



Attorneys at Law

## RESIDENT OWNED MOBILEHOME PARKS - LEGAL UPDATE 2011

The following provides a summary of changes in the statutory laws affecting resident owned mobilehome park communities; all referenced statutes are attached hereto:

- 1. Civil Code Section 1365.2: Records Inspection Rights of Members of Nonprofit Entities:** Requires an association to make “association records” and “enhanced association records,” including, without limitation, the accounting books and records and the minutes of proceedings of the association, available for inspection and copying by a member of the association, or the member’s designated representative, as provided.
- 2. Civil Code Section 2924b: Requests for Notices of Default:** Trustees or mortgagee are required to record a notice of default and to post and public a notice of sale prior to selling real property at a foreclosure sale. Civil Code Section 2924b provides that associations are allowed to record a single request that a mortgagee, trustee or other person authorized to record a notice of default regarding any of the separate interests governed by the association mail to the association a copy of any trustee’s deed upon sale concerning such separate interests. Civil Code Section 2924b is amended to clarify that an association can record a “blanket” request for notice that attaches to all the separate interests within the association. The request for notice will affect any interest, right, or encumbrance of an interest in real property. The “blanket” request for notice results in a much more cost effective method for associations to be notice of foreclosure sales in a timely manner. *This does not affect cooperative communities as they do not have separate interests in real estate.*

**RECOMMENDATION: For all subdivided communities, if the association has not already filed such a blanket notice, we recommend the association does so to provide the association with notice of potential foreclosures by lenders on units within the community.**

- 3. Civil Code Sections 2924.4 and 2924.45: Foreclosed Property Maintenance.** Existing law, in effect until January, 1, 2013, requires a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure. Existing law authorizes a governmental agency to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day per violation. The newly enacted statutes requires that prior to the governmental agency imposing a fine or penalty against

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an owner for failure to maintain such property to provide the owner with a notice of violation and an opportunity to correct the violation; however, the notice requirement does not apply if the specific condition of the property threatens public health or safety.

4. **Civil Code Section 798.15: Notice of Change in MRL:** Each year, the management of a Mobilehome park is required to provide all homeowners with a copy of the Mobilehome Residency Law by February 1 of each year, if a significant change was made to those provision in the prior year. The revisions to the statute now require that management may *either* (i) provide all homeowners with a copy of the MRL, *or* (ii) *provide written notice to all homeowners that there has been a change and that they may obtain a copy of the MRL from management at no charge.*
5. **Civil Code Section 799.1: Resident Owned Mobilehome Parks MRL:** Civil Code Section 799.1 through 799.11 applies to resident owned Mobilehome parks. Civil Code Section 799.1 was amended to provide that the 799 sections also and specifically applies to nonprofit mutual benefit corporations whose membership consists of residents of the mobilehome park. *Section 799.1 specifically provides that Civil Code Sections 798 through 798.84 applies to members of such nonprofit mutual benefit corporation that have a rental agreement with the corporation (also known as an occupancy agreement).*
6. **Code of Civil Procedure Section 630.01 et seq.: Expedited Jury Trials:** The legislature established the “Expedited Jury Trials Act” which is operative until January 1, 2016. The Act establishes procedures for conducting expedited jury trials in civil cases where the parties sign a consent order to stipulate that those procedures apply, including provisions for jury of 8 or fewer members, with no alternates, a limit of 3 preemptory challenges fo each side and a limit of 3 hours for each side to present its case. The Act also provided that all parties waiver all rights to appeals and move for a directed verdict or to make any post-trial motions, except as may specifically be provided. The Act provides that the verdict in an expedited jury trial is binding, subject to any written high/low agreement.  
*This new Act provides alternative and expedited processes for Associations to pursue legal action against members or venders; however, the member or vender would have to agree to follow such Act. Prior to pursuing litigation or alternative methods, consult your litigation team to determine the benefits and risks of pursuing under such Act.*

The following provides a summary of changes in the relevant recent **case decisions** affecting association type communities:

7. **Clear Lake Riviera Community Association v. Cramer (2010) 182 Cal.App.4<sup>th</sup> 459: Enforcement of Architectural Guidelines:** In an action brought by a community association against a homeowner for improperly building a home in violation of the association’s height restriction, the homeowner alleged that the association was not able

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to demonstrate that it properly adopted the architectural guidelines including the height restriction and therefore the association should not be able to enforce such guidelines. The Court found that it could infer the association's proper adoption of the guidelines from circumstantial evidence including the guidelines publication and long enforcement.

