

GRG UNIVERSITY™ PRESENTS



COMMUNITY ASSOCIATION  
**BASICS**

**GRG MANAGEMENT**



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## GLOSSARY

### ARCHITECTURAL REVIEW COMMITTEE

This committee is usually set up by the board of directors to review plans submitted by an owner requesting to alter some portion of the project. If there is no architectural review committee then the board of directors reviews architectural improvement requests submitted by owners.

### ASSESSMENT

This is the monetary contribution made by each owner to help maintain the project. Assessments are used by the association to preserve the value of the entire project, which in turn protects the value of the individual homes. The amount of the assessment is set by the board of directors according to a “reserve study” (defined below).

### ASSOCIATION

This is the business entity, usually a non-profit corporation, set up to manage the project. The primary function of the association is to preserve the property value of the homes and other property in the project. Also, the association is required by law to have a process to enforce the governing documents, including collecting assessments.

### BALLOT

A ballot is simply a document for owners to cast a vote, in writing. The election of directors is almost always conducted by ballot. A ballot is different from a proxy (defined below) in that a vote is actually cast on the ballot -- as opposed to a proxy which allows an owner to designate someone else to cast his or her vote.

### BOARD OF DIRECTORS

The board of directors is the governing body of the association and consists of a committee of volunteers, usually five people. The board of directors sets the policies and procedures for how the project operates, and interprets and enforces

the governing documents. Board members are elected by the members (owners) of the association.

## BYLAWS

For incorporated associations this is the document that contains the primary set of guidelines that the association is required to follow to conduct business. It includes rules about board meetings, meetings of the members, qualifications to serve on the board, voting procedures, etc.

## COMMON AREA

The common area is generally everything in the project except the individual homes. The association typically has the exclusive responsibility and authority to control and maintain the common area.

## CONDOMINIUM

In a condominium project the “condominium” refers to each owner’s entire interest in the project. It typically includes the air-space inside the home and the right to use exclusive use common areas that go with the home (such as a balcony or patio, or both), as well as the non-exclusive right to use the general common areas.

## CC&RS

### (DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS)

For most associations this is the document that contains the primary set of guidelines that governs the project, and which all owners, and the association, are required to follow at all times. In some instances the CC&Rs are very specific; in other instances the provisions are general in nature and open to interpretation by the board of directors and the members.

## DECLARANT

The person or organization that enacted the CC&Rs is the declarant. Usually, the developer of the project is the declarant.

## DIRECTORS

Each individual member of the board of directors is a director. Each director has the same rights and obligations as the other directors. Also, each director has the

same voting power; however, the law requires the board to act as a single unit, voting on all matters. Therefore, no director has any individual authority.

## GOVERNING DOCUMENTS

This is the general term that refers to the group of documents that contain the guidelines for operation of the project. The governing documents include (depending on the type of association) the CC&Rs, bylaws, articles of incorporation, the condominium plan, the planned unit development permit and rules and regulations enacted by the board. The association is required by law to enforce the governing documents.

## GUESTS

Anyone who is in the project but who is not a resident (including owners, if the owner has rented or leased his or her home).

## MEMBER/OWNER

In a community association these terms almost always mean the same thing; every owner of a home is a member of the association. The sole qualification to be a member is to own a home in the project. Only owners have the right to vote, and only owners are obligated to pay assessments.

## OFFICERS

The officers are the president, vice president, treasurer (or chief financial officer) and secretary (and there may be more than one vice president). In a community association the officer positions are usually not hierarchical. Instead, the officer positions simply designate responsibility. The officers' positions are separate and distinct from the role of a director, but directors can, and usually do, serve in the officer position as well.

## PROFESSIONAL MANAGER

The professional manager acts on behalf of the board of directors to help carry out the day-to-day activities of the association, including helping to enforce the governing documents and maintaining the project. Some associations have "on-site" managers who are actually employees of the association, but most hire an outside management company.

## PRO FORMA BUDGET

A planned budget, as opposed to a final budget.

## PROJECT

This is the general term used to refer to the entire complex, including the common area and all of the homes.

## PROXY

A proxy is a way for an owner to designate another person (or the board of directors) to cast a vote on his or her behalf. For example, if a proxy designates the board to cast an owner's vote at the annual election, the board can cast the vote in any way it deems fit.

## QUORUM

A quorum is the minimum number of members of an organization that must be present at a meeting to conduct business; it is usually a simple majority. For example, with a five-member board of directors, one or two board members cannot simply decide to have a meeting and make decisions--there must be a quorum of board members present to make decisions.

