

## **Request To Inspect and/or Copy Association Records (Civ. Code §5200, et seq.)**

By [Rian W. Jones, Esq.](#)

Homeowners associations are routinely faced with members and directors who request the right to inspect association records. There are penalties prescribed for an association's wrongful failure to timely and fully comply with the request. While the Davis-Stirling Common Interest Development Act ("Act") and the Corporations Code set forth specific requirements and procedures for responding to a request to inspect and copy association records, there are exceptions and limitations spelled out in the Code and in case law. If there is litigation or potential litigation associated with the request, the association is well advised to immediately seek counsel from its attorneys before acting on any such request.

The following is a summary of the applicable code sections and procedures.

### **Documents Subject to Inspection**

Absent different provisions in the governing documents, only "association records" may be inspected and copied. The Act defines "association records" (Civ. Code §5200) as follows:

- Financial documents (a summary of the association's reserves, the reserve study, insurance and loan information, notices of expiration of insurance policies (if any), documents required to be produced in response to a seller's request pursuant to section 5235, including notices of hearings for uncured violations (if any), a copy of construction defect notices (if any), notices of pending assessment changes (if any), the annual budget report, and financial statement reviews (if any);
- Interim financial statement containing a balance sheet, income and expense statement, a budget comparison and/or a general ledger;
- Executed contracts that are not privileged ;
- Written board approval of vendor or contractor proposals or invoices;
- State and federal tax returns ;
- Reserve account balances and records of payments made from reserve accounts;
- Agendas and minutes of meetings of the members, the board and committees appointed by the board, excluding minutes and other information from executive sessions of the board;
- Membership lists, including name, property address, mailing address, and email address (but not records and/or information for members who have opted out pursuant to Civ.

Code §5220). Note that a request for membership list requires a statement of the purpose for which the list is proposed to be used by the requester. (Civ. Code §5225.);

- Association check registers;
- The governing documents;
- Reserve studies;
- Enhanced association records. “Enhanced association records” means invoices, receipt and cancelled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards of the association, statements for services rendered and reimbursement requests submitted to the association; and
- Association election materials. “Association election materials” means returned ballots, signed voter envelopes, the voter list (including name, voting power, and either the physical address of the voter’s separate interest, the parcel number or both. The mailing address for the ballot must also be listed if it differs from the physical address of the voter’s separate interest or if only the parcel number is used.), proxies, and the candidate registration list. Signed voter envelopes may be inspected by may not be copied.

If there is a challenge to an election, members may also request to inspect ballots. (Civ. Code §5125.)

### **Time Limits for Keeping Records**

The association must maintain records for the current fiscal year, plus two previous years. However, minutes of member board meetings, and meetings of committees with decision-making authority (such as architectural committees) must be kept permanently. (Civ. Code §5210(a).)

### **Time Limits for Providing Records**

The association must produce records prepared during the current fiscal year within 10 business days following receipt of a written request. (Civ. Code §5210(b)(1).)

The association must produce any records prepared during the previous two years within 30 calendar days of a written request. (Civ. Code §5210(b)(2).)

Minutes (or a summary or proposed draft minutes) of board meetings must be produced within 30 days of the meeting. (Civ. Code §4950.) Minutes of committees with decision-making authority (such as architectural committees) must be made available with 15 calendar days following approval of the minutes by the committee.

Membership lists must be produced within five days, unless the association elects to provide a reasonable alternative, such as agreeing to transmit the requester's communication to the members directly. (Corp. Code § 8330.)

## **Withholding or Redacting Records**

The association may withhold or redact information from a document if information in a document is likely to lead to identity theft of an individual or to any fraud in connection with the association such as:

- Documents that are privileged or confidential (subject to attorney-client privilege, litigation, or confidential settlement agreements);
- A release that is likely to compromise the privacy of a member;
- Information that contains disciplinary actions taken against other members;
- Collection activities or payment plans of other members, or any personal identification Information (i.e., social security number, tax identification number, driver's license number, credit card number, bank account number or bank routing number);
- Minutes and other information from an executive session;
- Personal records;
- Interior architectural plans of individual homes or units, including security features (Civ. Code §5215(a)).

If information is withheld or redacted, the association must provide a written explanation of why the information is being withheld or redacted. (Civ. Code §5200.) The association may charge a fee for the cost of redacting enhanced association records, in any amount not in excess of \$10 per hour, and not to exceed \$200 total per written request., . (Civ. Code §5205(g).)

Note that the association may not withhold or redact information concerning compensation paid to employees, vendors, or contractors (except as provided by the attorney-client privilege). However, information regarding compensation paid to employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information. (Civ. Code §5215(b).) Note that where an association contracts with an outside management company to provide management services, the manager and other related employees are the employees of the management company, not the association.

