

**BOARD OF DIRECTORS
CASA DEL REY HOA OF SANTA CLARA**

**SUMMARY OF SIGNIFICANT FEATURES AND CHANGES
IN THE PROPOSED REVISED GOVERNING DOCUMENTS**

BACKGROUND OF GOVERNING DOCUMENT UPDATE PROJECT

Casa del Rey HOA of Santa Clara is a “common interest development” and, as such, it is governed by provisions of California law, including the Corporations Code and the Civil Code (the Davis-Stirling Act). Our Association’s governing documents were last updated in 1982. Since then, there have been many changes in the laws which have resulted in our existing articles of incorporation, bylaws, and CC&Rs being outdated, incomplete, or inaccurate concerning important aspects of our operations. For this reason, the Board has been working with the Association’s legal counsel to develop the updated governing documents that are enclosed in this package.

OBJECTIVES OF THE PROJECT

The objectives of this governing document project are: (i) to update the articles of incorporation, bylaws, and CC&Rs to reflect the many changes that have occurred in the law since our community was established, (ii) to provide clarity about issues that have caused confusion in the existing documents and to do so in a manner that reflects the principles contained in the current documents and applicable law, and (iii) to reorganize the documents so that the updated and clarified information will be more accessible to the membership, Board and committee members, the manager, and others who have an interest in the community.

The “New” Davis-Stirling Act was signed into law and became effective on January 1, 2014. The proposed documents reflect the new numbering scheme contained in New Davis-Stirling Act. For instance, Civil Code section 1351(a) under the “old” law is now referred to by its new number location, Civil Code section 4080.

Please Note: Some changes being proposed are not a result of changes in the law and are specifically discussed below. For example, one portion of the Annual Assessment allocation concerning commonly metered utilities is modified as discussed below, and maintenance responsibilities, such as for roofs and utility lines, reflect the Association’s current and past practice based on the Association’s budget and the level of assessments that have been imposed, also discussed below.

There are other changes that are what we call “Best Practices” which are recommended changes that will help the Association operate more effectively and efficiently. Those are also discussed more fully below.

THIS SUMMARY AND FORMAT OF THE DOCUMENTS

Because the information has been reorganized, it was not possible to prepare new documents in such a way that they can be usefully “redlined” or “compared” to the old documents. To assist you in reviewing the proposed new documents, we have asked legal counsel to prepare this “executive summary.” This summary provides a road map of how the information in the new documents is organized and outlines features and changes in the documents that the Board feels are significant. It should not be solely relied upon in making your decision on how to vote. Each document is discussed below.

The re-organization of the documents (objective (iii), above) is a result of certain changes in the laws (i.e., it makes sense to put certain things together because of new requirements in the law) and also an effort to make the order of the topics within each document more logical and sequential and to eliminate redundancy between the Bylaws and the CC&Rs. Within certain parts of the documents, we have created additional and more descriptive headings, use more white space, and a larger 12-point font. Although admittedly, this reorganization makes the documents longer, we think it also make the documents more approachable and user friendly.

ARTICLES OF INCORPORATION

The **Articles of Incorporation** of a homeowners association is the document that is filed with the California Secretary of State. The Articles of Incorporation establish the Association as a corporate entity. The Amended and Restated Articles include provisions that are required under the Corporations Code and provisions that are required for a homeowners association under the Davis-Stirling Act. A complete and accurate legal description of the property has been added. Obsolete provisions (such as two classes of voting rights), the initial agent for service of process, and the names of the original directors) have been removed. Consistent with the provisions of the Corporations Code, future amendments of the Articles of Incorporation will require approval of a majority of a quorum of the members.

BYLAWS

The **Bylaws** of a homeowners association govern organizational matters and matters of corporate governance. This is distinct from the Declaration or CC&Rs, which address real property rights, interests, and obligations and related real property matters. The Amended and Restated Bylaws are updated to include a number of specific “member protective” provisions that have been added to the law. The Amended and Restated Bylaws conform to the current provisions of the Corporations Code and the Davis-Stirling Act, particularly those that detail the duties and powers of the Association and the Board’s many disclosure obligations to the members.

Article 1: States the corporate name, location, and purpose of the Association.

Article 2: Contains a comprehensive set of definitions to clarify the terminology of the Bylaws and helps ensure the same words are used with a consistent meaning throughout the document. The CC&Rs define these words in the same way.

The purpose of the definitions is to ensure that important terms have the same meaning wherever they are used in the documents and that, as much as possible, the whole definition is in one place in the document. This is not intended to be a dictionary, so some of the definitions do include the words being defined and sometimes the “definition” refers you to another part of the document.

Article 3: Discusses membership and voting rights. As under the current bylaws, every owner of a Lot is automatically a member, and every Lot is entitled to one (1) vote.

