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SB-392 Common interest developments: document delivery. (2021-2022)

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Senate Bill No. 392

CHAPTER 640

An act to amend Sections 4041, 4045, 4055, 5200, 5220, 5230, 5260, 5310, and 5320 of, and to amend, add, and repeal Section 4040 of, the Civil Code, relating to common interest developments.

[Approved by Governor October 07, 2021. Filed with Secretary of State October 07, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 392, Archuleta. Common interest developments: document delivery.

Existing law, the Davis-Stirling Common Interest Development Act, requires an association to deliver documents to members of a common interest development, if those documents are required to be delivered by individual delivery or notice, by either first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier or by email, facsimile, or other electronic means, if the recipient has consented, in writing or by email, to receive documents by that electronic means.

This bill would instead require, on and after January 1, 2023, an association to deliver those documents in accordance with the preferred delivery method specified by the member or, if the member has not provided a preferred delivery method, by traditional mail, as described above.

The act requires an owner of a separate interest to annually provide certain written notice to the association, including the address or addresses to which notices from the association are to be delivered, an alternate or secondary address, and the address of the owner's legal representative, if any. The act requires the association to solicit that notice, as provided.

This bill would instead require a member to provide the member's preferred delivery method for receiving notices and an alternate or secondary delivery method for receiving notices, and would require the association to include the options of receiving notice by mail, by a valid email address, or both. The bill would require a member to provide a valid email address, if available, of the owner's legal representative, if any, and would define the term "valid email address." The bill would require an association to include certain items in the required solicitation of notice described above, including that the member does not have to provide an email address to the association.

Existing law specifies the methods by which an association may provide a document when a provision of the act requires "general delivery" or "general notice," including posting the printed document in a prominent location accessible to all members if designated for the posting of general notices by the association in its annual policy statement.

This bill would include posting the notice on the association's internet website among the authorized delivery methods if this method is so designated by the association in its annual policy statement.

The act prohibits association records, and any information from them, from being sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member.

This bill would prohibit an association or its managing agent from transmitting a member's personal information to a third party without the consent of the member unless required to do so by law, as specified.

This bill would also make conforming and nonsubstantive changes.

This bill would incorporate additional changes to Section 5200 of the Civil Code proposed by SB 432 to be operative only if this bill and SB 432 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4040 of the Civil Code is amended to read:

4040. (a) If a provision of this act requires that an association deliver a document by "individual delivery" or "individual notice," the document shall be delivered by one of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.

(2) Email, facsimile, or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. The consent may be revoked, in writing or by email, by the recipient.

(b) Upon receipt of a request by a member, pursuant to Section 5260, identifying a secondary address for delivery of notices of the following types, the association shall deliver an additional copy of those notices to the secondary address identified in the request:

(1) The documents to be delivered to the member pursuant to Article 7 (commencing with Section 5300) of Chapter 6.

(2) The documents to be delivered to the member pursuant to Article 2 (commencing with Section 5650) of Chapter 8, and Section 5710.

(c) For the purposes of this section, an unrecorded provision of the governing documents providing for a particular method of delivery does not constitute agreement by a member to that method of delivery.

(d) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 2. Section 4040 is added to the Civil Code, to read:

4040. (a) (1) If a provision of this act requires an association to deliver a document by "individual delivery" or "individual notice," the association shall deliver that document in accordance with the preferred delivery method specified by the member pursuant to Section 4041.

(2) If the member has not provided a valid delivery method pursuant to Section 4041, the association shall deliver the document by first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the recipient at the address last shown on the books of the association.

(b) Upon receipt of a request by a member identifying a secondary email or mailing address for delivery of notices, pursuant to Section 5260, the association shall deliver an additional copy of both of the following to the secondary address identified in that request:

(1) The documents to be delivered to the member pursuant to Article 7 (commencing with Section 5300) of Chapter 6.

(2) The documents to be delivered to the member pursuant to Article 2 (commencing with Section 5650) of Chapter 8 and Section 5710.

(c) For the purposes of this section, an unrecorded provision of the governing documents providing for a particular method of delivery does not constitute agreement by a member to that method of delivery.

(d) This section shall become operative on January 1, 2023.

SEC. 3. Section 4041 of the Civil Code is amended to read:

4041. (a) A member shall, on an annual basis, provide written notice to the association of all of the following:

(1) The member's preferred delivery method for receiving notices from the association, which shall include the option of receiving notices at one or both of the following:

(A) A mailing address.

(B) A valid email address.

(2) An alternate or secondary delivery method for receiving notices from the association, which shall include the option to receive notices at one or both of the following:

(A) A mailing address.

(B) A valid email address.

(3) The name, mailing address, and, if available, valid email address of the owner's legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of the member's extended absence from the separate interest.

