

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SB 392 (Archuleta)  
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Hearing Date: April 27, 2021  
Fiscal: No  
Urgency: No  
TSG

**SUBJECT**

Common interest developments: document delivery

**DIGEST**

This bill modifies the legal requirements that homeowner associations (HOAs) must follow when providing documents about community governance to their members. Specifically, beginning in 2023, the bill requires delivery of such documents by email, unless the member has not provided an email address or opts for physical delivery of paper copies instead. The bill also requires large HOAs to have a website and allows the posting of general notices to the membership on such a website.

**EXECUTIVE SUMMARY**

Common interest developments are composed of separate property interests that share common areas and facilities. They are governed by HOAs composed of the owners of the separate interests. To keep HOA members informed and enable them to participate in the governance of the community, existing law requires HOAs to provide certain documents and notices to their members. Currently, where the law calls for “individual delivery” or “individual notice,” the HOAs must physically deliver a hard copy of these documents to the member, which they usually do by mail. The HOAs can only email documents to a member if the member has affirmatively requested email delivery. This bill would invert these default delivery settings. Under this bill, HOAs would email documents to members unless the member either: (1) does not provide an email address to the HOA, or (2) affirmatively opts out of email delivery. Separately, the bill requires HOAs with 50 or more units to have a website and allows HOAs to comply with general notice requirements using a website.

The bill is sponsored by the California Association of Realtors. Opposition comes from advocates for retired individuals and advocates for the rights of homeowners within HOAs. The opponents assert that the bill may undermine the privacy of homeowners and that the website mandate may be difficult for some HOAs to comply with. The bill passed out of the Senate Housing Committee by a vote of 8-0.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes, within the Davis-Stirling Common Interest Development Act, rules and regulations governing the operation of a residential common interest development (CID) and the respective rights and duties of an HOA and its members. (Civ. Code § 4000 et seq.)
- 2) Provides that if an HOA must provide “individual notice” or “individual delivery” about the content of a document, the HOA shall deliver the document by mail or overnight delivery unless the recipient has consented to delivery by email, facsimile, or other electronic means. (Civ. Code § 4040(a).)
- 3) Provides that if an HOA must provide “general notice” or “general delivery” about the content of a document, it may deliver the document by any of the following means:
  - a) any method constituting individual notice;
  - b) including the notice in a billing statement, newsletter, or other document;
  - c) posting the notice in a prominent location that is accessible to all members, as specified; or
  - d) television broadcast, if the association broadcasts television programming. (Civ. Code § 4045(a).)
- 4) Requires an HOA to provide all general notices by individual notice if a member requests it. (Civ. Code § 4045(b).)
- 5) Defines “association records” to encompass membership lists including members’ names, property addresses, mailing addresses, and email addresses. (Civ. Code § 5200(a)(9).)
- 6) Empowers members to opt-out of having their name, property address, and mailing address included in the membership list. (Civ. Code §5220.)
- 7) Provides that 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 and empowers an association to bring a civil action against anyone who violates this provision. (Civ. Code 5230.)
- 8) Requires a member requesting the membership list to state the purpose for the request, which must be reasonably related to the requester’s interest as a member. (Civ. Code § 5225.)

- 9) Empowers an HOA to deny members access to the membership list if the association reasonably believes that the information on the list will be used for a purpose other than one reasonably related to the requester's interest as a member (Civ. Code § 5225.)
- 10) Empowers an HOA member to bring an action to enforce that member's right to inspect and copy the association records. (Civ. Code § 5235(a).)
- 11) Directs a court to award a member reasonable costs and expenses, including reasonable attorney's fees, if the court finds that the HOA unreasonably withheld access to the association records and authorizes the court to assess a civil penalty on the HOA of up to five hundred dollars (\$500) for the denial of each separate written request as well. (Civ. Code § 5235(a).)

