

## Annual Disclosures, Mandatory Checklist

### 1. **Annual Notice of Owner Information.**

At least 30 days prior to the association mailing its required annual budget report and annual policy statement, an association must update certain owner information in its records. [CC §4041(b)] To obtain this updated information, an association must solicit the following information from the owners: (1) the address(es) to which association notice are to be delivered; (2) an alternate or secondary address to which association notices are to be delivered; (3) the name and address of the owner's legal representative, if any, including any person with the owner's power of attorney or other person who can be contacted in the event of the owner's extended absence from the separate interest; and (4) whether the separate interest is owner-occupied, rented out, if the parcel is developed but vacant, or if the parcel is undeveloped land. [CC §4041(a)] For mixed-use associations where a portion of the association is subject to a time-share plan, the association must annually obtain from the time-share plan association a copy of the list of owners' names and addresses and enter that information into its records. [CC§4041(d)] If an owner fails to provide their primary and alternate secondary address, if applicable, the last property address provided in writing by the owner, or if none, the property address within the association community shall be deemed to be the address to which association notices are to be delivered. [CC §4041(c)]

### 2. **Annual Budget Report.**

Between 30 and 90 days before the new fiscal year begins, an association must prepare an annual budget report ("Report") and distribute it to the owners. [CC §5300(a)] *[As an alternative to distributing the full Annual Budget Report under CC §5300 or the Annual Policy Statement under CC §5310, the association may distribute only a summary of the items required by CC §5300 or CC §5310 [CC §5320. However, the members must be given a notice, in at least 10-point boldface type on the front page of each summary with instructions for how a member can request a complete copy of either report at no cost to the member. If a member requests a copy of the full report required by CC §5320, the association must mail a copy to the member presumably as provided for "individual delivery" under CC §4040.]* Compliance with this requirement, except for the summary of the reserve funding plan required by CC §5300(b)(3) is necessary for associations to utilize the 20%/5% assessment increase provisions described, paragraph a, below. [CC §5300(b)(1)] This report must contain the information below. See the respective statutes for details.

- Annual Budget.** The Report must include an annual budget prepared on an accrual basis. [CC §5300(b)(1)]

- Reserve Summary. The Report must include a summary of the association's reserves in boldface type and include the many details described in the statute [CC §§5300(b)(3) & 5565] and must disclose reserve study information in a specified format. [CC §§5300(e) & 5570] Where a community service organization (CSO) maintains major components of the association, the CSO must provide the association with information to do the reserve study. [CC §5580] Reserves include any funds received and not yet expended from a settlement or damage award arising out of any claim for construction or design defects. [CC §4177] Each association must report, as separate line items, either in the reserve study or in the annual review or audit, the amount of any such defect funds that have not yet been expended, and the expenditure or disposition of such funds, including any amounts expended for the direct or indirect costs for repairing construction or design defects. [CC §5565(b)(3)]
- Reserve Funding Plan Summary and Full Reserve Study. The Report must include a summary of the reserve funding plan adopted by the Board [CC §5550(b)(5)] and include notice to members that the full reserve study, including the reserve funding plan, is available to members and that the association must provide it upon request. [CC §5565(b)(3)]
- Statement of Decision(s) to Defer Repairs. The Report must include a statement of whether the board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the decision [CC §5300(b)(4)].
- Statement of Possible Levy of Special Assessments. The Report must include a statement of whether the board has determined or anticipates the need to levy one or more special assessments to repair, replace, or restore any major component or to provide adequate reserves for doing so [CC §5300(b)(5)].
- Statement of Method(s) for Funding Reserves. The Report must include a statement of the mechanism(s) by which the board will fund reserves [CC §5300(b)(6)].
- Statement of Procedures Used to Calculate and Establish Reserves. The Report must include a statement addressing procedures used for calculation and establishment of reserves. The statement shall include reserve calculations made using the formula described in paragraph (4) of subdivision (b) of CC §5570, and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made [CC §5300(b)(7)].
- Statement of any Outstanding Loans. The Report must include a statement of whether the association has any outstanding loans with an original term of more than one year. See statute for details. [CC §5300(b)(8)].

