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**REVISION TO STATUTE –
MEMBER VOTES BY SECRET BALLOT**

As you probably know, new Civil Code Section 1363.03, which took effect July 1, 2006, requires most membership votes, including Board elections, assessment increases, and revisions to CC&Rs or Bylaws, to be conducted by secret mail-in ballot. Voting on these issues in annual meetings or other membership meetings is now prohibited. This past week the governor signed into law Senate Bill 1560, which attempts to clean up some of the problems in Section 1363.03 and eliminate conflicts with other statutes. The revisions take effect immediately. Some highlights:

- Inspectors of election can appoint assistants, who must be independent third parties.
- Inspectors can verify the information on the ballots' outer envelope before the meeting where the ballots will be counted.
- Board recalls must also follow the secret mail-in balloting procedure.
- Cumulative voting is allowed if so stated in the governing documents.
- Proxies cannot be used in place of ballots. They may be, but are not required to be, allowed by the association. The association does not have to distribute proxy forms.
- After the votes are counted the inspector of election must keep the ballots, or designate the location where they are to be kept, for at least nine months, the time frame within which an owner can challenge the election in court. Then the inspector returns the ballots to the association to keep for at least one year after the election.

Note: Section 1363.03 probably conflicts with a large chunk of your Bylaws, rendering those Bylaw provisions invalid. Associations should seriously consider revising their Bylaws to match the new statutory requirements.



REVISION TO STATUTE – MEMBERS' ACCESS TO RECORDS

SB 1560 also revised some provisions of Civil Code Section 1365.2, the statute which as of July 2006 requires associations to make a wide array of financial information available to the owners within specified time frames. Again, these revisions take place immediately. In addition to clerical changes, following are the highlights:

- The requirement that the association make available to owners its general ledger, prepared in accordance with generally accepted accounting procedures (“GAAP”), has been deleted. Instead the general ledger must be made available on an accrual or modified accrual basis.
- Minutes of committee meetings must be made available to the members. The revision clarifies that this only refers to executive committees, which consist only of Board members and which can be delegated some of the Board’s powers, unlike other committees.
- The association may deliver records by fax or “machine readable storage media” (i.e. computer disk) as long as the format blocks the records from being altered.