## **Member/Owner Rights To Inspect**

A member or any member's designated representative may inspect an association's records. (Civ. Code § 5205(a).) Records and minutes may only be inspected for a purpose reasonably related to the member's interest as a member. (Civ. Code § 5230(a)). A membership list may not be used to solicit money; for any purpose that the requesting member does not reasonably and in good faith believe will benefit the association; for a commercial purpose or for sale to any person. (Corp. Code §8338(a).)

A member also has a right to request the email addresses of other members who have not opted out. (Civil Code section 5200(a)(9))

## Director Rights

A director has the "absolute" right, at any reasonable time, to inspect and copy all books, records, and documents of the association. (Corp. Code §8334.) This "absolute right" is subject to a director's fiduciary duty to act in the best of interests of the association to restrain directors from exercising these rights for personal gain, or to further interests contrary to the interests of the association. (Corp. Code §7231(a).)

The courts have carved out exceptions to this "absolute" right. The individual privacy rights of members of the association trump the director's right to inspect ballots cast in an election. "We hold that homeowners association members have a constitutional privacy right in their voting decisions, even when conducted by proxy ballot. A homeowners association director's statutory right to inspect the records of the association must be balanced against this privacy right". (*Chantilles v. Lake Forest II Master Homeowners Association* (1995) 37 Cal.App.4th 914, 926.)

A director who is a party to litigation with the association does not have the right to inspect records in order to "advance the director's personal interest in obtaining damages against the corporation." (*Tritek Telecom, Inc. v. Superior Court* (2009) 169 Cal.App.4th 1385, 1391.) "Although corporate directors have an 'absolute right' to 'inspect and copy all [corporate] books, records and documents of every kind' (Corp. Code §1602), including documents protected by the attorney-client privilege, we conclude that a corporate director does not have the right to access documents covered by the attorney-client privilege that were generated in defense of a suit for damages that the director filed against the corporation." (Id. at 1387.)

A director does not have the right to inspect records if that director's stated purpose for inspecting those records is to breach his fiduciary duty (e.g., by disclosing attorney-client privileged documents). The absolute right, however, is subject to exceptions and may be denied where a disgruntled director announces his or her intention to violate his or her fiduciary duties to the corporation. (*Havlicek v. Coast-to-Coast Analytical Services, Inc.* (1995) 39 Cal.App.4th 1844, 1852.)

## Documents May Be Inspected In Person, Copied, or Produced Electronically

**In-Person Inspection:** Inspection or copying of records may be done at the association's business office within the association or at a place agreed to by the requesting member and the association. (Civ. Code §5205(c) and (d).)

**Paper Copies:** If a written request is made, the association may deliver copies to the member in lieu of an inspection. (Civ. Code §5205(e).)

**Electronic Copies:** The member requesting the inspection can request that he/she receive records by electronic transmission or machine-readable storage media so long as the records

can be transmitted in a redacted format that does not allow the records to be altered. The association can charge for this cost. (Civ. Code §5205(h).)

### **Costs Associated With A Request For Documents**

**Copying and Mailing:** The association may bill the requesting member for the actual cost of copying and mailing. The association shall inform the member of the actual amount and this must be paid prior to copying and mailing. (Civ. Code §5205(f).)

**Redacting:** The association may bill the member requesting an enhanced record up to \$10.00 per hour, not to exceed \$200.00 per written request, for the time involved in redacting an enhanced record. The member making the request must agree to pay these costs before the redaction is done. (Civ. Code §5205(g).)

### **Remedy For Failure to Produce Records**

If the association fails to comply with a valid request from a member to produce association records, the member has the right to sue the association to force compliance. That member may hire an attorney and sue the association in Superior Court to obtain a mandatory injunction ordering the association to produce the records. If the member prevails in this lawsuit and the court finds that the association unreasonably withheld the records, the court must award the member his/her reasonable costs and expenses, including attorney's fees, and may assess a \$500 penalty for each denial of a written request to inspect/copy records. (Civ. Code §5235(a).) If the association prevails, it is not entitled to recover its attorneys fees and can only recover its costs of litigation if the court finds the member's lawsuit to be frivolous, unreasonable or without foundation. (Civ. Code §5235(c); see also *Retzloff v. Moulton Parkway Residents' Association* (2017) 14 Cal.App.5th 742.)

The member may also elect to bring suit in small claims court and the small claims court has jurisdiction to issue a mandatory injunction ordering the association to produce the records as well as award the statutory penalty (\$500) for each denial of a written request, up to the jurisdictional limits of the court (\$10,000). No attorneys fees are awarded in a small claims case, but the court can award other reasonable costs such as filing fees and costs of serving the summons and complaint. (Civ. Code §5235(b).)