

# What's New in the Davis-Stirling Act?

Hosted by SwedelsonGottlieb  
and Association Lien Services  
October 3, 2013  
DoubleTree, Culver City

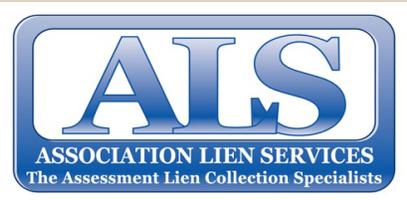


**SWEDELSON  
GOTTLIEB**



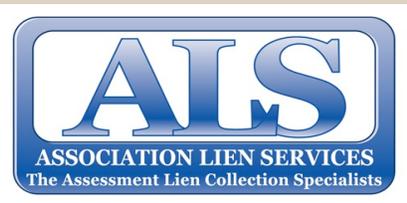
# Overview

- New law and changes effective January 1, 2014
- Changes include some substantive changes to the law
- Renumbered and reorganized for clarity
- Easier to understand
- Shorter sections



# What's Changed?

- ✓ Changes to Notice/Delivery to members and to the association
- ✓ Board of Directors Conflicts of Interest addressed
- ✓ Year-End Disclosures organized in Annual Budget Report and Annual Policy Statement
- ✓ New Definitions and Terminology
- ✓ Hierarchy of Governing Documents established
- ✓ Grants of Exclusive Use Common Area
- ✓ Election Results
- ✓ Record Inspection
- ✓ Provisions affecting Assessments and Liens
- ✓ And More...



# Delivery of Documents to the Association

- **Currently:** No provision describing how delivery to an association must take place.
- **New Law:** California Civil Code Section 4035: If documents must be delivered to the association, the delivery must be:
  - Delivered to the person designated in the annual policy statement to receive documents on behalf of the association. If no person is designated, documents must be delivered to the President or Secretary of the Board of Directors



## Delivery must be by:

- 1) Email, fax, or other electronic means (if the association has consented to such a method),
- 2) Personal delivery (if the association has consented to personal delivery) and the association must provide written receipt acknowledging delivery, or
- 3) By first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service center.

# Distribution and Delivery of Documents and Notices

- **Currently:** There is no distinction between individual and general delivery and/or notice.
- Under California Civil Code Section 1350.7, all documents required to be disclosed by an association are to be delivered by one or more of the following:
  - Personal delivery
  - First class mail
  - Email, facsimile, or other electronic means (if consented to by the recipient)
  - Publication in an association-wide circulated periodical
  - Inclusion in association broadcast television programming, if any.



# “Individual Delivery or Notice”

- **New Law:** California Civil Code Section 4040: If documents must be delivered by “individual delivery or notice,” the delivery must be by: **First class mail, registered/certified/express mail, or overnight delivery, all addressed to the address last shown in association’s records**
- If a member makes a written request, additional copies of the Annual Budget Report and Annual Policy Statement must be delivered to the member’s secondary address

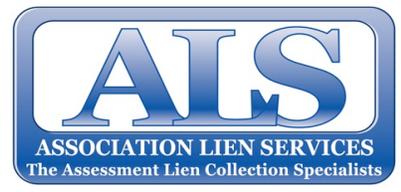


# “General Delivery or Notice”

**New Law:** California Civil Code Section 4045: If documents must be delivered by “general delivery or notice,” the delivery must be by:

- Any method of Individual Delivery or Notice
- In a billing statement, newsletter, or other document delivered using one of the methods described previously
- Posting a printed document in a prominent location accessible to all members, if the location is designated for general notices in the Annual Policy Statement
- Inclusion into the association’s broadcast television programming which distributes info to its members (if such programming exists)

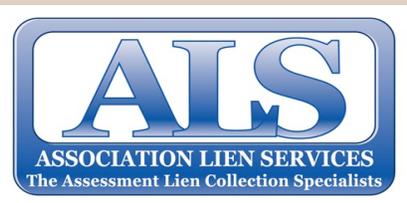
Members can request to receive all general notices by Individual Notice or Delivery



