

# RECORDS

1365.2. (a) For the purposes of this section, the following definitions shall apply:

(1) "Association records" means all of the following:

(A) Any financial document required to be provided to a member in Section 1365.

(B) Any financial document or statement required to be provided in Section 1368.

(C) Interim financial statements, periodic or as compiled, containing any of the following:

(i) Balance sheet.

(ii) Income and expense statement.

(iii) Budget comparison.

(iv) General ledger. A "general ledger" is a report that shows all transactions that occurred in an association account over a specified period of time.

The records described in this subparagraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

(D) Executed contracts not otherwise privileged under law.

(E) Written board approval of vendor or contractor proposals or invoices.

(F) State and federal tax returns.

(G) Reserve account balances and records of payments made from reserve accounts.

(H) Agendas and minutes of meetings of the members, the board of directors and any committees appointed by the board of directors pursuant to Section 7212 of the Corporations Code; excluding, however, agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05.

(I) (i) Membership lists, including name, property address, and mailing address, if the conditions set forth in clause (ii) are met and except as otherwise provided in clause (iii).

(ii) The member requesting the list shall state the purpose for which the list is requested which purpose shall be reasonably related to the requester's interest as a member. If the association reasonably believes that the information in the list will be used for another purpose, it may deny the member access to the list. If the request is denied, in any subsequent action brought by the member under subdivision (f), the association shall have the burden to prove that the member would have allowed use of the information for purposes unrelated to his or her interest as a member.

(iii) A member of the association may opt out of the sharing of his or her name, property address, and mailing address by notifying the association in writing that he or she prefers to be contacted via the alternative process described in subdivision (c) of Section 8330 of the Corporations Code. This opt-out shall remain in effect until changed by the member.

(J) Check registers.

(2) "Enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association, provided that the person submitting the reimbursement request shall be solely responsible for removing all personal identification

information from the request.

(b) (1) The association shall make available association records and enhanced association records for the time periods and within the timeframes provided in subdivisions (i) and (j) for inspection and copying by a member of the association, or the member's designated representative. The association may bill the requesting member for the direct and actual cost of copying requested documents. The association shall inform the member of the amount of the copying costs before copying the requested documents.

(2) A member of the association may designate another person to inspect and copy the specified association records on the member's behalf. The member shall make this designation in writing.

(c) (1) The association shall make the specified association records available for inspection and copying in the association's business office within the common interest development.

(2) If the association does not have a business office within the development, the association shall make the specified association records available for inspection and copying at a place that the requesting member and the association agree upon.

(3) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph (2), or if the requesting member submits a written request directly to the association for copies of specifically identified records, the association may satisfy the requirement to make the association records available for inspection and copying by mailing copies of the specifically identified records to the member by first-class mail within the timeframes set forth in subdivision (j).

(4) The association may bill the requesting member for the direct and actual cost of copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs, and the member shall agree to pay those costs, before copying and sending the requested documents.

(5) In addition to the direct and actual costs of copying and mailing, the association may bill the requesting member an amount not in excess of ten dollars (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written request, for the time actually and reasonably involved in redacting the enhanced association records as provided in paragraph (2) of subdivision (a). The association shall inform the member of the estimated costs, and the member shall agree to pay those costs, before retrieving the requested documents.

(d) (1) Except as provided in paragraph (2), the association may withhold or redact information from the association records for any of the following reasons:

(A) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, "identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property. Examples of information that may be withheld or redacted pursuant to this paragraph include bank account numbers of members or vendors, social security or tax identification numbers, and check, stock, and credit card numbers.

(B) The release of the information is reasonably likely to lead to fraud in connection with the association.

(C) The information is privileged under law. Examples include documents subject to attorney-client privilege or relating to litigation in which the association is or may become involved, and

confidential settlement agreements.

(D) The release of the information is reasonably likely to compromise the privacy of an individual member of the association.

(E) The information contains any of the following:

(i) Records of a-la-carte goods or services provided to individual members of the association for which the association received monetary consideration other than assessments.

(ii) Records of disciplinary actions, collection activities, or payment plans of members other than the member requesting the records.

(iii) Any person's personal identification information, including, without limitation, social security number, tax identification number, driver's license number, credit card account numbers, bank account number, and bank routing number.

(iv) Agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05, except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services.

(v) Personnel records other than the payroll records required to be provided under paragraph (2).

(vi) Interior architectural plans, including security features, for individual homes.

(2) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

(3) No association, officer, director, employee, agent or volunteer of an association shall be liable for damages to a member of the association or any third party as the result of identity theft or other breach of privacy because of the failure to withhold or redact that member's information under this subdivision unless the failure to withhold or redact the information was intentional, willful, or negligent.

(4) If requested by the requesting member, an association that denies or redacts records shall provide a written explanation specifying the legal basis for withholding or redacting the requested records.

(e) (1) The association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. An association may bring an action against any person who violates this section for injunctive relief and for actual damages to the association caused by the violation.

(2) This section may not be construed to limit the right of an association to damages for misuse of information obtained from the association records pursuant to this section or to limit the right of an association to injunctive relief to stop the misuse of this information.

(3) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this section.

(f) A member of an association may bring an action to enforce the member's right to inspect and copy the association records. If a court finds that the association unreasonably withheld access to the

association records, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a **civil** penalty of up to five hundred dollars (\$500) for the denial of each separate written request. A cause of action under this section may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court. A prevailing association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.

(g) The provisions of this section apply to any community service organization or similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368, that is related to the association, and this section shall operate to give a member of the community service organization or similar entity a right to inspect and copy the records of that organization or entity equivalent to that granted to association members by this section.

(h) Requesting parties shall have the option of receiving specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that electronic format. The association may deliver specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that prevents the records from being altered.

(i) The time periods for which specified records shall be provided is as follows:

(1) Association records shall be made available for the current fiscal year and for each of the previous two fiscal years.

(2) Minutes of member and board meetings shall be permanently made available. If a committee has decisionmaking authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently made available.

(j) The timeframes in which access to specified records shall be provided to a requesting member are as follows:

(1) Association records prepared during the current fiscal year, within 10 business days following the association's receipt of the request.

(2) Association records prepared during the previous two fiscal years, within 30 calendar days following the association's receipt of the request.

(3) Any record or statement available pursuant to Section 1365 or 1368, within the timeframe specified therein.

(4) Minutes of member and board meetings, within the timeframe specified in subdivision (d) of Section 1363.05.

(5) Minutes of meetings of committees with decisionmaking authority for meetings commencing on or after January 1, 2007, within 15 calendar days following approval.

(6) Membership list, within the timeframe specified in Section 8330 of the Corporations **Code**.

(k) There shall be no liability pursuant to this section for an association that fails to retain records for the periods specified in subdivision (i) that were created prior to January 1, 2006.

(l) As applied to an association and its members, the provisions of this section are intended to supersede the provisions of Sections 8330 and 8333 of the Corporations **Code** to the extent those sections

are inconsistent.

(m) The provisions of this section shall not apply to any common interest development in which separate interests are being offered for sale by a subdivider under the authority of a public report issued by the Department of Real Estate so long as the subdivider or all subdividers offering those separate interests for sale, or any employees of those subdividers or any other person who receives direct or indirect compensation from any of those subdividers, comprise a majority of the members of the board of directors of the association. Notwithstanding the foregoing, this section shall apply to that common interest development no later than 10 years after the close of escrow for the first sale of a separate interest to a member of the general public pursuant to the public report issued for the first phase of the development.

(n) This section shall become operative on July 1, 2006.