## RESERVE ACCOUNTS

Not actually separate "accounts," the reserve accounts are line-item designations for each of the common area components and other expenses of the association. A list of reserve accounts may include designations for items such as fences, monument signs, walls, pools, roofs, etc.

## RESERVE STUDY

This is a review of the project to evaluate the remaining useful life of the common area components, and to estimate the cost of repair or replacement. For example, the reserve study professional may determine that common area fences must be painted every five years, and that it will cost \$5,000 to do so. The Board would then know to set aside \$1,000 per year in the "reserve account" for fences for five years. The reserve study is the basis for the association's budget and, therefore, the amount of the assessments.

## **RESIDENT**

The people who actually live in the project are the residents, regardless of whether they own their home.

## **RULES AND REGULATIONS**

The rules adopted by the association that interpret and supplement the governing documents.

## **TENANT**

Residents of the project who are renting or leasing a home.



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## THE COMMUNITY ASSOCIATION CONCEPT

### INTRODUCTION

Prior to the mid-1960s, the typical family home in the United States was almost exclusively the single-family detached house located in a neatly arranged subdivision. There seemed to be an unlimited supply of land. Each house was built on a separate lot. Construction costs were moderate and stable. The sidewalks, streets, lighting, other basic services (the infrastructure), and any parks or recreational facilities in the neighborhood were provided and maintained by the local government through taxes.

In recent years, land in desirable areas for home building has become much more scarce and, consequently, more expensive. Construction costs have continued to rise along with everything else. Government can no longer afford to provide the same level of service and variety of amenities to enhance the quality of life as it has in the past.

### THE CHALLENGE

In order to continue to produce affordable housing and maintain an adequate housing supply for the population, land use had to become more efficient, and construction methods more economical. Ways to relieve local government of the burdening costs of infrastructure had to be discovered.

### A RESPONSE

One response to the challenge came in various forms of group or cluster housing coupled with shared ownership of the land which, today, is collectively referred to as Common Interest Developments or CIDs. It is estimated that more than 31 million Americans live in some type of CID. There are tens of thousands of CIDs in California alone, with new ones being built every day.

A CID is descriptive not only of a certain type of real estate and form of home ownership, but also of a life-style that is becoming more and more common to the

American way-of-life. To understand the concept, it is important to know that there is no one structural type, architectural style, or standard size for CIDs. They come in a variety of types and styles, such as single-family detached houses, two-story townhouses, garden apartments with shared “party walls,” and apartment-like, multi-storied high rises.

While recent studies indicate that the average-size CID in California is made up of 88 units, CIDs may, in fact, range in size from a simple two-unit development up to a large complex having thousands of units, many commonly owned facilities, and multiple associations under the auspices of one overall master association. However, despite the wide range of differences that exist among CIDs, all CIDs are similar in that they allow individual owners the use of common property and facilities, and they provide for a system of self-governance and some degree of service for the benefit of the homeowners.

## LEGAL CHARACTERISTICS

CIDs have distinct legal characteristics that distinguish them from other forms of home ownership. One important feature is that the ownership in a CID combines individual ownership or the right of exclusive occupancy of a residential unit with the shared ownership of the common area within the development. Another distinguishing trait is that owners in a CID are automatically members of a homeowner's association that is responsible for the operation and maintenance of the common area. This association also provides for a system of self-governance. Finally, to pay the costs of the operation of the association, CID owners are assessed dues to cover their equitable share of the association's expenses.

## COMPARING AND CONTRASTING

Four types of CIDs are common in California: condominiums, planned developments, stock cooperatives, and community apartments. Condominiums and planned developments, two of the most common CIDs, are similar to each other in that both provide the owner with title (ownership) to a residential unit and the right to use the common within the development. The main difference between condominium and planned development ownership is the way title to the common area is held. In a condominium, each homeowner has an undivided interest in the common area with all the other owners in the development, whereas in a planned development, the homeowner's association usually owns the common area.

By comparison, in the community apartment form of ownership the homeowner owns a title interest in the development. In the case of a stock cooperative, the homeowner owns a share of stock or a membership interest in the corporate entity that owns the structures and land comprising the CID. Coincidental with either of these two forms of ownership, the homeowner has the exclusive right to use a specific residential unit within the development.

## THE ASSOCIATION

### BASIC STRUCTURE AND EARLY OPERATION

When a sub-divider develops a CID, the sub-divider must simultaneously structure an association of the CID owners that will be responsible for the ongoing management, operation, and maintenance of the common area. In creating this association, the developer must establish reasonable arrangements for the total operation of the association, to include: levying assessments; member and governing body meetings; voting and elections; governing body duties; and rights and responsibilities of the association. Initially, these arrangements must meet the requirements of the Real Estate Commissioner's Regulations administered by the Department of Real Estate (DRE).