**Lessons Learned from Case:** When adopting rules, policies and guidelines, the Board of Directors should take proper measures to ensure that such adoption is properly documented and noticed to the residents including through meeting notices, meeting minutes and, if necessary, full board resolutions. All new homeowners should receive a full package of association documents including the guidelines relating to new homes. Additionally, to ensure guidelines are enforceable, Associations should ensure their rules, regulations, guidelines and policies are enforced equally throughout the community and any variation in enforcement is taken into detailed consideration.

8. **Foster v. Double R. Ranch Association (2010) 435 B.R. 650: Collection of Postpetition Assessments in Chapter 13 Bankruptcy Case.** Bankruptcy law generally supports an association's ability to pursue collection of postpetition assessments (assessments incurred after the member/owner has filed a petition for bankruptcy), as the obligation arises from a continuing obligation connected with the ownership of the property. Typically, whether the member/owner continues to reside in the property is irrelevant; however, in this particular case, residency was a factor.

**Lessons Learned from Case:** Immediately upon learning that a homeowner has filed a bankruptcy case, the association's property manager should divide the assessment account into "prepetition" and "postpetition" accountings, with the filing date of the bankruptcy case as the dividing point. Legal counsel should be consulted to determine the best way to pursue both prepetition and postpetition amounts.

9. **Worldmark, The Club v. Wyndham Resort Development Corporation (2010) 187 Cal.App.4<sup>th</sup> 1017: Rights to Inspection of Association Records:** A member of a nonprofit mutual benefit corporation demanded the right to inspect and copy membership records, including e-mail addresses of members, for the purpose of distributing a petition to amend the bylaws of the corporation. The Association was required to allow the member to inspect and copy its membership register, including the names, addresses, e-mail addresses, telephone numbers and voting rights of its members and the information was also required to be provided in an electronic form at the member's option. The court also required the inspecting member to acknowledge in writing that he agrees to not use or allow the use of the membership information for improper purposes. The Court further provided that the association has the right to either provide the inspecting member with the actual email addresses of the association's member or propose an alternative in which the association sends the requested information to the membership via email, without disclosing the email addresses to the requesting member.

**Lessons Learned from Case:** In this increasingly digital age, many associations are relying more and more on electronic communication with its members. The courts are

acknowledging such methods of communication and are respecting association's needs relating to such. Associations should be aware of the legal requirements and limitations relating to electronic communications and provide written communications as and when appropriate. When asked for inspection of membership lists, email addresses, or other association records, Board and managers should consult legal counsel to ensure that time sensitive deadlines are followed and any personal information of members are not accidentally disclosed.

- 10. Wolf v. CDS DEVCO (2010) 185 Cal.App.4<sup>th</sup> 903: Rights to Inspection of Association Records:** Mr. Wolf, a former member of a board of directors, filed suit against the association alleging an absolute right to inspect the corporations books and records. Under Civil Code Section 8334, Board members have an absolute right to inspect the books and records of the association. The Court found that although the Mr. Wolf was a member of the board at the time he filed suit, he lost the ability to claim an absolute right to inspect the books and records when he was not reelected to the board as he was no longer a board member. Mr. Wolf asserted that his right allowed him to inspect the books and records for the time period in which he was a board member; however, the court disagreed with this argument based on the fact that there was no evidence that he could be subjected to personal liability for actions which took place during his tenure on the board.

**Lessons Learned from Case:** Associations may have the limited right to deny a former board member the right to inspect the books and records of an association; however, the inspection rights afforded to a member would still remain. In the event an association were to desire to deny a former board members right to inspect the books and records, it should consult legal counsel to ensure such denial is proper and is able to justify the limitation or denial of such inspection.