Article 4: The Davis-Stirling Act was amended some years ago to require that common interest development associations use certain voting and election procedures that are different from the procedures contained in the Corporations Code and used by other (non-CID) corporations. Our existing bylaws (which were drafted before the Davis-Stirling Act was even enacted) do not reflect the provisions of the law.

Highlights of changes from our existing bylaws include: All voting by members will be by mail using the “secret ballot” method created by the voting and election law. Ballots will be opened at either a member meeting or a Board meeting but no voting by members will take place at a meeting. Proxies will no longer be used, since they are irrelevant if there is no voting at member meetings. Since there will not be any voting at meetings (other than tabulating the ballots that were sent out and returned), there is no quorum requirement for member attendance at meetings.

Consistent with the Corporations Code, the quorum for a valid vote is set at one-third (1/3) of the total voting power of the members. (Our current bylaws provide that if a quorum of 50% is not present at a meeting, the meeting can be adjourned and reconvened with a 25% quorum and votes of the members can be conducted with that reduced quorum.) Under the Amended and Restated Bylaws, every member entitled to vote will receive a ballot and at least one-third of the members entitled to vote must return a ballot for the result of the vote to be valid, with the following exceptions: (i) elections of directors will be like public elections in which the number of ballots cast will constitute a quorum, (ii) when the law requires a member vote to approve certain changes in assessments, the quorum requirement is more than half of all the owners, and (iii) there is no quorum requirement for member attendance at member meetings. These lower or no quorum provisions are designed to help the Association operate more effectively and efficiently.

Article 5: Spells out the process of nominating and electing Board members. There is no change in the number of directors (it remains three (3)). The term of office has been changed to three (3) years with staggered terms to promote continuity on the Board. In successive years, one (1) director will be elected to fill the seat being vacated each year, and directors will serve three-year terms. Directors are volunteers and are not entitled to receive compensation.

Only members in good standing are eligible to be elected to or serve on the Board of Directors. Co-owners of one (1) or more Lots may not serve on the Board at the same time. Candidates for the Board may be nominated by a nominating committee or by placing their own name in nomination before the nomination deadline. The names of all qualified candidates received by the Board by the published deadline for nominations will be included on the ballot sent to the members for the election of directors. Because ballots must be sent out at least thirty (30) days in advance and voting will begin as soon as ballots are mailed out, taking nominations from the floor at a meeting is not feasible.

Please Note: If the number of candidates is less than or equal to the number of seats to be filled (in other words, there is no question about the outcome of the election), the inspector of elections can declare the candidates elected and notify the members of their election without going through the cost and unnecessary process of balloting. Election by Acclamation is intended to permit the Association to avoid a costly election ballot mailing when there is an uncontested election.

The annual election of directors is in the month of April. In the election of directors, members may cast one (1) vote per candidate for each vacancy being filled, and the candidates receiving the highest number of votes are elected, up to the number of directors to be elected. If there is a tied vote, the candidates will draw lots to break the tie. Cumulative voting (giving more than one vote to a candidate for the Board) is not permitted. When the Association was first formed and the developer still controlled the votes and the Board, cumulative voting made it possible for homeowners to elect and keep a representative on the Board. But now that the developer is out of the picture, cumulative voting is no longer needed to ensure owner representation on the Board. Cumulative voting is complicated and confusing. In addition, when cumulative voting is permitted, it is virtually impossible for the members to remove an individual director (even if there is due cause) without the disruption of removing the entire Board of Directors.

Article 6: This Article deals with meetings of the Board and the right of the membership to have notice of Board meetings and to speak to the Board as provided by law. Board meetings are held monthly and are open to any owner who wants to attend (except for executive session meetings, which can only be held for certain purposes as specified by law). If the Board determines that the business of the Association can be managed with less frequent meetings, the Board may meet less often, but the Board must meet at least once every three (3) months. Directors and members both are entitled to notice of Board meetings. Members are given at least four (4) days' notice of open Board meetings and at least two (2) days' notice of executive session meetings. The notice must include the agenda except in the case of an emergency meeting. Permitted reasons for executive sessions are listed. Items not on the agenda cannot be decided by the Board except in very limited emergency situations.

Articles 7 & 8: Describe the duties and powers of the Board, including many important periodic notifications and disclosures to the membership which have been added by changes in the law.

Article 9: Describes the positions of the corporate officers. All of the principal offices (president, secretary, and treasurer) must be held by members of the Board.

Article 10: Concerns Association record keeping and financial management, as well as members' right to review the Association's accounting books and records, minutes of proceedings, and other records. The law requires the Board to keep minutes of all open Board meetings and members are entitled to have copies of minutes thirty (30) days after the Board meets.