The DRE's regulations constitute the standards by which DRE evaluates the governing instruments for subdivisions; however, they do not constitute substantive requirements in and of themselves. DRE's role with regard to CIDs is primarily one of seeing that the initial subdivision offering is made under reasonable arrangements.

The Declaration, Bylaws, and Articles of Incorporation are the documents used to establish the framework for the operation of the association. They form the legal basis for the "mini-government" of homeowners that is created. These documents are generally enforceable in a court of law, if the need ever arises. Once the original sub-divider or his or her successor in interest holds title to less than 25% of the lots or units in the project, the association is free to change the governing instruments as it sees fit as long as the changes are consistent with the Common Interest Development Act. (See Civil Code Section 1350 et. seq.) Case law mandates that the developer operate the association at all times in the best interest of the homeowners throughout the marketing phase, up until such time as the developer is no longer in control and the management and operation of the association passes

to the homeowners and their elected representatives. Once this transition of power is complete, sales by the developer cease and the homeowners are in charge. The association becomes a totally independent entity answerable to its membership.

## MEMBERSHIP

The homeowner's association is unique to CIDs. It exists only to serve a particular CID. Each owner in a CID automatically becomes a member of the association on taking title to a lot or interest in the project. Membership automatically terminates on the transfer of title. Only owners are association members and all owners must be members. With the exception of associations in which the developer is in control, each member of the association, generally, has one vote for each subdivision interest owned. When a lot or unit is owned by two or more persons as co-owners, the governing documents usually provide for a method of determining how the one vote can be exercised on behalf of the various owners.

## RIGHTS AND POWERS OF THE ASSOCIATION

The association must be given sufficient authority to effectively manage, operate, and maintain the common area which typically includes the landscaping, recreation facilities, private streets and driveways, outdoor lighting, structures, roofs, fences, and any other components of the common area of the CID. Powers adequate for this purpose are set forth in the association's governing documents.

These powers are usually delegated by the association to a governing body that must be elected by the membership at an annual or special meeting. The procedures for the election and for the removal of the members of the governing body are provided in the governing documents.

Although the governing body is given the power and responsibility to act on behalf of the association, if an action contemplated by the governing body will have a material effect on the rights of the membership, generally prior approval by at least a majority of the association is required. Examples of actions requiring such a vote are:

- Levying a regular assessment on each unit or interest that is more than 20% greater than the regular assessment for the preceding fiscal year or special assessments which in the aggregate exceed 5% of the budgeted gross

expenses for that fiscal year. These limits do not apply to increases necessary for emergency situations. An emergency situation is defined as an extraordinary expense; required by the court; or, necessary to repair or maintain common areas or other areas for which the association is responsible, which could not have been foreseen; or, to remedy a threat to personal safety. In the case of an unforeseen extraordinary expense, the governing body must distribute a resolution as to the necessity of the extraordinary expense and why the expense could not have been reasonably foreseen in the budgeting process.

- Where necessary, extending the term of the Declaration of Covenants, Conditions and Restrictions.

## THE GOVERNING BODY

### POWERS AND DUTIES

The powers of the association to manage the CID are normally exercised by a board of directors or similar governing body that is elected by the homeowners. The governing body is usually delegated the complete authority to manage the affairs of the entire project, subject to the control of the homeowners. The specific duties and powers of the governing body, generally set forth in the governing documents, normally include, but are not limited to the following:

1. Enforcement of the governing documents and any other instruments necessary for the management of the project;
2. Collection of assessments from association members for the payment of taxes, insurance, and operational costs related to the common area;
3. Contracting for goods, services, and insurance on behalf of the association, subject to some limitations;
4. Delegation of powers to committees, officers, and employees appointed and hired by the governing body to assist in the management and operation of the association;

5. Preparation of budgets and financial statements as called for in the governing documents or as prescribed by law;
6. Adoption and enforcement of rules for the operation and control of the common area;
7. Ability to take disciplinary action, including fines, interest, and late charges, against association members who violate the governing instruments;
8. The right to enter a privately-owned unit or interest in connection with construction, maintenance or emergency repair for the collective benefit of the owners;
9. Election of officers of the governing body and filling vacancies, except for one created through a removal by the association membership; and,
10. Repair and maintenance of the common area.

## FUNDING THE ASSOCIATION

### REGULAR ASSESSMENTS

The sole source of income for most associations is assessments levied on all owners in the project, including the developer, for each interest or unit owned. (In CIDs where some owners may receive greater services or benefits, assessments may be determined by a formula or schedule that is based on the proportional value of common area services provided.) Regular assessments cover the day-to-day costs of running the association, which include the management and operation of common area recreational amenities such as swimming pools, clubhouses and tennis courts, and services that include landscape maintenance, security guards and scheduled social activities.