# Electronic Delivery

- **Currently:** There is no explicit provision as to whether electronic delivery satisfies any provision which requires a writing.
- **New Law:** California Civil Code Section 4055:  
If the association or a member consents to electronic delivery, and any provision of the Davis-Stirling Act requires info to be in writing, the electronic delivery will satisfy the writing requirement only if the electronic information is capable of retention (i.e. it can be printed or saved/stored)

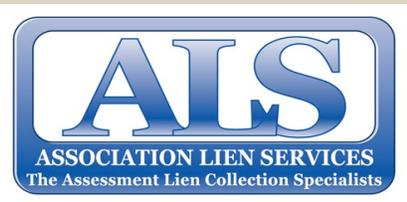
All other delivery/notice requirements remain the same; but have been renumbered, including when mail/electronic documents are considered delivered



# Requirements for Member Votes

- **Currently:** No provision defining “majority of all members”
- **New Law:** California Civil Code Section 4065: If the Davis-Stirling Act requires an action to be approved by a **majority of all members**, the action is considered approved or ratified by an affirmative vote of a majority of the votes entitled to be cast.

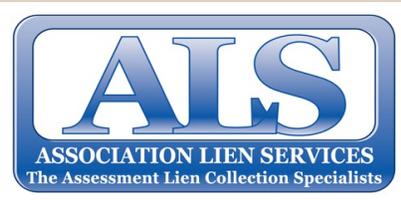
Tie-in of Corporations Code Sections 5033 and 5034



# Requirements for Member Votes (continued...)

- **Currently:** No provision defining “majority of a quorum”
- **New Law:** California Civil Code Section 4070: If the Davis-Stirling Act requires an action to be approved **by a majority of a quorum of the members**, the action is considered approved or ratified by an affirmative vote of a majority of the votes represented and voting in a duly held election in which a quorum is represented.

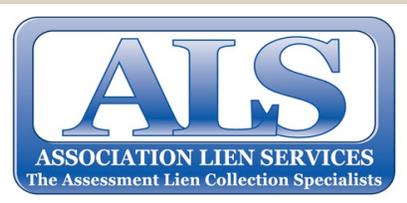
Tie-in of Corporations Code Sections 5033 and 5034



# Definitions/Terminology

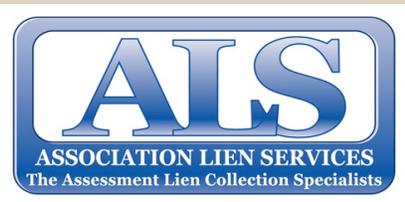
New definitions and standardized terminology have all been added or organized into Article 2 entitled “Definitions”:

- Annual Budget Report
- Annual Policy Statement
- Board
- Board Meeting
- Director
- General Notice
- Individual Notice
- Item of Business
- Managing Agent
- Member
- Person
- Reserve Accounts
- Reserve Account Requirements



# Hierarchy of Governing Documents

- **Currently:** No provision codifying the hierarchy of governing documents and laws.
- **New Law:** California Civil Code Section 4205: The authority and hierarchy of governing documents has been codified as follows:
  1. Federal and State Law
  2. Declaration/CC&Rs
  3. Articles of Incorporation
  4. Bylaws
  5. Operating Rules



To the extent there is conflict between any two of the above, the one on top controls!

# Changes in Notice Requirements for Rule Changes

- **Currently:** When the Board proposes or adopts a rule change (under Section 1357.130 and 1357.140), delivery could be by any method set forth in current California Civil Code Section 1350.7
- **New Law:** California Civil Code Section 4360: When the Board proposes or adopts a rule change, general delivery/notice is required.



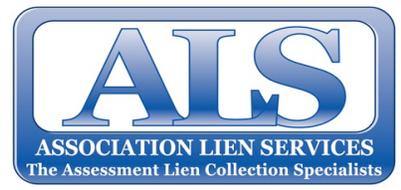
All other requirements for rule changes remain.

# Grants of Exclusive Use Common Area to a Member

- **Currently:** California Civil Code Section 1363.07: lists several exceptions to the general rule that a 67% membership approval would be required in order to grant exclusive use common area to a member.
- **New Law:** California Civil Code Section 4600: This provision has added additional exceptions to the current requirement that a 67% membership approval must be obtained prior to granting exclusive use common area to a member.