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- Summary of Insurance Policies. The Report must include a summary of the association's (1) property, (2) general liability, (3) earthquake, (4) flood insurance and (5) fidelity policies, listing the carrier's name, type of insurance, policy limits for each type and the deductibles. If the policy declaration page includes the required information, the association may use the declaration page. The Report must also include verbatim disclaimer language specified by the statute in at least 10-point bold type. [CC §5300(b)(9)] It may be worth adding to the insurance disclosures that the association policy (usually) does not cover alternate housing, moving and storage expenses, nor loss of owner's personal property from fire and other losses, nor cover the owner's liability for injuries on or in the owner's separate interest.
- Statement of FHA Certification Status by Condominiums. If the HOA is a condominium, the Report must contain a verbatim statement about whether the development is a condominium project and whether it is FHA certified. [CC §5300(b)(10)]
- Statement of VA Certification Status by Condominiums. If the HOA is a condominium, the Report must contain a verbatim statement about whether the development is a condominium project and whether it is VA certified. [CC §5300(b)(11)]
- A Copy of Completed Charges for Documents Provided Disclosure. The Report must include a completed "Charges for Documents Provided" disclosure as described in CC §4528. For purposes of the Report a "completed" "Charges For Documents Provided" disclosure means that the "Fee for Document" section of the form individually identifies the costs associated with providing each document listed on the form. [CC §5300(b)(12)]

### **3. Issues Related to the Annual Budget Report**

- Assessment Limits. Without obtaining the approval of a majority of a quorum of members, pursuant to CC §4070, at member meeting or election, associations may not increase in regular assessments 20% above the regular assessment for the prior fiscal year and total special assessments at a rate of more than 5% of the association's budgeted gross expenses during a given fiscal year. [CC §5605] Unless the association levied assessments based on taxable value in accordance with its governing documents before December 31, 2009, it may not do so thereafter, except where the association pays taxes on the separate interests and then only with respect to the taxes levied [CC §5625].
- Increase in Assessments Disclosure. Associations must send notice of any increase in regular or special assessments, by individual notice, 30 to 60 days before the due date for the increase [CC §5615] and notify prospective purchasers of increases that have been approved but are not yet due. [CC §4525(a)(8)]

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- Detailed Reserve Study. At least every 3 years, conduct a reasonably detailed and competent visual inspection of the accessible components the association must maintain, repair, replace, or restore as part of a study of the association's reserve account requirements (if the replacement cost of the components the association must maintain is at least one-half of the association's fiscal budget for the last 3-year period, excluding reserves). Consult the statute for many detailed requirements. [CC §5550]
- Annual Reserve Study Adjustments. At least annually, review the reserve study and make any necessary adjustments. [CC §5550]
- Reserve Procedures. In reserve studies, associations may not assume a rate of return in excess of 2% higher than the discount rate from the Federal Reserve Bank of San Francisco. [CC §5300(b)(7) & 5570]
- Reserves Used for Litigation Expenses. At least quarterly, if the board uses any reserve funds to pay expenses for any litigation, make an accounting of all litigation expenses and make it available for inspection at the association's office. Give the members written notice of (1) any decision to use reserves to pay for such litigation expenses and (2) the location of the accounting that is available for their inspection. [CC §5520; Corp. Code 5016]
- Directors and Officers (D&O) Insurance. To obtain exemption from personal liability for volunteer directors, purchase both general liability and directors and officer's liability insurance. The amount must be at least \$500,000 for associations consisting of up to 100 separate interests and \$1,000,000 for those associations consisting of more than 100 separate interests. [CC §5800]
- Commercial General Liability (CGL) Insurance. If the association contains any property owned in common by the owners, then to prevent suit and joint and several liabilities against individual owners the association must purchase general liability coverage of \$2,000,000 for associations consisting of 100 separate interests or fewer and \$3,000,000 for those with more than 100 separate interests. [CC §5805]
- Workers Compensation Insurance. Be sure that you have workers compensation insurance for employees and pay taxes withheld from employees pay when due.
- Fidelity Bond Coverage. Associations are required to maintain fidelity bond coverage for its officers, directors and employees in an amount that is equal to or more than the amount of the association's reserves plus total assessments for three months. The fidelity bond must also include computer fraud and funds transfer fraud. If your association uses a managing agent or a management company, your association's fidelity bond coverage must be separate from the fidelity bond of the

management company or managing agent and must also include dishonest acts by that person, entity and its employees. [CC §5806]

- Notice to Members of Insurance Lapse, Non-renewal or Cancellation. Associations must also give “individual notice” to all members under CC §4040 of any lapse, non-renewal, or cancellation of coverage, or if there is a significant change in coverage, such as a reduction in coverage or limits or an increase in deductibles. If an association receives a nonrenewal notice for an insurance policy described in the annual budget report, then such association must immediately notify the membership if replacement coverage will not be in effect by the date the existing coverage lapses. [CC §5810] Carriers must provide a reason for any non-renewal of a policy. [Ins. Code §678].