Regular assessments for all units or interests, including those owned by the developer, in a single-phase CID, or in a phase of a multi-phase project, generally begin, for each phase, on the first day of the month following the first completed sale. (A single-phase project is one completely developed at one point in time; a multi-phase project is developed in increments at different points in time.)

## SPECIAL ASSESSMENTS

Additionally, the governing body has the authority to levy special assessments against all CID interests or units for major repairs, replacements, or new construction on the common area or for a one-time, unanticipated expense which cannot be covered by the regular assessment (for example, insurance premiums that unexpectedly “sky rocket”).

The special assessment should not be confused with a monetary penalty levied by the association against an individual homeowner to reimburse the association for an expense such as damage to the common area, or imposed as a disciplinary measure for a violation of the rules and regulations.

## OTHER CHARGES

Some CIDs establish user fees or special charges for uncustomary services and activities. Typically, these are imposed on an owner specifically benefiting from the service, such as an owner who wants to use the common area pool, clubhouse, or tennis courts to entertain private guests. The fees are usually on a pay-as-you-go basis, and generally cannot become a lien on the owner’s unit or interest.

## LIMITATIONS ON GOVERNING BODY AUTHORITY

Procedures for establishing and collecting regular and special assessments, late charges, interest, and fines are usually set forth in the governing documents. Even if the governing documents are more restrictive, the governing body may not, except in specific emergency situations or with the vote of a prescribed percentage of owners, impose a regular assessment that is more than 20% greater than the regular assessment for the preceding fiscal year, or special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the association for the current fiscal year. The association must give owners notice, by first class mail, of any increase in regular or special assessments.

Current law states that a late charge may not exceed 10% of the delinquent assessment or \$10, whichever is greater. However, the governing instruments may specify a smaller amount. Also, any interest charged may not exceed 12% commencing 30 days after the assessment is due. (See Civil Code Section 1366.)

## LIEN RIGHTS

- Once levied, the assessments, any late charges, reasonable collection costs and interest assessed according to the law become a debt of the owner of the separate interest. The amount of the assessment plus the other described charges becomes a lien on the owner's interest at the time the association files a notice of delinquent assessment with the county recorder of the county where the separate interest is located. The lien can be enforced in any manner permitted by law; including the sale of the property in order to recover money owed the association. If and when the owner pays the amount for which the lien was filed, the association must record a notice releasing the lien within twenty-one (21) days of receiving payment in full.

A statement describing the association's policy regarding lien rights and other legal remedies must be delivered annually by the governing body to the membership. (See Civil Code Section 1365)

## BUDGETING FOR TODAY AND TOMORROW

Prompt payment of assessments by all owners, including the developer, is essential, not only to cover day-to-day operating costs, but also to build a reserve fund for future repair and replacement of major components of the common area. The reserves are an important part of the association's annual pro forma operating budget. They are generally collected with the regular assessment and set aside in a separate reserve account for the years to come. Ideally, all major repair and replacement costs will be covered by funds in the reserve account.

As the governing body is charged with the responsibility for maintaining the association's property, it is important that the accumulated cash be available when it is needed. Unlike an independent homeowner who can cause a repair or replacement to be made and pay for it out of his or her own pocket, the governing body is dependent on the membership for funding.

An insufficient reserve fund at a time when a major repair or replacement is needed usually results in the governing body levying a potentially burdensome special assessment, borrowing the money in extreme situations, or in some cases, deferring the work. A decision simply not to perform the needed repair or replacement might also be the response of a governing body afraid of the consequences of making an unpopular decision or of one operating at the "whim"

of the electorate. Such thinking and the failure of the association to adopt a “pay-as-you-go” plan for the future can create an environment of declining property values due to the increasing deferred maintenance and the association’s financial inability to keep up with the normal aging of the common area components. This, in turn, can have a serious negative impact on sellers in the project by making it difficult or even impossible for potential buyers to obtain financing from an institutional lender.

By contrast, a well-funded reserve goes a long way toward maintaining property values within a CID. Not only does it help eliminate the need for special assessments, but it spreads the costs of predictable repairs and replacements over time. Healthy reserves do away with the inequitable concentration of costs for anticipated major repairs and replacements on the owners in the project at the time the repair or replacement is required.