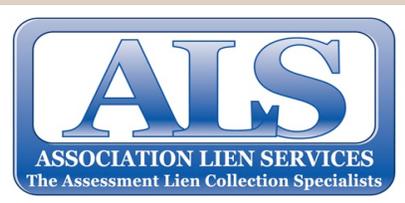
**Grants in order to accommodate disability, to assign a parking space, storage unit, or other amenity, or otherwise comply with the law do not require membership vote.**

All other existing exceptions to the 67% membership approval requirement remain effective.



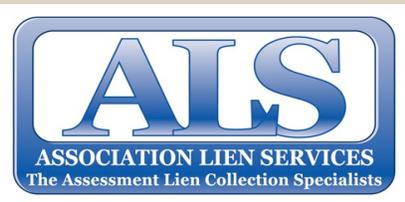
# Temporary Relocation Costs Clarified

- California Civil Code Section 4775: Owners are responsible for the costs of temporary location during the repair and maintenance of areas for which the association is responsible.
- Although language has been carried over from the current Davis-Stirling Act, this section has been relocated to precede any mention of wood-destroying pests and organisms.
- In the past, many believed this section only applied to relocations pertaining to wood-destroying pests/organisms, but now that this language has been moved, it is clear owners are always responsible for the costs of temporary relocation during the repair and maintenance of areas for which the association is responsible (unless the governing documents provide otherwise).



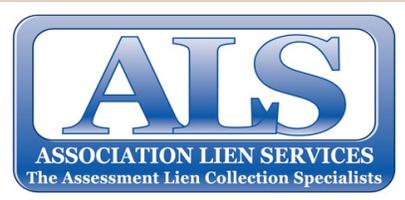
# Procedures Regarding Election Results

- **Currently:** Section 1363.03(g): requires that election results be publicized in a communication directed to all members.
- **New Law:** California Civil Code Section 5120: The board must now give general notice or delivery of election results to all the members.



# Retention of Election Results

- **Currently:** Section 1363.03(h) requires that the inspector of elections keep custody of election results for nine (9) months pursuant to California Corp. Code Section 7527.
- **New Law:** California Civil Code Section 5125: After an election, the inspector of elections must keep custody of the sealed ballots for a full year.
- The length of time has been extended to a full year in order to coincide/run parallel with the permissible period of time in which members may challenge the results of an election (which is one year).



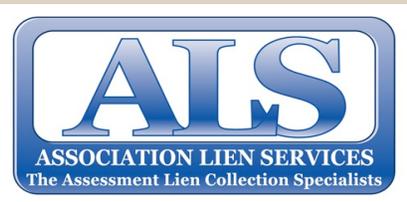
# “Association Records”

- **Currently:** Section 1365.2(a) defines “association records” to include multiple financial documents, membership lists, executed contracts, tax returns, etc.
- **New Law:** California Civil Code Section 5200: The new law expands the definition of “association records” to include:
  - The association’s governing documents, and
  - *At least* a quarterly accounting of expenses related to litigation (the governing documents can allow for a more stringent standard).



# Record Inspection

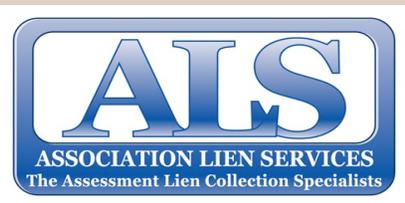
- **Currently:** Section 1365.2(c): provides that if the association does not have a business office and the association and requesting member can not agree on a place where the member can make an inspection, the association can satisfy the request by first-class mail.
- **New Law:** California Civil Code Section 5205: If the association does not have a business office and cannot agree on a place for record inspection with the requesting member, the association can satisfy the request by **individual notice or delivery** to the member.