#### **4. Annual Policy Statement.**

Between 30 and 90 days before the new fiscal year begins, an association must distribute an annual policy statement to provide information to members about association policies. [CC §5310(a)] This report must contain the information below. See the respective statutes for details.

- Official Communications to Association. The name and address of the person designated to receive official communications to the association as provided in CC §4035. [CC §5310(a)(1)]
- Second Member Address. A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses under CC 4040(b). [CC §5310(a)(2)]
- Place for Posting a General Notice. The location, if any, designated for posting of a general notice under CC §4045(a)(3). [CC §5310(a)(3)]
- Option to Receive Member Notices by Individual Delivery. Notice of a member’s right to receive general notices by individual delivery as provided in CC §4045(b). [CC §5310(a)(4)]
- Right to Receive Meeting Minutes. Notice of a member’s right to receive copies of meeting minutes as provided in CC §4950(b). [CC §5310(a)(5)]
- Assessment Collection Policies. The statement of assessment collection policies required by CC §5730. [CC §5310(a)(6)] This is the lengthy verbatim statement set forth in CC §5730 describing an association’s collection rights that must be printed in at least 12-point type. [CC §5730]
- Policies for Enforcing Lien Rights. A statement describing the association’s policies and practices in enforcing lien rights or other legal remedies for default in the

payment of assessments, in other words, its own "Collection Policy." [CC §5310(a)(7)]  
The board must also notify the owners of the standards for payment plans, if any exist. [CC §5665(a)]

- Association Discipline Policy. A statement describing the association's discipline policy, if any, including any schedule of penalties for violations of the governing documents as provided in CC §5850. [CC §5310(a)(8)]
- Summary of Dispute Resolution Procedures. A summary of dispute resolution procedures as required by CC §§5920 (IDR) and 5965 (ADR). [CC §5310(a)(9)]
- Requirements for Architectural Approvals. A summary of any requirements for association approval of a physical change to property as provided in CC §4765, including the types of changes that require association approval and a copy of the procedure used to review and approve or disapprove a proposed change. [CC §4765] [CC §5310(a)(10)] If the governing documents require association approval of architectural changes, the association must provide a fair, reasonable and expeditious process for making architectural decisions. Associations may not impose fines or assessments against members for reducing or eliminating the watering of vegetation or lawns during any period for which the Governor or a local government has declared a state of emergency due to drought conditions. Governing document architectural requirements may not conflict with the water conservation requirements in CC §4735. They may no longer prohibit, or have the effect of prohibiting, artificial turf or other artificial surfaces resembling grass. [CC §4735]. Owners may use a "clothesline" or "drying rack", as defined in the law, for drying clothes in the owner's "backyard" (not defined). [CC §4750.01] Associations can no longer establish a general policy prohibiting the installation or use of a rooftop solar energy system for household purposes on the roof of the building in which an owner resides or a garage or carport adjacent to the building that has been assigned to an owner for his/her exclusive use. [CC §4746]
- Mailing Address for Overnight Payment. The mailing address for overnight payment of assessments as provided in CC §5655. [CC §5310(a)(11)]
- Other Required or Optional Information. Any other information that is required by law or the governing documents. For items that require disclosure and that you may wish to include at the end of the Annual Policy Statement, see the paragraph, below, entitled "Other Mandatory Disclosure the Board May Wish to Disclose with the Annual Budget Report and Annual Policy Statement." Some of these may require disclosure in a place other than the Annual Policy Statement. For optional items you may consider important to disclose to members but that may not be mandatory, also see the paragraph, below, entitled "Optional Disclosures the Board May Wish to Make with the Annual Budget Report and Annual Policy Statement." [CC §5310(a)(12)]