(4) Whether the separate interest is owner-occupied, is rented out, if the parcel is developed but vacant, or if the parcel is undeveloped land.

(b) (1) The association shall solicit the annual notices described in subdivision (a) of each owner and, at least 30 days before making its own required disclosure under Section 5300, shall enter the data into its books and records.

(2) The association shall include in the solicitation required by paragraph (1) both of the following:

(A) Notification that the member does not have to provide an email address to the association.

(B) A simple method for the member to inform the association in writing that the member wishes to change their preferred delivery method for receiving notices from the association.

(c) If a member fails to provide the notices set forth in subdivision (a), the last mailing address provided in writing by the member or, if none, the property address shall be deemed to be the address to which notices are to be delivered.

(d) (1) To the extent that interests regulated in Chapter 2 (commencing with Section 11210) of Part 2 of Division 4 of the Business and Professions Code are part of a mixed-use project where those interests comprise a portion of a common interest development, the association, as defined in Section 4080, shall be deemed compliant with this section if, at least once annually, it obtains from the time-share plan association a copy of the list described in subdivision (e) of Section 11273 of the Business and Professions Code, and enters the data into its books and records.

(2) Notwithstanding subdivision (e) of Section 11273 of the Business and Professions Code, the time-share plan association shall provide the list required by paragraph (1) to the association at least annually for this purpose.

(e) For the purposes of this section, a valid email address is one that, after a notice is sent, does not result in a bounce or other error notification indicating failure of the message. If the association delivers a notice to a member's email address and finds that the email address provided is no longer valid, the association shall resend the notice to a mailing or email address identified by the member pursuant to Section 4040.

SEC. 4. Section 4045 of the Civil Code is amended to read:

4045. (a) If a provision of this act requires "general delivery" or "general notice," the document shall be provided by one or more of the following methods:

(1) Any method provided for delivery of an individual notice pursuant to Section 4040.

(2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.

(3) Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement prepared pursuant to Section 5310.

(4) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(5) If the association maintains an internet website for the purpose of distributing information on association business to its members, by posting the notice on the association's internet website in a prominent location that is accessible to all members if designated as a location for posting general notices in the annual policy statement prepared pursuant to Section 5310.

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to Section 4040. The option provided in this subdivision shall be described in the annual policy statement prepared pursuant to Section 5310.

SEC. 5. Section 4055 of the Civil Code is amended to read:

4055. If the association or a member receives information by electronic delivery pursuant to Section 4040, and a provision of this act requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

SEC. 6. Section 5200 of the Civil Code is amended to read:

5200. For the purposes of this article, the following definitions shall apply:

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

- (1) Any financial document required to be provided to a member in Article 7 (commencing with Section 5300) or in Sections 5565 and 5810.
- (2) Any financial document or statement required to be provided in Article 2 (commencing with Section 4525) of Chapter 4.
- (3) Interim financial statements, periodic or as compiled, containing any of the following:
 - (A) Balance sheet.
 - (B) Income and expense statement.
 - (C) Budget comparison.
 - (D) 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 paragraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

- (4) Executed contracts not otherwise privileged under law.
- (5) Written board approval of vendor or contractor proposals or invoices.
- (6) State and federal tax returns.
- (7) Reserve account balances and records of payments made from reserve accounts.
- (8) Agendas and minutes of meetings of the members, the board, and any committees appointed by the board pursuant to Section 7212 of the Corporations Code; excluding, however, minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900).
- (9) Membership lists, including name, property address, mailing address, and email address collected by the association in accordance with Section 4041, but not including information for members who have opted out pursuant to Section 5220.
- (10) Check registers.
- (11) The governing documents.
- (12) An accounting prepared pursuant to subdivision (b) of Section 5520.
- (13) An "enhanced association record" as defined in subdivision (b).
- (14) "Association election materials" as defined in subdivision (c).

(b) "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.

(c) "Association election materials" means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Signed voter envelopes may be inspected but may not be copied.

SEC. 6.5. Section 5200 of the Civil Code is amended to read:

5200. For the purposes of this article, the following definitions shall apply:

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

- (1) Any financial document required to be provided to a member in Article 7 (commencing with Section 5300) or in Sections 5565 and 5810.
- (2) Any financial document or statement required to be provided in Article 2 (commencing with Section 4525) of Chapter 4.
- (3) Interim financial statements, periodic or as compiled, containing any of the following:
 - (A) Balance sheet.
 - (B) Income and expense statement.
 - (C) Budget comparison.
 - (D) 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 paragraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

- (4) Executed contracts not otherwise privileged under law.
- (5) Written board approval of vendor or contractor proposals or invoices.
- (6) State and federal tax returns.
- (7) Reserve account balances and records of payments made from reserve accounts.
- (8) Agendas and minutes of meetings of the members, the board, and any committees appointed by the board pursuant to Section 7212 of the Corporations Code; excluding, however, minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900).
- (9) Membership lists, including name, property address, mailing address, email address, as collected by the association in accordance with Section 4041 where applicable, but not including information for members who have opted out pursuant to Section 5220.
- (10) Check registers.
- (11) The governing documents.
- (12) An accounting prepared pursuant to subdivision (b) of Section 5520.
- (13) An "enhanced association record" as defined in subdivision (b).
- (14) "Association election materials" as defined in subdivision (c).