- 11. Affan v. Portofino Cove Homeowners Association (2010) 189 Cal.App.4<sup>th</sup> 930: Boards failure to Act May Not be Protected From Liability:** Homeowner complained several times over a 6 year period of time of plumbing back ups to their unit which caused damage to their unit. After 6 years, the Association hired a plumber to perform a hydro jet cleaning of the main line; however, two weeks later a major back up occurred which caused damage to the homeowner's unit. The association paid for the emergency clean up but did not pay for the additional repair and remediation work to the unit to make the unit habitable again. Traditionally, courts rely on the *Lamden* rule which provides that where a duly constituted association board, upon reasonable investigation, in good faith and with regard for the best interests of its community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas, courts should defer to the board authority and presumed expertise. However, the appellate court here found that the *Lamden* rule is limited to cases where the board has made a reasonable decision regarding

ordinary maintenance and that the rule does not create a blanket immunity for all decisions and actions of the association. The court further found that because the association took no action to maintain the main drain lines until 6 years after the first complaints, the *Lamden* rule could not be applied; that the *Lamden* rule is an affirmative defense and that the burden is on the association to demonstrate its actions fall within the rule; and finally, that the rule applies only to actions taken by a board of directors and not the managing agent hired by the association.

**Lessons Learned from Case:** When addressing maintenance issues within a community, this case demonstrates that it is important for a board to conduct fact-finding missions, to learn from the professionals, to obtain multiple bids and/or recommendations, prior to determining how to address such maintenance issues. Documenting such steps is also important and could provide the needed evidence for a successful defense in a claim by a homeowner that the board did not conduct itself properly. While the case does not state any specific course of action has to be taken in addressing maintenance issues, it does make clear that failure of a board to investigate or make any decision to perform maintenance may not be afforded the protections of judicial deference set forth in the *Lamden* rule.

**12. *Chapala Management Corporation v. Thomas Stanton* (2010) 186 Cal.App.4<sup>th</sup> 1532:**

**Attorneys Fees:** Homeowner improperly and without association approval windows which did not comply with the association's architectural guidelines after the homeowner was made aware of the denial of such windows and the reasons for such denial. The association brought suit against the homeowner seeking injunctive relief to replace the windows with windows which comply with the association's requirements. The Association prevailed and filed a motion for attorney fees totaling more than \$83,000. The court awarded the association approximately \$59,000 in attorneys fees. The costs and fees incurred on the appeal of the matter were born by each party.

**Lessons Learned from Case:** Although Civil Code 1354(c) and many association's CC&Rs provide that the prevailing party is entitled to an award of attorneys fees, this case highlights that courts are prone to discount attorneys fees regardless of how reasonable such attorneys fees may have been. Regardless of how "righteous" or "legally correct" the association may have been, courts generally try to discourage litigation and an effective means of doing so is to not award 100% of the attorneys fees incurred. As the Association would likely continue to be liable for the full attorneys fees incurred, by not recovering 100% of the fees incurred means that the association is not made completely whole.

## Essential Documents Checklist:

Every community should have some combination of the following documents, with the financial reports updated annually. For smooth transition between boards, its best to keep these (at least copies) in a single binder that can be updated regularly and annually as applicable.

- I.** Governing Documents (including any amendments)
  - a.** Declaration (CC&Rs)
  - b.** Bylaws
  - c.** Articles of Incorporation
  - d.** Condominium Plan
  - e.** Final Subdivision Public Report (if one is still active) or Department of Corporations Permit to Sell Shares (current or most recent permit)
- II.** Minutes and Notices
  - a.** Board and Annual Meeting Minutes
  - b.** Legal Actions by/against the Association
- III.** Vendor Contracts
- IV.** Policies and Procedures
  - a.** Assessment Collection Policy
  - b.** Policies and Procedures for other violations
  - c.** Election Rules
- V.** Insurance Policy Declarations Page(s)
- VI.** Architectural Guidelines
- VII.** Rules and Regulations
- VIII.** Reports (Current)
  - a.** Financial Audit and Budget
  - b.** Reserve Study (and update if any)
  - c.** Community Maintenance Report and Guidelines (if any)
  - d.** Landscape Maintenance Report or Plan (if any)
- IX.** Regulatory Agreements (for Coops and LEHCs)

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## ANNUAL REQUIREMENTS CHECKLIST

The Association is required to make specific disclosures, reports or notices thereof to its members annually and at various times throughout the year. The below checklist is to provide you with a guideline of the annual requirements; however, please consult your management company and/or legal counsel to ensure you have satisfied all specific requirements throughout the year.