## **5. Issues Related to the Annual Policy Statement**

- Document Delivery Methods. The Board may deliver documents in any manner provided in CC §§4040 & 4045. [CC §§4040 & 4045]
- Right to Annual Financial Report. The board must notify members (of incorporated associations) annually of their right to obtain an annual financial report upon written request. This report is similar to the audit or review required by CC §5300(b)(3), but it applies to corporations that have as little as \$10,000 in gross annual receipts. [Corp. Code §8321]. Presumably the requirements of CC §5300(b)(3) are more extensive and control over Corp. Code §8321.
- Monetary Penalty or Fine Disclosures. The board must distribute to all members any schedule of the monetary penalties adopted by the board to discipline members, whether committed by the owner, or the owner's guests or invitees. The board must distribute it by individual delivery as provided in CC §4040. The board needs to do this only once per year pursuant to CC §5310(a)(8), although it must be redistributed, if there are any changes. [CC §5850]
- IDR and ADR Disclosures. Associations must have some procedure for informal, internal attempts to resolve disputes between the association and an owner. [CC §5900-5920] The board must also disclose its IDR (Internal Dispute Resolution) procedures in the annual policy statement. [CC §5920] If the board does not adopt its own IDR procedures, the statute contains default procedures in CC §5915 that will apply. Attorneys may assist either an association or a member at both ADR and IDR proceedings. [CC §§5910 & 5915] Associations must also include in the Annual Policy Statement at least a summary of the ADR (Alternative Dispute Resolution) procedures used under CC §5925-5965. It must contain the verbatim language found in CC §5965(a). This summary must also be disclosed in the annual policy statement. [CC §5965].

## **6. Other Mandatory Disclosures the Board May Wish to Disclose with the Annual Budget Report and Annual Policy Statement**

- Preparation of an Annual Audit or Review. This statement or disclosure is not required, but it should help to alert the board of the need to get this task done within 120 days after the end of the fiscal year. An association must prepare at least a "review," or possibly an "audit" if required by the governing documents, if its gross income for the year is \$75,000 or more. [CC §5305]. The review or audit must be distributed to members by individual delivery within 120 days after the close of the fiscal year. If an incorporated association has at least \$10,000 in income for the year, it must provide at least the information required by Corporations Code §8321 within 120 days after the end of the fiscal year. Also, if there are any disclosures required by Corp. Code §8322 (such as information about material financial

interests, loans, guarantees, indemnifications, etc.) involving officers and directors as required by Corporations Code §8322, that must be disclosed annually as well.

- Asbestos Disclosures. Under Health & Safety (H&S) Code Section 25915.2, associations must give or post notice about any asbestos known to exist in the project. See footnote 16 in CC §4525. [H&S Code §25915.2] Annual written notice and/or signs on the premises may be required to be posted. You should consult with legal counsel for assistance in preparing this disclosure for compliance with the requirements of the H&S Code.
- Disclosure and Accounting of Reserves Borrowed for Litigation. When the Board temporarily borrows reserve funds to pay for litigation under CC §5510(b), the association must make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting must be made available for inspection by members of the association at the association's office. [CC §5520] A statement to this effect is not required, but if an association discloses this, it is more likely to do the accounting each quarter.
- Rental/Lease Restriction Disclosures. If an association's governing documents prohibit the rental or leasing of any separate interest to a renter, lessee or tenant [CC §4740], an owner is required to disclose this to prospective purchasers [CC §4525(a)(9)], but the association is required to provide that information to the owner on request to provide to the prospective purchaser. [CC §4528]. If the information is disclosed with the annual disclosures, the annual disclosures and budget documents are part of the documents that a prospective purchaser is required to be given.
- Disclosure of Senior Community (55+) Status. This option is required by CC §4525(a)(2) only if there are differences between the CC&R requirements and the requirements of CC §51.3. While not specifically required for the annual policy statement, this disclosure is required if a prospective purchaser requests documents and disclosures for escrow as required by CC §4525(a)(2), AND if there is any difference between the CC&R provision on senior housing and the senior housing requirements in CC §51.3. There may also be some differences if an association is a mobile home community (that is subject to the Federal Fair Housing Act) or an association in Riverside County (that is subject to CC §51.11). Obviously, the association must be a senior (55+) community in the first place. By including the disclosure in escrow packages as part of the annual budget disclosures, it helps to ensure that this disclosure will be distributed to the prospective purchaser under CC §5300 as required by CC §4525(a)(3). It is probably helpful to have a disclosure that the association is a senior community as part of the annual budget package that would go to a prospective purchaser who requests the documents, including the annual disclosures, under CC §4525.