# Record Inspection (continued...)

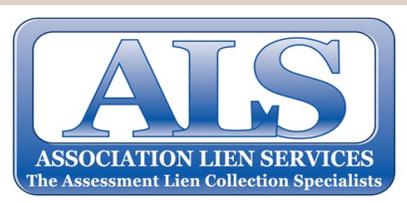
Remember:

- ✓ Don't forget the association can still bill the member for costs of copying and for up to \$10/hour or \$200 total for time involved in redacting enhanced association records, and the member must agree to pay these costs beforehand.
- ✓ Further, if the enhanced association record includes a reimbursement request, the person submitting the request is solely responsible for removing all personal identification info from the request.



# Requests for Records Inspection

- **Currently:** No provision detailing which requests must be in writing, but accounting records and minutes were available pursuant to California Corporations Code Section 8333.
- **New Law:** California Civil Code Section 5260: Lists member requests which must be in writing and delivered in accordance with the new delivery requirements set forth in Section 4035 (delivery to the association):
  - ✓ Requests to change the member's information in the association's membership list
  - ✓ Requests to add/remove a second address for receiving individual notices
  - ✓ Requests to receive general notices by individual delivery (or requests to cancel prior requests to receive general notices by individual delivery)
  - ✓ Requests to opt out of the membership list (or requests to cancel a prior request to opt out of the membership list)
  - ✓ Requests to receive a full copy of a specified annual budget report or annual policy statement, or to receive all reports in full (or requests to cancel prior requests)



# Financial Disclosures organized into an “Annual Budget Report”

- **Currently:** Section 1365 requires that a pro forma operating budget (or summary), summary of reserve funding, review of financial statement, collection policy and summary of insurance policies be distributed to all members.



- **New Law:** California Civil Code Section 5300: The board, on behalf of the association, must distribute to all members by **individual delivery/notice** either: 1) a full Annual Budget Report, or 2) a summary of the Annual Budget Report.

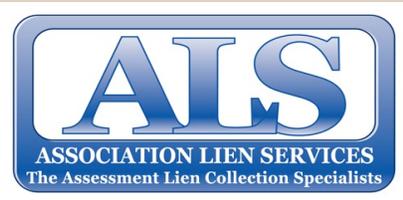
- This must still be delivered thirty (30) to ninety (90) days before the end of each fiscal year, and it must be delivered to a member's secondary address if requested.

- If a member has opted to receive all reports in full, a summary cannot be sent to that member.

# The Annual Budget Report

The Annual Budget Report must include *at least* the following (the association's governing documents can require that more be disclosed):

- **Pro Forma Operating Budget** - estimate of revenue and expenses on an accrual basis
- **Reserve Summary** - must be based on most recent reserve study, and must be prepared pursuant to Section 5565
- **Reserve Funding Plan Summary** - must be prepared pursuant to Section 5550(b)(5), and provide a notice that the full Reserve Funding Plan is available and will be provided to a member upon request



# The Annual Budget Report (continued...)

- **Major Component Repair Statement** - a statement as to whether the board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of thirty (30) years or less, including a justification for the deferral or decision not to undertake the repairs/replacement.
- **Anticipated Special Assessment Statement** (or if none, a statement confirming there is none anticipated)- A statement whether the board has determined to levy special assessments as required to repair, replace, or restore any major component or to provide reserves to fund the same. The statement must include estimated amount of the assessment, the commencement date, and the duration of the special assessment.



**SWEDELSON  
GOTTLIEB**



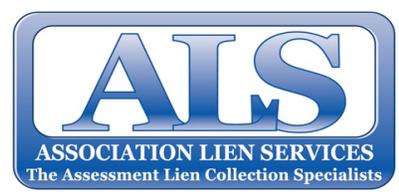
# The Annual Budget Report (continued...)

- **Reserve Funding Mechanism Statement** - Statement as to the mechanisms by which the board will fund reserves to repair or replace major components. This includes assessments, borrowing, using other association assets, deferral of selected repairs, or other methods.



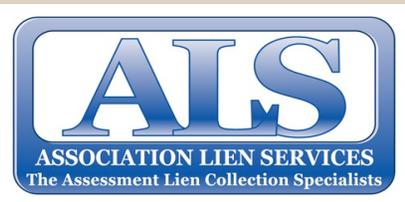
- **Procedures for Calculating Reserves Statement**

Statement addressing the procedures used for the calculation and establishment of the reserves to defray the future repair, replacement, or additions to major components for which the association is responsible. The statement's calculations must be made using the formula in Section 5570(b)(4), and may not assume a rate of return on cash reserves in excess of two percent (2%) above the discount rate published by the Fed. Reserve Bank of San Francisco.