The law allows the governing body to borrow from the reserve fund to meet short-term cash-flow requirements or other expenses. The money must be returned to the reserve fund within one year unless the governing body can document that a delay in repayment is necessary. Ultimately, a special assessment may be required to repay the money. That special assessment would not be subject to the 5% aggregate limitation discussed above. (See Civil Code Section 1365.5.)

## RESERVE STUDY

A reserve study prepared by the association or professionals hired by the association gives a current estimate of the cost of repairing and replacing major common area components over the long term, commonly thirty years. A reserve study generally consists of an inventory of all the major component parts of the common area, an estimation of the remaining useful life of each component, as well as the cost of replacing each component at a predicted time in the future. A well-prepared reserve study allows the association, the owners, and potential buyers to compare estimated required reserves with the reserve funds on hand, and thereby serves as a guide to their respective future actions. If the replacement value of the major components which the association must maintain is equal to or greater than one-half of the association’s gross budget, the association must, at least once every three years, cause a reserve study to be completed and review that study annually in order to make any necessary adjustments to the analysis of reserve account requirements.

The DRE has two publications that are useful in preparing a reserve study: the “Operating Cost Manual,” for budget preparation; and “Reserve Study Guidelines for Homeowner Association Budgets.” For information on these and other DRE publications, write to: Book Orders, P.O. Box 187006, Sacramento, CA 95818-7006, or visit the DRE website: [www.dre.ca.gov](http://www.dre.ca.gov).

## DISTRIBUTION OF FINANCIAL STATEMENTS

The law requires that the association prepare financial statements for distribution to its members annually so that the membership will have an accurate picture of the association’s financial position and level of preparedness for the future, and so that the membership can participate in the financial decision-making process. These financial statements include:

1. A pro forma operating budget which shall include: estimated revenues and expenses; a general statement describing procedures used to calculate necessary reserves; identification of cash reserves; an estimate of current replacement costs of and the remaining useful life of the major components the association must maintain; and a comparison, by percentage, of reserve funds accumulated and the current estimate of necessary reserve funds, with a statement as to whether any special assessment(s) will be necessary for any repair or replacement or to augment the accumulated reserves.
2. In lieu of the actual budget, the association may choose to distribute to all owners a budget summary with a notice that the complete budget is available upon request. An association which does not distribute the required budget information to all owners may not impose an otherwise permitted increase in the regular annual assessment without a specified vote of the owners.
3. A copy of a review of the financial statement done in accordance with generally accepted accounting principles by a licensed accountant for any association whose annual gross income exceeds \$75,000.
4. A statement describing the association’s policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments. (See Civil Code Sections 1365 and 1366.)

# DUTIES, RIGHTS AND POWERS OF THE INDIVIDUAL OWNER

## DUTIES AND RESPONSIBILITIES

In order for the association to function successfully for the whole as well as for the parts, the relationship of the collective rights, duties, and responsibilities of the association to those of the individual owner must be recognized. When a person purchases in a CID, he or she assumes both collective and individual obligations that are set forth in the governing documents, California law, and rules and regulations adopted by the association. These duties apply not only to the common area, but also to the individual unit or interest that the person owns.

While the association is obligated to maintain the common area, sometimes to the extent of maintenance and repair of the exteriors of each owner's unit or interest, each owner is responsible for the maintenance and upkeep of the interior of his or her separate interest or unit. Typically, this includes the carpeting and drapes, interior walls, cabinets, counter tops, and the appliances and fixtures.

The individual owners may also have explicit maintenance responsibility for exclusive use common areas such as private yards, decks, and front doors. Sections 1351 and 1364 of the Civil Code specifically designate internal and external telephone wiring to serve a single separate interest as well as an exclusive use common area. The owner of a separate interest will be allowed reasonable access to the common area for the maintenance of internal and external telephone lines, subject to the consent of the association.

Each owner has the duty to pay assessments in a timely manner. Failure to fulfill this financial obligation not only places the association in financial jeopardy by creating a shortfall of funds necessary to operate the project, but also subjects the delinquent owner to potential interest charges, late fees, and costs of collection, including reasonable attorney's fees. In addition, each owner must accept personal responsibility for his or her actions, as well as the actions of his or her guests, children, and pets with respect to the common area and/or to the other owners in the project. This personal obligation also extends to each owner's role in ensuring maximum property value for all units in the project by adhering to maintenance

standards appropriate to the project. This “pride-of-ownership” is reflected in the upkeep of the individual unit or interest by each owner.

## BASIC RIGHTS

Along with the duties and obligations to the association, owners have specific protection of their ownership rights under California law, as well as through the governing documents. One of the most basic of these rights is the owner’s right to the quiet use and enjoyment of his or her unit or interest, as well as the right to use and enjoy the common area, subject to the established rules and regulations, and to the rights of others.