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- Community Service Association Disclosure. Include this section only if there is a community service organization whose funding comes from the association, and it exceeds 10% of the association's annual budget. [CC §5580] It is likely to apply to few associations. The association can disclose that it is subject to the disclosure requirements of the law, but it also needs to prepare and provide the accounting described in CC §5580 when it is required.
- Emergency Preparedness and/or Evacuation Plans. Mobile home communities [H&S Code §§18603 & 18871.8] and high-rise buildings [H&S §§13210-13234] are required to have emergency preparedness and/or evacuation plans. Such associations may also wish to include them in their annual policy statements. However, there are other requirements, such as posting these in conspicuous common areas or conspicuous areas of a high rise, as required by the applicable statutes.
- Any Other Disclosures that May be Required by Law or the Governing Documents. An association may include any other disclosure in its annual policy statement that is required by law or the governing documents.

**7. Optional Disclosures the Board May Wish to Make with the Annual Budget Report and Annual Policy Statement.**

- Architectural Modifications or Other Accommodations Made for Persons with Disabilities. This is an optional disclosure, but it is helpful for some associations. Such a disclosure would inform owners that they may observe some architectural changes or some other apparent violation of the association's governing documents, but the changes or other apparent "violations" are actually "accommodations" that were permitted to enable the association to comply with state and/or federal fair housing laws requiring accommodations to be made for persons with disabilities. This disclosure can point out that these may be needed to give disabled residents an equal opportunity to use and enjoy the premises. This disclosure also can point out the many different types of disabilities may require many different types of accommodations. However, owners should recognize that this does not mean the association is lax about enforcing community standards and rules. Rather it is mindful of its legal duty to comply with disability protection laws.
- Distribution of Mailing List to Owners. An association is required by CC 5200(a)(9), under the circumstances covered by the statute, to provide members with the name, property address, and mailing address of all members. However, association members may opt out of sharing their contact information by notifying the association that the member prefers to be contacted via the alternative process described in Corporations Code §8330(c). CC §5200(a) does not require this disclosure, but it may be useful for owners who wish to opt out of providing their name and other contact information to an owner who requests and is entitled

to the information on the membership list. This disclosure would inform owners of their right to opt out, but if some do opt out, it will not exempt them from receiving the materials. It probably requires the association to disclose to the requesting party that X owners opted out, and if the requesting party wants to distribute information to them, the requesting owner will need to provide sealed and stamped envelopes with the return address of the sender, and the association will have to add mailing labels to mail out that information to those specific owners.

- Security Disclaimer by Gated Communities and Associations with Locked Entry Doors, Security Cameras or Patrols. Associations may wish to consider a disclaimer to state explicitly that owners are ultimately responsible for their own security, and the fact that there may be gated entries, staffed entry gates, periodic patrols, the use of security cameras, etc., do not provide a guarantee of security on which any residents may rely.
  
- Requirements for Owners to have Smoke and Carbon Monoxide Detectors in their Units. These are not mandatory disclosures, but they are important to remind owners about smoke detectors and carbon monoxide detector requirements, and some HOA insurance companies are also requiring the associations they insure to provide written notice to owners about these obligations. Owners are required by law to have operational smoke detectors and carbon monoxide detectors. Carbon monoxide detectors were required by July 1, 2011, in most single-family dwelling units with a fossil fuel-burning heater or fireplace. The deadline was January 1, 2013, for all other dwelling units intended for human occupancy. [H&S Code §§17926-17926.2] Also, smoke alarms have been required as far back as January 1, 1986. [H&S Code §13113.8].] Associations may wish to remind owners that it is common for many detectors to last no longer than 10 years, to test their detectors regularly, to follow the manufacturer's instructions about replacement and to replace them when their useful life ends.
  
- Water Shutoffs. It may be helpful to identify the location of all water main shutoffs in association buildings to be sure everyone knows where they are. This information is critical to find a shutoff to stop a major pipe leak or a fire sprinkler that is accidentally damaged or fails. This is important even if all residents are one floor and even more so if the association has a building that is two or more stories high.
  
- Any Other Disclosures that an Association May Wish to Add. An association may add any other information in this section that it believes is appropriate.

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