Article 11: Consistent with the provisions of the Corporations Code, future amendments of the Bylaws will require approval of a majority of a quorum of the members. To allow the Association to keep the Bylaws up to date with changes in the law, this Article also authorizes the Board to approve an amendment if it is to eliminate a conflict between the existing Bylaws and the law or if it is to add some new requirement imposed by law, and the amendment is prepared by the Association's legal counsel. The idea is to provide a mechanism for this limited category of changes to be made in an expeditious and low-cost manner so that it will be easier to keep the documents current with future changes in the law.

Article 12: States which of the governing documents will control in the event of a conflict. The likelihood of conflicts is reduced under the Amended and Restated Bylaws and the Amended and Restated CC&Rs because they do not cover overlapping subject matter.

DECLARATION OF CC&Rs

The **Declaration (or CC&Rs)** of a common interest development address real property rights, interests, and obligations and related real property matters. This is different and distinct from the Bylaws which govern organizational matters and matters of corporate governance of the Association.

The proposed CC&Rs have been drafted using consistent terminology and are organized to collect in each part of the document the provisions that relate to a particular topic and to avoid repetition or excessive cross-referenced provisions. Obsolete provisions concerning the original builder, completion of original construction, two classes of voting, etc., have been removed. The remaining content has been updated to conform to the current law and has been organized into a more logical order.

Article 1: Contains a comprehensive set of definitions consistent with the definitions in the Bylaws.

Article 2: Describes our Association generally and the fact that the Association has authority over the development. To avoid repetition and the potential for inconsistent provisions in the Bylaws and the CC&Rs, detailed provisions concerning corporate governance are in the Bylaws only.

Article 3: Describes the overall "lay of the land" of the development. Section 3.5 reflects the provisions of state law restricting partition of the development. Sections 3.6 through

3.9 contain provisions that limit the power of the Board to enter into certain transactions concerning the property.

Article 4: Deals with taxes and mechanic's liens and collects together the provisions concerning easement rights.

Article 5: Contains the provisions concerning residential use of the property, such as use of the Common Area, conducting businesses, vehicles and parking, pets, and signs. Consistent with our current CC&Rs, Lots shall be used only for residential purposes except for certain home businesses. Consistent with longstanding rules, residents may not have more than three (3) dogs or cats, in any combination (for example, two cats and one dog). Restrictions concerning signs are consistent with limitations imposed by law. Sections regarding vehicles, parking, nuisance, and other use provisions reflect our current CC&Rs, rules, current practices or legal requirements.

Please Note: There is a proposed new provision at Section 5.4 that would prohibit smoking anywhere within the Common Area. Smoking is defined to include marijuana, electric cigarettes and personal vapor devices. This provision is designed to protect the health of owners and residents and to preserve our property values.

Article 6: Clarifies owners' responsibilities in relation to their tenants, consistent with limitations imposed by law. This Article puts the Association on notice as to the rights owners have to lease their Lot, and notifies owners of their responsibilities, including that they are responsible for the actions of their tenants. These provisions provide for an initial lease term of at least one hundred eighty (180) days. Consistent with our current CC&Rs, leases must be in writing, the terms must comply with the governing documents, and transient and hotel-style rental are prohibited.

Please Note: Many of these provisions were added to give the Association more enforcement tools against tenants when absentee owners are non-responsive to problems caused by a tenant. Tenants are subject to the same rules and standards of conduct as are owners. These provisions allow the Association to address certain behavior even when an owner won't.

Article 7: Describes when architectural approval is required. State law has imposed procedural requirements and other standards on architectural control functions of homeowner associations. Describes the application, approval, and inspection procedures consistent with applicable law and with sufficient detail so that the procedures will remain generally consistent from year to year and so all members can know what their rights and obligations are when they want to make changes to their Lots. Some common architectural issues are outlined which require prior approval. The Board may adopt architectural rules as long as they are consistent with the CC&Rs.

Requests for architectural approval must be made in writing. Architectural decisions must also be made in writing, must be made within forty-five (45) days after an owner submits a complete application, and if an application is denied, an explanation must be given for the decision. If the Board does not act in a timely manner, the owner may demand "internal

dispute resolution” (meet and confer with the Board). All architectural decisions must be made in good faith in accordance with the standards in the CC&Rs. The Board may grant reasonable variances to deal with special circumstances as long as the variance is not contrary to the intention of the CC&Rs, and variances do not set precedents for other situations.

Article 8: Deals with assessments. The provisions have been updated to conform to the Davis-Stirling Act in terms of categories of assessments and enforcement. Annual and Special Assessments continue to be allocated among the Lots in the same manner as under the current governing documents.

Please Note: Annual and Special Assessments continue to be allocated equally among the Lots, except that under Section 8.7.2, if a particular Lot causes a disproportionate burden on the commonly metered utilities (for instance due to an alteration or a business use within the Lot), the Board has the discretion to charge that owner an additional amount for the disproportionate usage. This is different from the current documents which provide that the cost of common utilities is always allocated equally among the owners.