<b>30 to 90 days Prior to Start of Fiscal Year</b> (With <i>Pro Forma</i> Operating Budget Time)
<i>Pro Forma</i> Operating Budget or Summary <b>Civ. Code § 1365(a) &amp; (d)</b>
Assessment & Reserve Funding Disclosure Summary <b>Civ. Code §§ 1365(a) &amp; (d), 1365.2</b>
Anticipated Special Assessment for Reserve <b>Civ. Code §§ 1365(a)(3), 1365.5(e)(5)</b>
Assessment Collection Policy <b>Civ. Code §§ 1365(e), 1365.1(a)</b>
Statutory Notice of Collection Rights <b>Civ. Code § 1365.1</b>
Association Insurance Disclosure <b>Civ. Code § 1365(f)</b>
Alternative Disputes Rights Summary <b>Civ. Code § 1369.590</b>
Internal Dispute Resolution Procedures <b>Civ. Code §1363.850</b>
Receipt & Disposition of Funds Received for Construction Defects <b>Civ. Code §1365(a)(2)(B)</b>
Notice of Member Right to Minutes <b>Civ. Code § 1363.05(e)</b>
Notice of Right to Submit Secondary Address <b>Civ. Code § 1367.1(k)</b>
Architectural Review Procedures <b>Civ. Code § 1378(c)</b>
Insurance Coverage Summary <b>Civ. Code § 1365(f)</b>
<b>120 Days After End of Fiscal Year</b> (Other Fiscal Disclosures)
Review of Annual Financial Statement <b>Civ. Code § 1365(c)</b>
Notice of Right to Receive Annual Financial Statement <b>Corp. Code § 8321</b>
Notice of Transaction with Officer or Director <b>Corp. Code § 8322</b>

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## STATUTES REFERENCED IN 2011 UPDATE

### **§ 1365.2. Association records and enhanced association records; Definitions; Availability for inspection and copying; Redaction of information; Use; Action for violation; Effect on Corp C §§ 8330, 8333; Applicability**

(a) For the purposes of this section, the following definitions shall apply:

(1) "Association records" means all of the following:

(A) Any financial document required to be provided to a member in Section 1365.

(B) Any financial document or statement required to be provided in Section 1368.

(C) Interim financial statements, periodic or as compiled, containing any of the following:

(i) Balance sheet.

(ii) Income and expense statement.

(iii) Budget comparison.

(iv) General ledger. A "general ledger" is a report that shows all transactions that occurred in an association account over a specified period of time.

The records described in this subparagraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

(D) Executed contracts not otherwise privileged under law.

(E) Written board approval of vendor or contractor proposals or invoices.

(F) State and federal tax returns.

(G) Reserve account balances and records of payments made from reserve accounts.

(H) Agendas and minutes of meetings of the members, the board of directors and any committees appointed by the board of directors pursuant to Section 7212 of the Corporations Code; excluding, however, agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05.

(I) (i) Membership lists, including name, property address, and mailing address, if the conditions set forth in clause (ii) are met and except as otherwise provided in clause (iii).

(ii) The member requesting the list shall state the purpose for which the list is requested which purpose shall be reasonably related to the requester's interest as a member. If the association reasonably believes that the information in the list will be used for another purpose, it may deny the member access to the list. If the request is denied, in any subsequent action brought by the member under subdivision (f), the association shall have the burden to prove that the member would have allowed use of the information for purposes unrelated to his or her interest as a member.

(iii) A member of the association may opt out of the sharing of his or her name, property address, and mailing address by notifying the association in writing that he or she 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.

(J) Check registers.

(2) "Enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association, provided that the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request.

(b) (1) The association shall make available association records and enhanced association records for

the time periods and within the timeframes provided in subdivisions (i) and (j) for inspection and copying by a member of the association, or the member's designated representative. The association may bill the requesting member for the direct and actual cost of copying requested documents. The association shall inform the member of the amount of the copying costs before copying the requested documents.