This bill:

- 1) Requires HOAs to make a good faith effort to obtain an email address for each of their members by June 1, 2022.
- 2) Requires HOAs, effective January 1, 2023, to deliver by email any document that is required to be delivered by "individual delivery" or "individual notice."
- 3) Notwithstanding (2) above, requires an HOA to deliver a notice by first-class mail, registered or certified mail, express mail, or overnight delivery, if the member has not provided a valid email address to the HOA, or the member has revoked their consent to receive documents by email.
- 4) Requires HOAs to deliver an additional copy of documents requested by a member, including annual reports and assessment notices, to a secondary email or mailing address.
- 5) Requires HOAs, if two-thirds of its members approve, to deliver a document required to be delivered by "individual delivery" or "individual notice," by any means specified in (2) or (3) above.
- 6) Requires an HOA member to annually provide their email or mailing address or addresses, as well as an alternate or secondary email or mailing address, to which HOA notices shall be delivered.
- 7) Requires HOAs to annually notify their members that by providing an email address to the HOA, the member agrees that communication shall be by email.
- 8) Authorizes an HOA to satisfy a requirement to provide "general notice" or "general delivery" of a document but posting that document on the HOA's website.

- 9) Requires each HOA of 50 or more units to maintain a website, as specified, to provide general information to its membership except if two-thirds of the members vote not to maintain such a website.

## COMMENTS

### 1. About common interest developments

Common interest developments (CIDs) are self-governing groups of dwellings that share common spaces and amenities. They come in a wide variety of physical layouts: condominium complexes, apartment buildings, and neighborhoods of detached, single-family residences, for example. Some consist of thousands of units. Others are made up of just a handful. Dwellings within common housing developments currently account for approximately a quarter of the state's overall housing stock, meaning that the laws governing such developments have a large impact on the population. In California, CIDs are primarily governed by the Davis-Stirling Act. (Civ. Code §§ 4000-6150.)

The Davis-Stirling Act sets forth a system for each CID to govern itself through a homeowners' association (HOA). The owners of the separate properties within the CID are the members of the HOA. The membership of the HOA elects a board of directors. The board manages the HOA, frequently by hiring an individual or entity – the property manager – to do so on its behalf. The board determines the annual assessments – much like taxes – that members must pay in order to cover communal expenses. The board enforces the community rules and can propose and make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members, place liens on the offending member's property, and, if ultimately necessary, the power to foreclose. This array of responsibilities and powers has led multiple courts to observe that HOAs function in many ways almost “as a second municipal government, regulating many aspects of [the homeowners'] daily lives.” (*Villa Milano Homeowners Ass'n v. Il Davorge* (2000) 84 Cal.App.4th 819, 836 [citations omitted].)

### 2. Existing notice requirements within CIDs and how this bill would change them

So that HOA members can stay abreast of what is happening within their community and participate fully in community governance, the Davis-Stirling Act requires HOAs to provide their members with notice about things like meetings, elections, and annual reports.

There are two main methods of notice required within the Davis Stirling-Act. Sometimes the HOA has to provide “individual notice” or “individual delivery” of a document. At other times, the HOA merely has to provide “general notice” or “general delivery” of the document. This bill proposes changes to both types of delivery.

*a. Individual notice or delivery*

Under existing law, when an HOA is required to provide its members with “individual notice” or “individual delivery” of a document, the HOA must physically deliver a paper copy of these documents to the member. Typically, HOAs do this by mail, though they are also authorized to use an overnight delivery service as well. (Civ. Code § 4040(a).) Physical delivery of paper is costly, labor intensive, and environmentally problematic, especially for larger HOAs. Delivery by email enables swift, cheap, and paper free distribution of HOA documents. Yet, under existing law, the only time that an HOA can satisfy its individual notice or individual delivery requirement through email is if the member to whom the delivery must be made affirmatively consents to electronic delivery. (Civ. Code § 4055.) In other words, the default setting for distribution of HOA documents is physical delivery of hard copies and email is the alternative to which members must opt-in.

This bill would invert those default settings beginning January 1, 2023. Under this bill, HOA members would receive HOA documents by email unless they do not have an email on file with the HOA or they affirmatively request physical delivery of paper copies instead. It is worth noting that this change also forces the HOA to abide by the homeowners’ choice of email delivery methods in a way that existing law does not. Under existing law, if the homeowner consents to email delivery, then the HOA *may* use email delivery, but is not obliged to. Under this bill, the HOA *must* deliver by email unless the homeowner has not given the HOA an email address or the homeowner opts for the physical delivery of paper copies instead.