While the association generally has the exclusive right to modify or improve the common area, the individual owner has the right to modify or improve his or her unit (according to the architectural controls and procedures in the governing documents and the local building codes and standards, as applicable). However, any such modifications or improvements must not adversely affect the rights of other owners. The rights of individuals to modify their units include handicapped owners, who also have additional rights under federal and state laws to improve the accessibility and livability of their units. (See Civil Code Section 1360.)

CID owners have a basic right to be informed and to participate in the operation of the association. In order that homeowners are given this opportunity, the governing documents include specific provisions for the association’s giving notice of meetings, posting and/or mailing of certain information, and disseminating required financial statements, and other related information.

## RIGHT TO VOTE AND APPROVE

Many governing documents grant CID owners the right to vote on major issues affecting the association, such as:

- Election and/or removal of members of the governing body;
- Amendment and/or extension of the effective date of the governing documents;
- Approval of some third-party contracts entered into by the association;
- Approval of regular and special assessments in excess of annual amounts of increase allowed by law;

- Approval of various other decisions and expenditures such as improvement of the common area, annexation of other property to the existing project, and selling property of the association.

## CONCLUSION

A successful and viable CID is generally one in which homeowners assume an active role in the association's function, not only by attending meetings, voting, and paying dues on time, but also by taking an active role in the actual functioning of the association by running for the elected offices, serving on committees, and generally participating in group activities. It is one where owners have developed and fostered a "sense of community." While the framework of the association is the governing documents, it can certainly be said that the "backbone" of the association is the active and involved membership.

# THE ROLE AND FUNCTIONS OF THE BOARD OF DIRECTORS

## DIRECTORS

Directors are the members of the association's governing body, the Board of Directors. Directors are the persons ultimately responsible for virtually all decisions made by the association. Each director has one vote in the decision-making process. Under California law, directors have a "fiduciary duty" regarding the management and operation of the association, which duty is sometimes referred to as the "business judgment rule."

The directors' fiduciary duty may involve seeking advice from accountants, lawyers, architects, insurance professionals, property managers, and other professionals for matters within their respective areas of expertise. The board of directors is not expected to have expertise in all areas of the association's business. Generally, if the board follows a well-established procedure for the management of its business and employs the assistance of professionals in those areas that require specific expertise, it will meet the fiduciary duty threshold of responsibility, and be in compliance with the business judgment rule.

In exercising its authority, the only decisions the board generally cannot make are those major decisions that the governing documents explicitly leave to the owners. Such major decisions typically include amending the governing documents, selling or borrowing against association property, adopting extraordinarily large assessments, and similar decisions that affect the property rights of owners, or the mortgage holders.

Corporations Code Section 7231.5 addresses the duties of volunteer directors or officers and their liability for failure to discharge their duties. The law provides that, except under certain circumstances, there is no monetary liability on the part of, or cause of action against any volunteer director or executive officer of a nonprofit corporation based upon an alleged failure to discharge the person's duties as an officer or director if the duties are performed in such a manner that all of the following criteria are met:

- a. The duties are performed in good faith;
- b. The duties are performed in a manner that such a director or officer believes to be in the best interests of the corporation; and,

c. The duties are performed with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

This statute defines “volunteer” as the rendering of services without compensation, and “executive officer” as the president, vice-president, secretary or treasurer of a corporation or other individual serving in a like capacity who assists in establishing the policy of the corporation.

## OFFICERS

The officers of the association include the President, Treasurer or Chief Financial Officer, Secretary, and one or more Vice Presidents (although a vice-president may not be required). Officers are charged with the responsibility of conducting association business, according to the decisions of the board of directors. The association’s bylaws typically describe the duties of the officers and should be consulted by the directors and officers. If there is any question as to who has responsibility for what, the board should consult with the association’s attorney.

Typically, the President is the chief administrative officer who presides at all meetings of the board and at the annual owners meetings. The President is responsible for conducting the day-to-day business matters of the association. These duties usually include signing association contracts and carrying out other administrative functions as assigned by the Board.

The Chief Financial Officer is typically responsible for the financial affairs and records of the corporation. The Chief Financial Officer will generally sign all association checks, review monthly financial statements, and interact with the association’s accountant and/or tax preparer. Withdrawals from reserve accounts, however, usually require two signatures.

The Secretary is the legal custodian of the books and records of the association. This includes the official minutes of the board meetings and the annual owner’s meetings, as well as other official association records such as contracts and financial records. The Secretary also frequently co-signs contracts with the President.