This Article describes the procedures that by law are available to the Association to enforce the obligation to pay assessments. These provisions are designed to ensure that the Association is able to raise the funds needed to conduct the Association’s affairs in a timely manner and that each member pays his or her fair share.

Annual Assessments continue to be due and payable monthly and are delinquent if unpaid fifteen (15) days after they are due.

The Assessment provisions describe a category of assessment to reimburse the Association for costs incurred in the process of enforcing the governing documents against a particular Lot (“Reimbursement Assessments”). Reimbursement Assessments can be enforced by lien and non-judicial foreclosure of the Lot, in the same manner as Annual and Special Assessments. The assessment provisions also describe a category of assessments that are fines (“Enforcement Assessments”). Enforcement Assessments are also enforceable by lien but cannot be foreclosed by non-judicial foreclosure. These categories of assessments and the powers and procedures to enforce them reflect the powers available to the Association under the provisions of applicable law.

If an owner does not pay assessments when they are due, the Association must give certain notifications to the owner before a notice of delinquent assessments can be recorded and foreclosed upon. Delinquent owners are responsible for late charges, interest, and collection costs in addition to the unpaid assessments. Owners are also personally responsible for payment of assessments if there is not enough equity in the Lot to pay what the owner owes to the Association. If an owner is delinquent but is still collecting rent from a tenant who is renting the Lot, the Association can direct the tenant to pay the rent to the Association to collect what the owner owes to the Association. (This right does not interfere with any rights of lenders to do the same thing if the owner is delinquent on a mortgage loan.) The homestead exemption is waived so as to increase the ability of the Association to recover what a delinquent owner owes to the Association.

Article 9: Describes the respective maintenance responsibilities of the Association and the individual owners.

Please Note: This Article reflects the maintenance scheme as provided in our existing governing documents, clarified to be consistent with the Association's past and current practice. For instance, in Section 9.2.3, regarding roof coverings, this Article expressly states, consistent with the Association's budget and assessments, that the Association is responsible for maintenance, repair, and replacement of the shingles, flashing, underlayment, and the plywood to which such materials are attached, the owners are responsible for any roof components beyond that, including the roof trusses. Similarly, Association and owner responsibilities for various utility lines are more precisely laid out pursuant to past practice.

Article 10: Describes the owners' responsibilities concerning party walls and party fences, consistent with our existing governing documents and general rules of law. Section 10.4 gives the Board the option to decide if the Association will assume responsibility for the maintenance, repair and replacement of the party fences instead of the owners.

Article 11: Sections 11.2, 11.3, and 11.4 describe the insurance to be carried by the Association, including particular liability insurance policies that may give the members and the volunteer directors and officers the benefit of certain limitations on liability as provided by law.

Consistent with your current documents, Section 11.2 describes an "all in" policy covering the Common Area and the Lots, including replacement of "builder's grade" fixtures. If something has been upgraded, the insurance will pay the amount to replace with the builder's standard grade item, and the owner is responsible for the cost of the difference between the builder's grade and the upgrade the owner had installed.

Section 11.5 describes the Lot owners' responsibility to carry certain kinds of insurance which the Association policies do not cover. The described insurance is intended to provide a reasonable amount of coverage for normal foreseeable risks so owners will have financial resources to deal with events that are likely to occur. This section does not require owners to carry this insurance. Section 11.5.4 states that the Association is not responsible if a Lot owner fails to carry insurance that is the owner's responsibility. It is the owner's sole responsibility to carry such insurance, and if owners do not carry insurance, they are still financially responsible.

Article 12: Contains provisions dealing with damage or destruction of the development or eminent domain or condemnation of any part of the development by governmental agencies. These provisions are intended to provide appropriate authority and flexibility, recognizing that the particulars of the Association's response will necessarily depend on the circumstances in each case.

Article 13: Describes the rights of mortgagees as provided in our existing CC&Rs.

Article 14: Describes the enforcement powers that by law are available to the Association if members fail or refuse to comply with the governing documents. This Article describes the members' right to enforce the CC&Rs as well. Describes in sequential order the enforcement process, from investigating complaints, to notice and hearing whether called by the Board or requested by a member, to "internal dispute resolution" and "alternative dispute resolution" procedures for resolving disputes between the Association and an owner, or between owners for certain compliance issues, consistent with the Davis-Stirling Act.

Article 15: Future amendments of the CC&Rs will continue to require approval of a majority of the total voting power of the Association. Also contains the same provision as in the Bylaws authorizing certain kinds of amendments to be adopted by the Board if they are to remove conflicts with law or conform to requirements of law.

Article 16: Contains general provisions concerning the document.

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The Board would like to thank you for taking the time to review this information.

YOUR VOTE IS IMPORTANT

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