To facilitate the transition to email as the default mode of HOA document distribution, the bill in print requires HOAs to make a good faith effort to obtain an email address from their members before June 1, 2022. The bill also makes HOAs solicit email addresses from their members as part of the annual required process for updating the HOA membership contact lists.

*b. General notice or delivery*

Under existing law, when an HOA is required to provide its members with “general notice” or “general delivery” of a document, the HOA must communicate the information in the document in one or more of the following ways: (a) any method constituting individual notice; (b) including the notice in a billing statement, newsletter, or other document; (c) posting the notice in a prominent location that is accessible to all members, as specified; or (d) television broadcast, if the association broadcasts television programming. (Civ. Code § 4045(a).)

This bill would provide HOAs with yet another method for complying with a “general delivery” or “general notice” requirement: they could also post the document to their website.

3. Ensuring that members know about the transition to email delivery by default, know that providing their email will result in email delivery, and have a simple way to opt for physical delivery of paper instead

Opponents of this bill criticize the fact that the proposed transition to email as the default for receiving HOA documents happens without necessarily involving any active consent on the part of the HOA members. The member's provision of an email address effectively functions as the member's consent.

The opposition contends, first, that this constitutes a violation of Civil Code Section 4040(a), which requires the affirmative consent of the member for an HOA to send notices to that member electronically. Legislation that would alter an existing statute is not a violation of that statute, though; it is a proposal to change that statute. Indeed, a big part of the purpose of the bill is to revise Civil Code Section 4040(a).

Still, the opposition is correct that the bill eliminates the need for HOAs to obtain active, affirmative consent from homeowners before beginning to send them important documents by email. That is a big part of the point, presumably: the idea is to nudge HOAs and homeowners toward greater use of email (because of the cost-savings, efficiency, and environmental benefits) by changing the choice architecture from one in which homeowners have to affirmatively ask to get documents by email, to one in which they must affirmatively ask to get paper copies physically delivered to them instead. Those without email addresses would not be part of this choice architecture; they would simply receive paper copies automatically.

Without strong guardrails, however, making this change could be problematic in some instances. If there is not clear notice to homeowners that provision of their email address will result in the receipt of important HOA documents by email, homeowners could get caught off guard by the change. Similarly, the idea that homeowners are voluntarily acquiescing to delivery by email is illusory unless the notification of the change is accompanied by an easy and obvious way for the homeowner to opt for physical delivery of paper copies instead.

To build more of these sorts of guardrails into the bill, the author proposes to offer a series of amendments in Committee. First, the proposed amendments would clarify that provision of an email to the HOA only constitutes an agreement by the homeowner to begin receiving delivery of HOA documents by email when the email is provided as part of the required annual solicitation of members' contact information pursuant to Civil Code Section 4041. That will prevent HOAs from hoovering up homeowners' email addresses from any source they can find and using that as a basis to claim the homeowner has agreed to delivery of HOA documents by email. It will also prevent homeowners from unwittingly agreeing to email delivery of HOA documents by "providing" their email address to the HOA through some casual, unrelated email communication. Second, the proposed amendments require the HOA to do all of the

following with each annual solicitation of membership contact information pursuant to Civil Code Section 4041: (1) notify the member that providing an email address to the HOA is not mandatory; (2) notify the member that provision of an email address constitutes consent to delivery of required documents from the HOA by email; and (3) offer the members a simple method for opting out of email delivery by informing the HOA that the member wants physical delivery of paper copies instead. Finally, to address the scenario in which a homeowner already has an email address on file with the HOA, the proposed amendments require that, during the 2022 solicitation of updated contact information from members, the HOA must notify members that if they already have an email address on file with the HOA, the HOA will begin delivering HOA documents to that email address beginning in 2023 unless the member asks the HOA not to. The proposed amendments require this 2022 notice to be accompanied with a simple method for each homeowner to opt out of email delivery in favor of physical delivery of paper copies.

While still preserving the transition to email as the default mode of delivery in 2023, these proposed amendments greatly increase homeowner's agency within the transition and offer them ample opportunity to make an informed, deliberate choice as to whether to transition to email delivery or opt for physical delivery of paper copies instead.