(2) A member of the association may designate another person to inspect and copy the specified association records on the member's behalf. The member shall make this designation in writing.

(c) (1) The association shall make the specified association records available for inspection and copying in the association's business office within the common interest development.

(2) If the association does not have a business office within the development, the association shall make the specified association records available for inspection and copying at a place that the requesting member and the association agree upon.

(3) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph (2), or if the requesting member submits a written request directly to the association for copies of specifically identified records, the association may satisfy the requirement to make the association records available for inspection and copying by mailing copies of the specifically identified records to the member by first-class mail within the timeframes set forth in subdivision (j).

(4) The association may bill the requesting member for the direct and actual cost of copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs, and the member shall agree to pay those costs, before copying and sending the requested documents.

(5) In addition to the direct and actual costs of copying and mailing, the association may bill the requesting member an amount not in excess of ten dollars (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written request, for the time actually and reasonably involved in redacting the enhanced association records as provided in paragraph (2) of subdivision (a). The association shall inform the member of the estimated costs, and the member shall agree to pay those costs, before retrieving the requested documents.

(d) (1) Except as provided in paragraph (2), the association may withhold or redact information from the association records for any of the following reasons:

(A) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, "identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property. Examples of information that may be withheld or redacted pursuant to this paragraph include bank account numbers of members or vendors, social security or tax identification numbers, and check, stock, and credit card numbers.

(B) The release of the information is reasonably likely to lead to fraud in connection with the association.

(C) The information is privileged under law. Examples include documents subject to attorney-client privilege or relating to litigation in which the association is or may become involved, and confidential settlement agreements.

(D) The release of the information is reasonably likely to compromise the privacy of an individual member of the association.

(E) The information contains any of the following:

(i) Records of a-la-carte goods or services provided to individual members of the association for which the association received monetary consideration other than assessments.

(ii) Records of disciplinary actions, collection activities, or payment plans of members other than the member requesting the records.

(iii) Any person's personal identification information, including, without limitation, social security number, tax identification number, driver's license

number, credit card account numbers, bank account number, and bank routing number.

(iv) Agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05, except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services.

(v) Personnel records other than the payroll records required to be provided under paragraph (2).

(vi) Interior architectural plans, including security features, for individual homes.

(2) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

(3) No association, officer, director, employee, agent or volunteer of an association shall be liable for damages to a member of the association or any third party as the result of identity theft or other breach of privacy because of the failure to withhold or redact that member's information under this subdivision unless the failure to withhold or redact the information was intentional, willful, or negligent.

(4) If requested by the requesting member, an association that denies or redacts records shall provide a written explanation specifying the legal basis for withholding or redacting the requested records.

(e) (1) 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 section for injunctive relief and for actual damages to the association caused by the violation.

(2) This section 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 section or to limit the right of an association to injunctive relief to stop the misuse of this information.

(3) 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 section.

(f) A member of an association may bring an action to enforce the member's right to inspect and copy the association records. If a court finds that the association unreasonably withheld access to the association records, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to five hundred dollars (\$500) for the denial of each separate written request. A cause of action under this section may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court. A prevailing association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.

(g) The provisions of this section apply to any community service organization or similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368, that is related to the association, and to any nonprofit entity that provides services to a common interest development under a declaration of trust. This section shall operate to give a member of the organization or entity a right to inspect and copy the records of that organization or entity equivalent to that granted to association members by this section.

(h) Requesting parties shall have the option of receiving specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that electronic format. The association may deliver specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that prevents the records from being altered.

(i) The time periods for which specified records shall be provided is as follows:

(1) Association records shall be made available for the current fiscal year and for each of the previous two fiscal years.