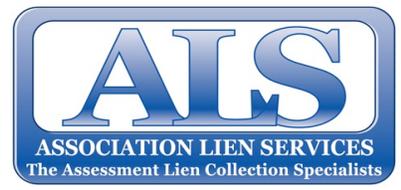
# The Annual Budget Report (continued...)

- **Outstanding Loan Statement** -Statement as to whether the association has any outstanding loans with an original term of more than one year. Must include the payee, interest rate, amount outstanding, annual payment, and when loan is scheduled to be retired. If no loans are outstanding, disclose this fact in the statement.
- **Assessment and Reserve Funding Disclosure Summary Form** -This form, which is prepared pursuant to Section 5570, must accompany the Annual Budget Report (whether a full report or a summary of the report is disclosed).



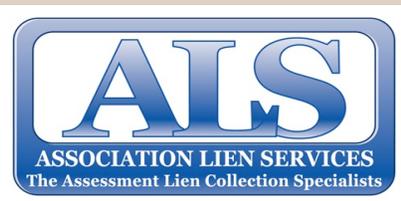
# The Annual Budget Report (continued...)

- **Insurance Summary** - A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies. Must include (for each policy) the name of the insurer, type of insurance, policy limit, and policy deductible, if any.
- If a policy's declaration page contains all the above info, this will satisfy the disclosure requirement. The insurance summary must contain the quoted language found in Section 5300.
- Section 5810 requires that members be individually notified if any of the policies have lapsed, been cancelled, not renewed/restored/replaced, or significantly changed (previously, notification was to be by first-class mail).



# Review of Financial Statement

Under renumbered California Civil Code Section 5305: A review of the financial statement of the association shall be prepared for any fiscal year in which the gross income exceeds \$75,000.00, and distributed to members within 120 days of the fiscal year's end.



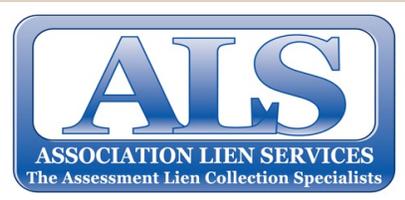
- With a copy of the review distributed to the members by **individual delivery/notice**.
- The governing documents can provide a more stringent standard.

# Annual Disclosures organized into an “Annual Policy Statement”

- **Currently:** Some of the following disclosures are required individually, and not organized under the Annual Policy Statement heading.
- **New Law:** California Civil Code Section 5310: The board, on behalf of the association, must distribute by **individual delivery or notice** either: 1) a full Annual Policy Statement, or 2) a summary of the Annual Policy Statement.

This must be delivered thirty (30) to ninety (90) days before the end of each fiscal year, and it must be delivered to a member’s secondary address if requested.

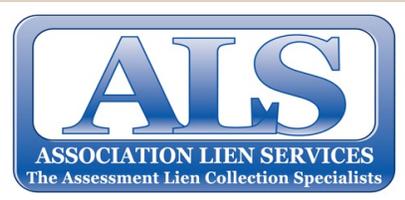
If a member has opted to receive all reports in full, a summary cannot be sent to that member.



# The Annual Policy Statement

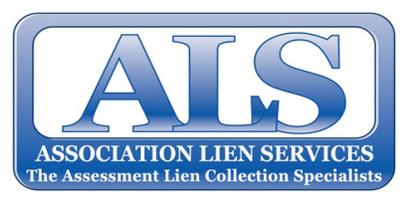
The Annual Policy Statement must include the following:

- **Association's Designated Recipient** - Name and address of the person designated to receive communications
- **Right of Notice to a Secondary Address** - Association must provide a statement explaining a member's right to request a secondary address for the purposes of notices
- **General Notice Location**- Association must describe the location, if any, designated for general postings available for all members to see (general notices cannot be posted in any common area not specified in the Annual Policy Statement)
- **Right to Receive General Notice by Individual Delivery**- Association must give notice of a member's right to receive general notices by the individual delivery/notice method