4. Clarifications to the bill's provision allowing an HOA to choose an alternative document delivery system by a supermajority vote

As discussed, a primary purpose behind the bill is to make email the default method for HOAs to deliver required documents and notices to their members. However, the bill provides some flexibility for situations in which a super-majority the membership is opposed to this approach. Specifically, Section 2 of the bill in print states that, if two-thirds of the members of an HOA approve, the HOA shall provide individual notice or individual delivery "by any means described in subdivision (a) or (b), at its discretion."

This language seems susceptible to two possible interpretations. It may merely mean that, if two-thirds of the HOA membership approves, then the HOA may choose either: (1) email as the default method of delivery but physical delivery for members without email addresses or who do not consent to email delivery; or (2) physical delivery as the default mode of delivery, but email delivery for members who affirmatively consent to it. Alternatively, since subdivisions (a) and (b) describe both email and physical delivery options, the language could be interpreted to mean that, if two-thirds of the HOA membership approves, then an HOA can deliver documents by email or physical delivery, at its discretion, period. The latter interpretation would be problematic. For instance, if 70 out of 100 members of an HOA voted to approve delivery by email for everyone, but the other 30 members have no email address, then those 30 members would not get required documents and notices at all. The author therefore proposes to offer amendments in Committee that would eliminate this latter possible interpretation of Section 2. Instead, as part of a general redrafting of that Section of the bill intended to

make it simpler to follow, the proposed amendments would clarify that if a two-thirds majority of the HOA membership overrides the bill's proposed transition to email as the default mode of delivery, then the result is a reversion to physical delivery as the default mode of delivery. The proposed amendments further clarify that the super-majority vote must be taken as part of a member election, meaning the vote must be conducted by secret ballot and according to specified rules designed to ensure integrity and fairness.

#### 5. Establishing safeguards on the use of member's data

Under existing law, HOAs must attempt to update the contact information they have on file for each of their members each year. (Civ. Code § 4041.) To do this, the HOAs are supposed to solicit the members' names and mailing addresses, as well as an alternative mailing address, and the contact information for the member's legal representative, if any. (*Ibid.*) This bill would offer members the option of providing an email address in lieu of, or in addition to, their mailing address.

Once collected, this information becomes part of the HOA's official records. (Civ. Code § 4041(b).) In fact, the Davis-Stirling Act defines "association records" to encompass membership lists and goes on to state that membership lists include members' names, property addresses, mailing addresses, and *email addresses*. (Civ. Code § 5200(a)(9). Emphasis added.) Thus, existing law already contemplates the inclusion of members' email addresses as part of the membership list.

All HOA records are subject to inspection by any of the members. Like the federal Freedom of Information Act or the California Public Records Act, this aspect of the HOA law allows for the sort of transparency that is critical to a self-governed community. Since membership lists are part of the HOA's records, the membership lists, too, are subject to inspection. This also plays a critical role in the democratic governance of HOAs, as it enables members to contact one another about HOA elections and other matters of community concern.

At the same time, however, the accessibility of membership lists raises potential concerns around privacy and about the possibility that bad actors could exploit the availability of the list for commercial or even fraudulent purposes. A balance must be struck, therefore, between the accessibility of the membership list and protecting members against misuse of the membership list. Existing law attempts to strike this balance in two ways.

First, it empowers individual HOA members to opt out of having their name, property address, and mailing address included in the membership list. (Civ. Code § 5220.) It is a flaw in existing law that email addresses are not mentioned among the things that members can remove from the membership list. With that in mind, the author proposes



to add a section to the bill amending the existing law to ensure that HOA members can opt out of having their email address included on the HOA membership list.

The second way that existing law seeks to strike a balance between enabling access to HOA membership lists while preventing their misuse is by prohibiting certain uses for the list. In general, all association records, including membership list, and any information contained in them, cannot be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. (Civ. Code § 5230.) HOAs are authorized to bring suit against anyone who violates this provision. (*Ibid.*) Moreover, any member who is requesting to see the membership list must tell the HOA why they want to see the list. (Civ. Code § 5225.) If the HOA reasonably believes that the member is planning to use the membership list for purposes other than HOA community issues, then the HOA has legal authority to deny that member access to the membership list. (*Ibid.*)

Despite the existence of these protections for the contact information contained in HOA membership lists, the opponents of this bill express concern that the emails collected pursuant to this bill will be used for nefarious purposes. The opponents emphasize that email is often an initial point of contact that criminals use to commit fraud, particularly against seniors. While it is true that email can be used in this way, the only way to prevent the possibility that members' emails could get from an HOA membership list into the hands of criminals would be to shut down members' access to those membership lists. This would have a profound chilling effect on member-to-member communications, which are a vital and important part of the democratic self-governance that is supposed to characterize HOA communities.