(b) "Enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, bank account statements for bank accounts in which assessments are deposited or withdrawn, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.

(c) "Association election materials" means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Signed voter envelopes may be inspected but may not be copied. An association shall maintain association election materials for one year after the date of the election.

SEC. 7. Section 5220 of the Civil Code is amended to read:

5220. A member of the association may opt out of the sharing of that member's name, property address, email address, and mailing address by notifying the association in writing that the member 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.

SEC. 8. Section 5230 of the Civil Code is amended to read:

5230. (a) 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 article for injunctive relief and for actual damages to the association caused by the violation.

(b) This article 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 article or to limit the right of an association to injunctive relief to stop the misuse of this information.

(c) (1) An association or its managing agent shall not do either of the following:

(A) Sell a member's personal information for any purpose without the consent of the member.

(B) Transmit a member's personal information to a third party without the consent of the member unless required to do so by law, including, but not limited to, Article 5 (commencing with Section 5200).

(2) A member may bring an action against an association that violates this subdivision for injunctive relief and actual damages caused by the violation. A member shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce the member's rights under this subdivision.

(d) 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 article.

SEC. 9. Section 5260 of the Civil Code is amended to read:

5260. To be effective, any of the following requests shall be delivered in writing to the association, pursuant to Section 4035:

(a) A request to change the member's information in the association membership list.

(b) A request to add or remove a second email or mailing address for delivery of individual notices to the member, pursuant to Section 4040.

(c) A request for individual delivery of general notices to the member, pursuant to subdivision (b) of Section 4045, or a request to cancel a prior request for individual delivery of general notices.

(d) A request to opt out of the membership list pursuant to Section 5220, or a request to cancel a prior request to opt out of the membership list.

(e) A request to receive a full copy of a specified annual budget report or annual policy statement pursuant to Section 5320.

(f) A request to receive all reports in full, pursuant to subdivision (b) of Section 5320, or a request to cancel a prior request to receive all reports in full.

SEC. 10. Section 5310 of the Civil Code is amended to read:

5310. (a) Within 30 to 90 days before the end of its fiscal year, the board shall distribute an annual policy statement that provides the members with information about association policies. The annual policy statement shall include all of the following information:

(1) The name and address of the person designated to receive official communications to the association, pursuant to Section 4035.

(2) A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses, pursuant to Section 4040.

(3) The location, if any, designated for posting of a general notice, pursuant to subdivision (a) of Section 4045.

(4) Notice of a member's option to receive general notices by individual delivery, pursuant to subdivision (b) of Section 4045.

(5) Notice of a member's right to receive copies of meeting minutes, pursuant to subdivision (b) of Section 4950.

(6) The statement of assessment collection policies required by Section 5730.

(7) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.

(8) A statement describing the association's discipline policy, if any, including any schedule of penalties for violations of the governing documents pursuant to Section 5850.

(9) A summary of dispute resolution procedures, pursuant to Sections 5920 and 5965.

(10) A summary of any requirements for association approval of a physical change to property, pursuant to Section 4765.

(11) The mailing address for overnight payment of assessments, pursuant to Section 5655.

(12) Any other information that is required by law or the governing documents or that the board determines to be appropriate for inclusion.

(b) The annual policy statement shall be made available to the members pursuant to Section 5320.

SEC. 11. Section 5320 of the Civil Code is amended to read:

5320. (a) When a report is prepared pursuant to Section 5300 or 5310, the association shall deliver one of the following documents to all members by individual delivery pursuant to Section 4040:

(1) The full report.

(2) A summary of the report that includes, on the first page, a general description of the content of the report and instructions, printed in at least 10-point boldface type, regarding how to request a complete copy of the report at no cost to the member.

(b) Notwithstanding subdivision (a), if a member has requested to receive all reports in full, the association shall deliver the full report to that member, rather than a summary of the report.

SEC. 12. Section 6.5 of this bill incorporates amendments to Section 5200 of the Civil Code proposed by both this bill and Senate Bill 432. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 5200 of the Civil Code, and (3) this bill is enacted after Senate Bill 432, in which case Section 6 of this bill shall not become operative.