



## “Your Future Is Our Business”

Courtesy of RSI, the following is a reprint of the most current California Civil Code sections that apply to Reserve Studies:

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

- (a) A pro forma operating budget, which shall include all of the following:
  - (1) The estimated revenue and expenses on an accrual basis.
  - (2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, based only on assets held in cash or cash equivalents, which shall be printed in boldface type and include all of the following:
    - (A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
    - (B) As of the end of the fiscal year for which the study is prepared:
      - (i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.
      - (ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.
      - (iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). Instead of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.
    - (C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).
    - (D) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of clause (ii) of subparagraph (B) from the amount determined for purposes of clause (i) of subparagraph (B) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.
  - (3) A statement as to all of the following:
    - (A) Whether the board of directors of the association has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.
    - (B) Whether the board of directors of the association, consistent with the reserve funding plan adopted pursuant to subdivision (e) of Section 1365.5, has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor..If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment.
    - (C) The mechanism or mechanisms by which the board of directors will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms.
    - (D) Whether the association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.
  - (4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain. The report shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (b) of Section 1365.2.5, and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made. The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision. Notwithstanding a contrary provision in the governing documents, a copy of the operating budget shall be annually distributed not less than 30 days nor more than 90 days prior to the beginning of the association's fiscal year.

- (b) Commencing January 1, 2009, a summary of the reserve funding plan adopted by the board of directors of the association, as specified in paragraph (4) of subdivision (e) of Section 1365.5. The summary shall include notice to members that the full reserve study plan is available upon request, and the association shall provide the full reserve plan to any member upon request.
- (c) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.
- (d) Instead of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

**1365.2.5.** (a) The disclosures required by this article in regard to an association or a property shall be summarized on the following form:

## Assessment and Reserve Funding Disclosure Summary

- 1) The current regular assessment is \$\_\_\_\_\_ per ownership interest per month and the portion allocated to reserves is \$\_\_\_\_\_ per ownership interest per month (note: if assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on a separate schedule attached).
- 2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members (note: if assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on a separate schedule attached).

DATE ASSESSMENT WILL BE DUE	PURPOSE	AMOUNT PER OWNERSHIP INTEREST
Total:		\$0.00

- 3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association's obligation for repair and/or replacement of major components during the next 30 years? Yes \_\_\_ No \_\_\_
- 4) If the answer to #3 is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not been approved by the board or the members?

APPROXIMATE DATE ASSESSMENT WILL BE DUE	DESCRIPTION	AMOUNT PER OWNERSHIP INTEREST
Total:		

- 5) All major components are included in the Reserve Study and are included in its calculations.
- 6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5 of the Civil Code, the estimated amount required in the reserve fund at the end of the fiscal year is \$\_\_\_\_\_ based in whole or in part on the last Reserve Study Update prepared by Reserve Studies Incorporated as of \_\_\_\_\_ for the \_\_\_\_\_ calendar / fiscal year. The projected reserve fund cash balance at the end of the fiscal year is \$\_\_\_\_\_, resulting in reserves being \_\_\_\_\_ funded at this date.
- 7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5 of the Civil Code, at the end of each of the next five budget years the estimated amount required in the reserve fund, the projected reserve fund cash

balance in each of those years, taking into account only assessments already approved and other known revenues, and the percent funded is as follows:

YEAR	ESTIMATED AMOUNT REQUIRED IN THE RESERVE FUND	PROJECTED RESERVE FUND CASH BALANCE	PERCENT FUNDED

If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, and the percent funded is as follows:

YEAR	ESTIMATED AMOUNT REQUIRED IN THE RESERVE FUND	PROJECTED RESERVE FUND CASH BALANCE	PERCENT FUNDED

NOTE: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change. **It has been assumed that a reserve funding plan has been adopted by the board of directors at an open meeting before the membership of the association as described in California Civil Code Section 1363.05.**

For the purposes of preparing a summary pursuant to this section:

- 1) "Estimated remaining useful life" means the time reasonably calculated to remain before a major component will require replacement.
- 2) "Major component" has the meaning used in Section 1365.5. Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the Reserve Study and reported in the Assessment and Reserve Funding Disclosure Summary.
- 3) The form set out in subdivision (a) shall accompany each pro forma operating budget or summary thereof that is delivered pursuant to this article. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.
- 4) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the board to fund reserves in accordance with this calculation.

**1365.3.** Unless the governing documents impose more stringent standards, any community service organization as defined in paragraph (3) of subdivision (c) of Section 1368 whose funding from the association or its members exceeds 10 percent of the organization's annual budget shall prepare and distribute to the association a report that meets the requirements of Section 5012 of the Corporations Code, and that describes in detail administrative costs and identifies the payees of those costs in a manner consistent with the provisions of Section 1365.2. If the community service organization does not comply with the standards, the report shall disclose the noncompliance in detail. If a community service organization is responsible for the maintenance of major components for which an association would otherwise be responsible, the community service organization shall supply to the association the information regarding those components that the association would use to complete disclosures and reserve reports required under this article. An association may rely upon information received from a community service organization, and shall provide access to the information pursuant to the provisions of Section 1365.2.

**1365.5.** (a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

- (1) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.
  - (2) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.
  - (3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.
  - (4) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.
  - (5) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.
- (b) The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of moneys from the association's reserve accounts.
- (c) (1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components that the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.
- (2) However, the board may authorize the temporary transfer of moneys from a reserve fund to the association's general operating fund to meet short-term cash flow requirements or other expenses, if the board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Section 1363.05. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the board authorizes the transfer, the board shall issue a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.
- (d) When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.
- (e) At least once every three years, the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association, excluding the association's reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review. The study required by this subdivision shall at a minimum include:
- (1) Identification of the major components that the association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years.
  - (2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.
  - (3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).
  - (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.
  - (5) A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plan shall be adopted by the board of directors at an open meeting before the membership of the association as described in Section 1363.05. If the board of directors determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in Section 1366.
- (f) As used in this section, "reserve accounts" means both of the following:
- (1) Moneys that the association's board of directors has identified for use to defray the future repair or replacement of, or additions to, those major components that the association is obligated to maintain.

- (2) The funds received, and not yet expended or disposed of, from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from funds described in paragraph (1).
- (g) As used in this section, "reserve account requirements" means the estimated funds that the association's board of directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components that the association is obligated to maintain.
- (h) This section does not apply to an association that does not have a "common area" as defined in Section 1351.

**1366.** (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners of an association.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than 50 percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- (1) An extraordinary expense required by an order of a court.
  - (2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.
  - (3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.
- (c) Regular assessments imposed or collected to perform the obligations of an association under the governing documents or this title shall be exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision. This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by the owners of an association, constituting a quorum, casting a majority of the votes at a meeting or election of the association, or to any state tax lien, or to any lien for labor or materials supplied to the common area.
- (d) The association shall provide notice by first-class mail to the owners of the separate interests of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due.
- (e) Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due, unless the declaration provides a longer time period, in which case the longer time period shall apply. If an assessment is delinquent the association may recover all of the following:
- (1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.
  - (2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.
  - (3) Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorney's fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the assessment becomes due, unless the declaration specifies the recovery of interest at a rate of a lesser amount, in which case the lesser rate of interest shall apply.
- (f) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

**1366.1.** An association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.