The opponents further contend that the bill gives HOAs carte blanche to do whatever they will with members' email addresses. That argument seems to ignore the existing prohibition on the use of association records – of which member email address are one type – for sale, for commercial purposes, or for any other purpose not reasonably related to a member's interest as a member. (Civ. Code § 5230(a).)

It is notable, however, that the enforcement provisions associated with this prohibition only speak about the HOA's ability to seek relief. There is no explicit right for a member to enforce the prohibition if it is the HOA itself that is using the records for an inappropriate purpose, such as selling access to members' contact information. Thus, to further strengthen the existing prohibition on the use of membership lists, including email addresses, for purposes other than conducting HOA affairs, the author proposes to amend the bill to add provisions that: (1) clarify that HOAs are prohibited from transmitting or selling a members' personal information; and (2) empower members to enforce this prohibition in the event that their HOA is violating it.

6. The California Consumer Privacy Act probably has limited relevance to this bill

Opponents of this bill repeatedly assert that the bill violates the California Consumer Privacy Act (CCPA). The CCPA primarily applies to for-profit businesses that: (1) have at least \$25 million in annual adjusted gross revenues; (2) buy, sell, or share the personal information 100,000 or more consumer; or (3) derive 50 percent or more of their annual revenue from selling or sharing consumer's personal information. (Civ. Code § 1798.140(d).) It seems unlikely that many, if any, HOAs meet this definition, so the CCPA probably does not apply to them. In any event, while proposed state legislation cannot violate constitutional law or federal law without risking being struck down in court if enacted, there is no need for a bill to comply with existing state law.

The opponents may mean that the bill runs contrary to the general spirit of the CCPA, which is to protect Californians against the use of their private, personal information for commercial purposes without their consent. However, as discussed in Comment 5, above, the sharing of membership lists within the HOA context serves an important role in enabling the member-to-member communications that are vital to the democratic self-governance of HOAs, and existing law already strikes a balance between protecting members' privacy and ensuring that members can communicate with one another freely about HOA affairs.

7. The website mandate

The bill mandates that HOAs composed of 50 or more separate interests maintain a website with general information about the HOA. For larger HOAs like these, maintaining a website may be a best practice. A website can serve as a central hub for communication about what it happening within the HOA, as well as a repository of information about the HOA and its governance. Perhaps the HOA could even make recordings of board meetings accessible on the site for members to review at their convenience.

At the same time, maintaining a website can be costly and may in many instances be impossible for HOAs to comply with, as the opposition points out. Internet access remains far from universal and at least some HOAs are located in places where internet service is limited or non-existent. The bill does empower HOAs to opt out of the website mandate if two-thirds of the membership approve, but perhaps the better policy approach is to allow the potential benefits of maintaining a website to lure willing HOAs to do so voluntarily, rather than putting the onus on the HOAs that are unable or unwilling to maintain a website to opt out. With that in mind, the author proposes to offer an amendment in Committee to remove the website mandate.

## 8. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- clarify that only email addresses obtained through the annual solicitation of updated contact information can be used as a basis for email delivery of required HOA documents;
- add required elements to the annual solicitation of updated contact information that: (a) notify members that providing an email address in response constitutes an agreement to receive required HOA documents by mail; (b) inform members that they do not have to provide an email address to the HOA; and (c) give homeowners a simple way to give their email address to the HOA and still opt out of receiving required HOA documents by email;
- require HOA's to add to their required 2022 solicitation of updated contact information from the membership: (a) a notification that, if the member has an email address on file with the HOA, the HOA will be using that email address for delivery of required HOA documents beginning in 2023; and (b) a simple way for the member to request that the HOA send the member paper copies of the documents by physical delivery instead;
- clarify that a super-majority vote, through a member election, to override the bill's switch to email as the default mode of delivery simply results in a reversion to physical delivery as the default mode of delivery, with an option for HOA members to request email delivery instead;
- prohibit HOAs from selling member's personal information without the member's consent;
- prohibit HOAs from transmitting member's personal information to third parties without the member's consent, except as required by law;
- clarify that a member can opt out of having their email address included in the membership list; and
- eliminate the mandate to maintain a website.