# The Annual Policy Statement (continued...)

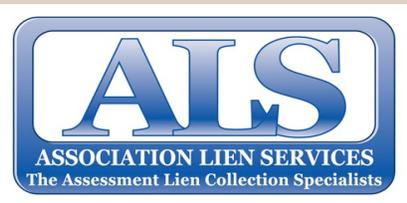
- **Right to Receive Board Minutes** - Association must give notice of a member's right to receive a copy of board meeting minutes (and how and where to do so).
- **Assessment Collection Policy** - Association must provide this policy and the notice provided in Section 5730. Don't forget Assessment Collection Policies are distributed with Pre-Lien Letters or Intent to Lien Letters.
- **Assessment Default Enforcement Policy** - Statement describing the association's policies and practices in enforcing lien rights or other legal remedies for defaults in assessment payments (this statement can be incorporated into the Assessment Collection Policy).



# The Annual Policy Statement (continued...)

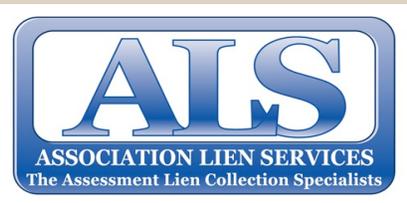
- **Governing Document Enforcement and Fine Policy** - Association must provide the discipline policy, if any, including any schedule of penalties (fine schedule) for violations of governing documents (this is in addition to the existing requirement that fine schedules be distributed to all members upon adoption or revision).
- **Dispute Resolution Procedure Summary** - Summary of Dispute Resolution procedures set forth in Section 5900
- **Architectural Guidelines and Procedures** - Notice of requirements for association approval of physical changes to property which must include the types of changes that require approval and a copy of the procedure used to review and approve/disapprove of a change
- **Overnight Payment Mailing Address** - for overnight payment of assessments

And, any other information required by law or the governing documents.



# Board of Directors “Conflicts of Interest”

- **Currently:** No specific provision dealing with conflicts of interest for board members
- **New Law:** California Civil Code Section 5350 includes an express list of conflicts of interest that may disqualify a board member from voting on the following matters:
  - ✓ Discipline of the director/committee member
  - ✓ An assessment against the director/committee member for damage to the common area or facilities
  - ✓ A request by the director/committee member for a payment plan for overdue assessments
  - ✓ A decision whether to foreclose on a lien on the director/committee member’s separate interest
  - ✓ Review of proposed physical changes to the director/committee member’s separate interest
  - ✓ A grant of exclusive use common area to the director/committee member



# Use of Reserve Funds Requires General Notice

- **Currently:** Section 1365.5 requires that the association must “in the next available mailing to all members” notify members of the use of reserve funds. This typically means in a newsletter sent to all members.
- **New Law:** California Civil Code Section 5520: provides that if the Board makes a decision to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the association must now provide general notice/delivery of the decision and of the availability of an accounting of the expenses.



**SWEDELSON  
GOTTLIEB**



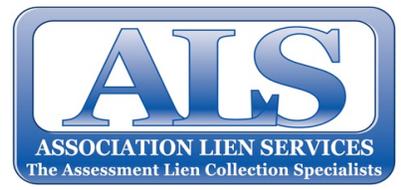
# Increase in Assessments Requires Individual Notice

- **Currently:** Section 1366: requires that any increase in assessments required notice by first-class mail between 30 and 60 days prior to the increased assessment becoming due.
- **New Law:** California Civil Code Section 5615: provides that if regular or special assessments will be increased, the association must now provide individual notice or delivery to the owners, and must do so between 30 and 60 days prior to the increased assessment becoming due.