While the officers of the association are given the specific titles of President, Chief Financial Officer, etc., they do not necessarily function in the same way as officers in a traditional business corporation, which may operate under a closely observed hierarchy or chain-of-command. Rather, the officers of the association should strive to function together, as a cohesive unit. Although certain responsibilities may be delegated to particular officers, no individual officer has the authority to make decisions for the association as a whole.

## CHAIN OF COMMAND (BOARD TO COMMITTEES)

Often the Board will be required by the governing documents to establish certain standing committees (e.g., architectural or nominating). In other cases, the board may establish a committee to review a specific situation (e.g., parking). Regardless of the reason, it is very important that the committee and the board maintain good communication regarding the information received and the decisions reached by the committee. Under no circumstances should the committee or its members act without the prior approval of the board. No matter who is assigned a particular task, the board will ultimately have the final responsibility for the acts of everyone to whom they delegate duties.

The primary concern regarding committees is assuring that they strictly comply with the requirements of the association's governing documents. For example, if the governing documents require an architectural committee to be established, then the governing documents may also contain a specific procedure that must be followed by the architectural committee when architectural improvement requests are reviewed.

Every committee member should be aware of the specific written requirements, and the time limits that are imposed on the committee. For example, the architectural committee often has a limited time to respond to an owner's request to make improvements, or to notify an owner of a violation that exists on his/her property. If the committee fails to meet a deadline, the board may lose its authority regarding these matters.

## ESTABLISHING BOARD LIAISONS

It is often difficult for the entire board to be familiar with every issue. An effective way to deal with this situation is to appoint individual directors to act as liaisons to

interact with third parties with whom the board needs to communicate. Generally, each liaison has a different area of responsibility. The Board may wish to establish liaisons as follows:

President	Liaison with management and attorney
Chief Financial Officer	Liaison with accountant and insurance professionals
Secretary	Liaison with attorney and for administrative matters
Vice President(s)	Liaison for architectural and landscaping

When each liaison position is filled and the liaison representatives have become familiar with their specific areas of responsibility, they will be able to gather and present the information necessary for the board to make decisions, quickly and efficiently.

# PARLIAMENTARY PROCEDURE

## INTRODUCTION

The California Civil Code requires associations to conduct meetings of members according to an established system of “parliamentary” procedure. Although the law does not require use of any particular procedure, the procedure chosen should be applied on a consistent basis.

Parliamentary procedure originated in the English parliament as a way of debating public affairs even when matters became heated. The rules were introduced to meetings in America with the first settlers from England and, as we know them today, were established in 1876 by Henry M. Robert when he published his first manual on parliamentary law entitled Robert’s Rules of Order.

The basic concepts underlying Robert’s Rules of Order are important because they form the foundation for an effective system of procedure. However, Robert’s Rules of Order were designed for a parliament, not for community association board meetings. Therefore, while it is useful to draw from Robert’s Rules of Order to establish an effective system of procedure, Robert’s Rules of Order have limited usefulness and are certainly not legally required.

The following information is a basic format for one system of parliamentary procedure that might be used by your association. It is important to remember that parliamentary procedure should be applied so that it is flexible enough to protect the rights of all members. As you will see, there is nothing particularly complicated about the process.

## ORDER OF BUSINESS

Organizations using parliamentary procedure should follow a fixed order of business. The following is a typical example:

- 1. Call To Order:** The Chairperson calls the meeting to order by a statement such as, “I’d like to call this meeting to order.” The Chairperson may also call *roll*, or announce who is present and/or absent.

**2. Reading And Approval of Prior The Minutes:** Secretary reads, or distributes a written copy of the minutes of the last meeting and calls for approval, modification or addition. Approval and/or modifications are achieved by a motion.

**3. Officers' Reports:** Any Officer makes a report, either verbally or in writing.

**4. Committee Reports:** Permanent, or “standing” committees report first. Temporary or “ad hoc” committees are then given an opportunity to present reports.

**5. Special Business:** If there is some unusual and important business, it may be addressed at this point in the meeting.

**6. Unfinished Business:** Business that was not or could not be completed at any previous meeting can be discussed.

## **7. New Business**

## **8. Announcements**

## **9. Adjournment**

## **MOTIONS**

Technically, there are four types of motions:

**1. Main Motions:** Main motions introduce subjects for consideration. Only one main motion may be considered at a time. For example, a main motion might be introduced as follows: “I move that we purchase...”

**2. Subsidiary Motions:** Subsidiary motions change or affect how the main motion is handled, and should be voted on before the main motion. Subsidiary motions include a motion to amend, a motion to refer to committee, a motion to postpone, a motion to limit or extend debate, a motion to close debate and a motion to table. A subsidiary motion may be introduced by saying, “I move the question be amended by striking out ...”