A mock-up of the amendments in context is attached to this analysis.

## 9. Arguments in support of the bill

According to the author:

Under the Davis-Stirling Act Common Interest Development Act, homeowners associations (HOAs), must provide members with necessary documents, including annual budgets, policy statements, or notices. Because of existing law, HOAs are, by default, required to print hundreds of pages of documents, resulting in additional costs to deliver a physical copy to each member. In the midst of a global pandemic, where frustration with mail delays are constantly increasing, and cost savings are crucial to the continued operation

of vital services, updating these processes to be electronic are more important than ever. SB 392 will improve accessibility to important documents and reduce delivery costs by requiring HOAs to communicate with homeowners via email, unless otherwise requested by the member, beginning January 1, 2023 if a valid email address has been provided by June 1, 2022. It will also mandate associations consisting of 50 or more units to maintain a website.

As sponsor of the bill, the California Association of Realtors writes:

Providing homeowners with the resources and tools they need by updating the way homeowners receive information from HOAs is pivotal to ensuring that processes are kept up to date within our ever-changing landscape of information sharing technology. Electronic document delivery has many advantages as it is much more cost effective and reduces negative environmental impacts by eliminating an unnecessary use of paper products. Individual homeowners are also more likely to retain important documents electronically for future reference.

10. Arguments in opposition to the bill

In opposition to the bill, the Center for California Homeowner Association Law writes:

[...] [T]rying to void a homeowner's ownership of his own email address, the legislation says the HOA can INFORM an individual owner that its mere possession of the owner's email address - no matter how possession was obtained - "equals" consent by the owner to its use by the association. [...] SB 392 puts no limits or guardrails on the uses to which it will put an owner's email address once the association obtains possession of it. [...] For example, will the association turn an owner's email address over to a debt collector who wants it?

In further opposition to the bill, the California Alliance of Retired Americans writes:

We must point out that many retirement communities are located in California's rural areas where there is no - or limited -- internet infrastructure. Most Sun City communities - in San Benito, in Placer, in Kern counties for example - suffer from what is called the "digital divide." So just from a technical standpoint it could be difficult, if not impossible, to comply with the website requirement of SB 392. Second: SB 392 carries no appropriation for funding the

website requirement. The bill apparently assumes that homeowners – including seniors – will bear the cost, when seniors are the ones least likely to afford it.

### **SUPPORT**

California Association of Realtors (sponsor)

### **OPPOSITION**

California Alliance for Retired Americans  
Center for California Homeowner Association Law

### **RELATED LEGISLATION**

Pending Legislation: SB 391 (Min, 2021) authorizes HOAs, during a declared emergency or disaster, to conduct board meetings by phone or video conference without a physical location for members to attend, subject to specified preconditions and exceptions. SB 391 is currently pending consideration on the Senate Floor.

#### Prior Legislation:

SB 981 (Archuleta, 2020) was nearly identical to this bill. SB 981 was never referred to a policy committee for review because of the COVID-19 pandemic's impact on the 2020 legislative session.

SB 261 (Roth, Ch. 836, Stats. 2018) authorized HOA members to use email to opt in and out of individual delivery and individual notice by email.

SB 1128 (Roth, 2018) would have authorized HOA members to use email to opt in and out of individual delivery and individual notice by email. Then-Governor Brown vetoed the bill on other grounds.

### **PRIOR VOTES:**

Senate Housing Committee (Ayes 8, Noes 0)

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**Amended Mock-up for 2021-2022 SB-392 (Archuleta (S))**

**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) (A) 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) On or before June 1, 2022, an association shall make a good faith effort to obtain an email address for each member.~~

(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) If a provision of this act requires an association to deliver a document by "individual delivery" or "individual notice, the association shall deliver the document in accordance with the following:

(1) If the member has provided a valid email address to the association pursuant to Section 4041, then the association shall deliver the documents to that email, unless the member has revoked the member's consent to receiving documents by email.