# Policies Regarding Monetary Penalties included with Annual Policy Statement

- **New Law:** California Civil Code Section 5850 requires that any policy imposing monetary penalties must be included in the Annual Policy Statement.
- This is in addition to the existing requirement that any revised or newly adopted policy imposing monetary penalties must be provided to the members; however, now when the association provides a revised/adopted policy, it must use individual delivery/notice to the members.
- Changes to fine schedule apply to future violations



# Notice and Hearing for Reimbursement Assessments

- **Currently:** Section 1363: does not require notice and a hearing specifically for reimbursement assessments for damage to the common areas.
- **New Law:** California Civil Code Section 5855: provides that associations must provide notice and a hearing before a board can levy a reimbursement assessment for damage to the common area and facilities, which is caused by an owner, or the owner's tenants or guests. The notice must be in writing and either by personal delivery or individual delivery.



**SWEDELSON  
GOTTLIEB**

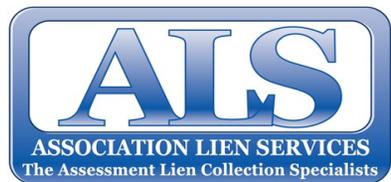


# Payment in Full Under Protest

- **Currently:** An owner may pay under protest and reserve his/her right to contest the amount in court or otherwise. See 1365.1(b).
- **New Law:** California Civil Code Section 5658: If an owner pays under protest, the owner can at the same time pursue dispute resolution AND commence an action in small claims court (amount at issue must not exceed jurisdictional monetary limit).



**SWEDELSON  
GOTTLIEB**

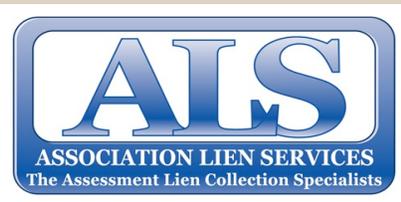


# Designation of Trustee in Lien

An often overlooked provision existing under current law has been assigned its own section as part of the rewrite.

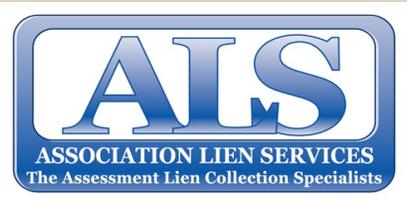
California Civil Code Section 5675(c) states that in order for a lien to be enforced by nonjudicial foreclosure, the lien shall state the name and address of the trustee authorized by the association to enforce the lien by sale.

\*Regardless of what collection method your association uses, you should include trustee language in the association's lien.



# Liens Recorded in Error

- **Currently:** Under Section 1367.5 reversal or lien and related charges is required if dispute resolution reveals error.
- **New Law:** California Civil Code Section 5685: Reversal required when association learns of error. The association must also pay all costs related to any related dispute resolution or ADR.

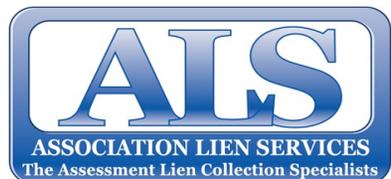


# Failure to Comply with Annual Budget Report Disclosure and Distribution Requirements

- References have been made to the Annual Budget Report as required under the new Davis-Stirling Act. What's the big deal?
- **Under New Law:** California Civil Code Section 5605, if a board fails to fully comply with the disclosures required under the Annual Budget Report and distribution, there can be NO annual increase in regular assessments for that fiscal year, without membership vote.

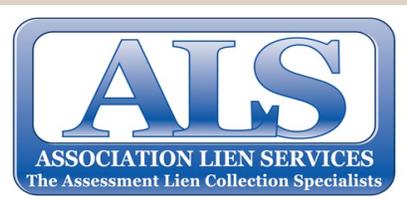


**SWEDELSON  
GOTTLIB**



# Amending the Governing Documents to Comply

- **Under New Law:** California Civil Code Section 4235, Boards can amend governing documents without member approval solely to correct any cross-references (*i.e.* update or confirm statutory citations and references) as a result of the Davis-Stirling Act rewrite.
- How? Board must adopt a Board Resolution that shows the corrections.
- If Board chooses to restate the CC&Rs, it must also record a Board Resolution with the restated and recorded CC&Rs.



## Q & A

Sandra L. Gottlieb

SwedelsonGottlieb

slg@sghoalaw.com

310.207.2207

www.lawforhoas.com

*Thanks for joining us today!*

