

What About the Paperwork?

The Documents HOA's Should Have to Give You

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Part of the Davis-Stirling Act, the basic law governing common interest developments, requires that certain documents and information be provided to members upon their request, to give to prospective buyers. The statute, Civil Code Section 1368, does not list all of the documents that may be informative to prospective buyers. However, the required documents will contain important information about the association.

Here is a brief checklist of the mandatory disclosures, to assist the homeowner, manager, Realtor®, or prospective buyer.

CHECKLIST:

1. **Governing Documents:**
 - CC&R's
 - ByLaws
 - Articles of Incorporation (or statement of non-incorporation)
 - Condominium Plan or Subdivision Map (not required, but should be provided)
 - Rules/Regulations
2. **Financial Documents:**
 - Budget
 - Accountant Review
 - Assessment Collection Policies
 - Assessment and Reserve Funding Disclosure Summary
3. **Assessments Information:**
 - Assessment (regular and special)
 - Assessments - future (if known)
4. **Insurance Information:**
 - Summary of insurance policies
5. **Problems/Violations Information:**
 - Assessment arrearages on home
 - Unpaid fines or penalties on home
 - Unresolved violations of HOA documents

6. **Unique Issues:**
 - Disclosures regarding age-restricted communities.
 - Current or resolved construction defect case information.

1) **Governing Documents**

The association must provide a copy of its governing documents, namely the Covenants, Conditions and Restrictions (aka "CC&R's"), ByLaws, the Articles of Incorporation, and all operating rules (aka "rules," "house rules," or "rules and regulations"). If the association is not incorporated, there must be a written statement that the association is unincorporated. The Condominium Plan or Subdivision Map is not specifically required by law, but should also be provided, since it legally defines the real estate interest being acquired.

2) **Financial Documents**

The association must also provide a copy of its most recent: budget, accountant's review of the association's financial statements, Assessment and Reserve Funding Disclosure Summary, and assessments collection policies. These documents will tell you much about the association's financial condition and the financial security (or lack thereof).

Pay close attention to the reserves information, much expanded this year by a change in the law. The Assessment and Reserve Funding Disclosure Summary is a brand new requirement in the law, just added to the Davis-Stirling Act in July 2006. Is the association following the recommendations of its reserve study preparer? Or is the association leaving next to nothing in the reserve fund, exposing the association to future major borrowing and homeowners

in future years to major special assessments? Does the association have a plan to try to become more adequately funded in the future?

3) Insurance Information

How completely is the association protected by insurance? The association is required to provide information listing for each of its insurance policies:

- A) The name of the insurer;
- B) The type of insurance;
- C) The policy limits; and
- D) The amount of deductible

4) Assessments Information

What are your assessment payment obligations when you buy a residence within the association? The association must state in writing the current regular assessments (sometimes called dues) and any special assessments. The association must also disclose any assessment increases, or any new special assessments, approved but not yet due.

5) Problems/Violations Information

Are you buying into a residence which has not been a good member of the association? The association must indicate if any assessments are unpaid for the residence in question, including the amount of the total arrearage. Any unresolved violations by the member of the association governing documents must also be disclosed. Are there any fines or penalties the owner has not paid? You have the right to know that also.

6) Unique Issues

Some associations are age-restricted communities, established for senior living. Such restrictions must be disclosed along with specific information regarding the applicability of the restriction.

Some associations have had to sue their builders for construction defects. If the case is still pending, you have a right to the same defect list given at the outset of the lawsuit to the builder. If the lawsuit was settled, there should be a post-litigation disclosure regarding its plans to

deal with the defects – you have a right to that also.

Other Helpful Documents

In addition to the specifically required documents, prospective buyers may wish to request the –

*Latest quarterly or monthly financial report;

*Last three board meeting minutes; and

*Latest reserve study.

These documents are not mandatory disclosures, but will provide further helpful information and insight into the association.

[Note to association directors and managers... Are your association's documents in order? If they are not, this may not only violate the law, but may reflect poorly on the desirability of living in your common interest development.]

What can the association or its manager charge for the copies? Only the association's actual and reasonable charge to make the copies. In past days some would charge fees which contained thinly disguised profit, but the law no longer permits this.

When must these documents be provided? They must be provided within ten days of written request.

Difficulties in obtaining these aforementioned documents are common. However, if you have difficulties in obtaining them, it may not be that the HOA or its manager is trying to hide anything or to sabotage your purchase. This law has changed frequently in recent years, and the list of required disclosures also is much longer than it was. So, they may not know exactly what the law requires. Also, many associations are self-managed, and you may simply be dealing with volunteers struggling to take care of association paperwork in addition to their daytime jobs. You can read this

law (Civil Code §1368) yourself, as with any provision of the Davis-Stirling Act (Civil Code Sections 1350-1378) by going to the Legislature's web site at <http://www.leginfo.ca.gov/calaw.html>.

Click on "Civil Code", then on "search", and you'll find a Table of Contents open for the entire Civil Code.

The law provides much information for the common interest development homeowner and prospective buyer. Make good use of it. Be informed, and be a better buyer and member of your new community.

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