(2) If the member has not provided a valid email address to the association, or if the member has revoked the member's consent to receiving documents by email, then 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, pursuant to Section 5260, identifying a secondary email or mailing 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) Notwithstanding subdivision (a), if two-thirds of all members of the association so approve as part of an election pursuant to article 4 of chapter 6 of part 5 of division 4 (beginning with Section 5100), then, whenever a provision of this act requires an association to deliver a document by "individual delivery" or "individual notice," the association shall deliver the document as follows:

(1) By first-class mail, postage prepaid, 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, unless the recipient has consented in writing or by email to receive documents from the HOA by email, and the recipient has not revoked that consent in writing or by email.

(2) By email, if the recipient has consented in writing or by email to receive documents from the HOA by email, and the recipient has not subsequently revoked that consent.

(d) 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.

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

~~(a) Subject to subdivisions (b) and (d), 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 by email.~~

~~(b) If a provision of this act requires an association to deliver a document by “individual delivery” or “individual notice,” an association shall, instead of complying with subdivision (a), deliver the document by first class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier if either of the following is true:~~

~~(1) The member has not provided a valid email address to the association.~~

~~(2) The member has revoked the member’s consent to receiving documents by email.~~

~~(c) Upon receipt of a request by a member, pursuant to Section 5260, identifying a secondary email or mailing 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.~~

~~(d) If two-thirds of the members approve, an association shall deliver a document subject to this section by any means described in subdivision (a) or (b), at its discretion.~~

~~(e) 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 email or mailing address or addresses to which notices from the association are to be delivered.

(2) An alternate or secondary email or mailing address to which notices from the association are to be delivered.

(3) The name and email or mailing 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) As part of the solicitation of annual notices pursuant to paragraph (1), the association shall include all of the following:

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

(B) Notification that if the member chooses to provide an email address annually notify each member that by providing an email address to the association, the member agrees is agreeing that the association may send required documents and notices to the communication between the member and the association shall be conducted by email, unless the member informs the association in writing that the member prefers to receive required documents and notices from the association in paper form.-

(C) A simple method for the member to inform the association in writing that the member prefers to receive required documents and notices from the association on paper and does not want documents and notices from the association sent to the member by email.

(3) As part of any solicitation of annual notices pursuant to paragraph (1) that takes place during calendar year 2022, the association shall, in addition to complying with all other provisions of this section, notify each member that if the member already has an email address on file with the association, that email address will be used to deliver all required documents to the member beginning January 1, 2023 unless the member informs the association in writing that the member prefers to receive required documents and notices from the association in paper form. The notification shall be accompanied by a simple method for the member to inform the association in writing that the member prefers to receive required documents and notices from the association on paper and does not want documents and notices from the association sent to the member by email.

(c) If a member fails to provide the notices set forth in paragraphs (1) and (2) of subdivision (a), the last email or 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.

**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) A 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) Posting the document on an internet website maintained pursuant to Section 4801.

(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 4801 is added to the Civil Code, to read:~~

~~**4801.** (a) (1) Subject to subdivision (b), an association shall maintain an internet website to provide general information to its membership if the common interest development it manages consists of 50 or more separate interests.~~

~~(2) The internet website required by this subdivision shall be maintained by a person designated by the association, including, but not limited to, any of the following:~~

~~(A) A volunteer member of the association.~~

~~(B) A real estate licensee, as defined in Section 10014 of the Business and Professions Code.~~

~~(C) A person contracted by the association to provide association management services, as defined in Section 11500 of the Business and Professions Code.~~

~~(b) An association may choose not to comply with subdivision (a) if that noncompliance is approved by two-thirds of the members.~~

**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:**

**(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 of chapter 6 of part 5 of division 4 (beginning with Section 5200).**

**(2) A member may bring an action against an association that violates this subdivision for injunctive relief and actual damages cause by the violation. A member shall be entitled to recover reasonable costs and expenses, including reasonable attorney 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. 97.** 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. 108.** 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 paragraph (3) of 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. 119.** 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.