____ percent per year, and the assumed long-term inflation rate to be applied to major component repair and replacement costs was _____ percent per year.

Appendix B: Statement of Collection Procedure

“NOTICE ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner’s property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney’s fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner’s property. The owner’s property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 5700 through 5720 of the Civil Code, inclusive) In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney’s fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common area damaged by a member or a member’s guests, if the governing documents provide for this. (Section 5725 of the Civil Code) The association must comply with the requirements of Article 2 (commencing with Section 5650) of Chapter 8 of Part 5 of Division 4

of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 5675 of the Civil Code) At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 5660 of the Civil Code) If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 5685 of the Civil Code) The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, the owner may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 5655 of the Civil Code) 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. An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of Part 5 of Division 4 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 3 (commencing with Section 5925) of Chapter 10 of Part 5 of Division 4 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure. An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 5685 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share interest may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exists. (Section 5665 of the Civil Code) The board must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 5665 of the Civil Code)"

(b) An association distributing the notice required by this section to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7 of the Business and Professions Code may delete from the notice described in subdivision (a) the portion regarding meetings and payment plans.