**3. Privileged Motions:** Privileged motions are those that are most urgent. These motions usually deal with special or important matters not directly related to the pending business. Some examples include a motion to recess, a motion to adjourn at a predetermined time, a motion to avoid an improper matter, etc.

**4. Incidental Motions:** Incidental motions raise questions of procedure that relate to other pending motions, and must be considered before a vote on the related motion. For example, an incidental motion may involve a request to withdraw a motion, a request for division of the motion into parts or verification of a vote.

Each type of motion has a purpose and falls into a priority in terms of when it is considered; the order of preference is: privileged motions; subsidiary motions; main motions. Incidental motions are simply decided as soon as they arise.

For the most part, however, the type of motion is not as important as the fact that a motion has been made. That is, the Board can only take certain actions by a duly called, seconded, and voted-upon motion. It is far more important to ensure that these actions be taken by motion than it is to worry about the type of motion.

## PRESENTING A MOTION

For all types of motions, the procedure is the same:

1. The board member who wants to make a motion indicates to the Chairperson that he or she has a motion to present to the board.
2. The Board member then says, “I make a motion that... (we adjourn the meeting, or we approve the financial report, etc.). Motions should be stated in the affirmative.
3. A different Board member says, “I second the motion.” (If there is no second, generally the motion dies.)
4. After it is seconded, the motion can be debated and it can be changed. The person who made the motion is supposed to have the first opportunity to talk. There is often little or no debate at this point because the board has usually discussed the matter, and is ready to vote.
5. The Chairperson asks, “All in favor?” and “All opposed?” Usually the vote is taken by a voice vote; the alternatives are discussed below.

## VOTING ON A MOTION

Generally, there are four methods of voting on a motion:

- 1. Voice Vote:** The Chairperson asks all in favor to say “Aye” and all opposed to say “No.”
- 2. Vote By Show of Hands:** Same as a voice vote, but directors raise their hands rather than respond verbally.
- 3. Vote By Roll Call:** The Chairperson calls each name, and the directors responds “yes” or “no.” The Secretary records the response of each director.
- 4. Vote By Ballot:** Voting is done by writing the vote on paper, anonymously. This is the best method if secrecy is an issue, or if the matter is controversial.

## ABSTAINING

Any board member has the option to vote in favor of a motion, against the motion, or to abstain from the voting. Abstaining is the same as “no comment.” It does not indicate approval or disapproval of the motion. The most common example of a reason to abstain from voting is the situation where the board is voting on something in which a director has an individual interest. For example, perhaps the board is voting to approve a landscape policy that prohibits rock gardens, and one of the directors has a rock garden. It would be appropriate for that director to abstain.

The effect of an abstention is the same as if that director simply was not present. There must be a majority vote of the remaining board members to carry the motion (or more than a majority, if the issue calls for it). It is important to note that the board member who abstained is still legally responsible for the action of the board.

## MAINTENANCE OF MINUTES, BOOKS AND RECORDS

Minutes of meetings along with the association books and records provide the documentation for all of the acts of the association/corporation. Under California law, all corporations are required to keep “adequate and correct books and records of account, minutes of the proceedings of its members, board and committees of the board, and a record of its members, giving their names and addresses and the class of membership held by each.”

Minutes should be an abstract of the actions taken by the board, not a transcript of everything that was said at the meeting. Reports of officers or committees should be attached, or summarized briefly. Motions should be stated clearly. It is

often helpful for each person making the motion to write it out. This will avoid confusion and provides a concise statement of what was proposed.

It is generally not required to record who moved or seconded a particular action. Discussion is typically not recorded, or if it is recorded at all it is only summarized. Likewise, on routine matters, actual voters need not be recorded. However, on controversial matters, especially where dissenting directors feel strongly against the actions of the majority, the names of those voting for and against should be recorded. Where a matter of direct personal interest is involved, the interested director should want the minutes to reflect that he or she abstained from voting, and may even wish to leave the meeting during any discussion and have that fact reflected in the minutes. All directors are obligated to stay informed about the affairs of the corporation. Thus, all directors should review the minutes for information and accuracy whether or not they were present at the meeting in question. If any changes in the minutes are required, they should be approved and noted in the official copy of the minutes which the secretary is charged with keeping. The changes should also be reflected in the text of the minutes of the meeting at which they were approved.

Occasionally an “executive session” will be held. This designation should be invoked to maintain confidentiality. Only board members and other necessary personnel (attorneys, management representatives, etc.) should participate in an executive session meeting. Actions taken in executive session should be generally noted in the minutes of the next regularly scheduled open meeting.

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