- (2) Minutes of member and board meetings shall be permanently made available. If a committee has decision making authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently made available.
- (j) The timeframes in which access to specified records shall be provided to a requesting member are as follows:
- (1) Association records prepared during the current fiscal year, within 10 business days following the association's receipt of the request.
  - (2) Association records prepared during the previous two fiscal years, within 30 calendar days following the association's receipt of the request.
  - (3) Any record or statement available pursuant to Section 1365 or 1368, within the timeframe specified therein.
  - (4) Minutes of member and board meetings, within the timeframe specified in subdivision (d) of Section 1363.05.
  - (5) Minutes of meetings of committees with decision making authority for meetings commencing on or after January 1, 2007, within 15 calendar days following approval.
  - (6) Membership list, within the timeframe specified in Section 8330 of the Corporations Code.
- (k) There shall be no liability pursuant to this section for an association that fails to retain records for the periods specified in subdivision (i) that were created prior to January 1, 2006.
- (l) As applied to an association and its members, the provisions of this section are intended to supersede the provisions of Sections 8330 and 8333 of the Corporations Code to the extent those sections are inconsistent.
- (m) The provisions of this section shall not apply to any common interest development in which separate interests are being offered for sale by a subdivider under the authority of a public report issued by the Department of Real Estate so long as the subdivider or all subdividers offering those separate interests for sale, or any employees of those subdividers or any other person who receives direct or indirect compensation from any of those subdividers, comprise a majority of the members of the board of directors of the association. Notwithstanding the foregoing, this section shall apply to that common interest development no later than 10 years after the close of escrow for the first sale of a separate interest to a member of the general public pursuant to the public report issued for the first phase of the development.
- (n) This section shall become operative on July 1, 2006.

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**§ 2924b. Request for copy of notice of default or sale; Recordation; Duty of mortgagee, trustee, etc.**

(a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:

“In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded \_\_\_\_\_, \_\_\_\_\_, in Book \_\_\_\_\_ page \_\_\_\_\_ records of \_\_\_\_\_ County, (or filed for record with recorder’s serial number \_\_\_\_\_, \_\_\_\_\_ County) California, executed by \_\_\_\_\_ as trustor (or mortgagor) in which \_\_\_\_\_ is named as beneficiary

(or mortgagee) and \_\_\_\_\_ as trustee be mailed to  
\_\_\_\_\_ at \_\_\_\_\_.  
Name Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature \_\_\_\_\_”

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

**(b)** The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do each of the following:

**(1)** Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

**(2)** At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

**(3)** As used in paragraphs (1) and (2), the "last known address" of each trustor or mortgagor means the last business or residence physical address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. For the purposes of this subdivision, an address is "actually known" if it is contained in the original deed of trust or mortgage, or in any subsequent written notification of a change of physical address from the trustor or mortgagor pursuant to the deed of trust or mortgage. For the purposes of this subdivision, "physical address" does not include an e-mail or any form of electronic address for a trustor or mortgagor. The beneficiary shall inform the trustee of the trustor's last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

**(4)** A "person authorized to record the notice of default or the notice of sale" shall include an agent for the mortgagee or beneficiary, an agent of the named trustee, any person designated in an executed substitution of trustee, or an agent of that substituted trustee.

**(c)** The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do the following:

**(1)** Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof that is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address that the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

**(2)** The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed that is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a "Notice of Lien for Postponed Property Taxes" has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, that has recorded, subsequent to the deed of trust or mortgage being foreclosed, a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if a "Notice of Federal Tax Lien under Internal Revenue Laws" has been recorded, subsequent to the deed of trust or mortgage being foreclosed, against the real property to which the notice of sale applies. The failure to provide the Internal Revenue Service with a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind the trustee's sale and invalidate the trustee's deed, at the option of either the successful bidder at the trustee's sale or the trustee, and in either case with the consent of the beneficiary. Any option to rescind the trustee's sale pursuant to this paragraph shall be exercised prior to any transfer of the property by the successful bidder to a bona fide purchaser for value. A rescission of the trustee's sale pursuant to this paragraph may be recorded in a notice of rescission pursuant to Section 1058.5.

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a mailing address of the trustor or mortgagor therein named, and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has

subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor or mortgagor.

**(e)** Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of that person, that he or she is over the age of 18 years, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

**(f)** **(1)** Notwithstanding subdivision (a), with respect to separate interests governed by an association, as defined in subdivision (a) of Section 1351, the association may cause to be filed in the office of the recorder in the county in which the separate interests are situated a request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of those separate interests mail to the association a copy of any trustee's deed upon sale concerning a separate interest. The request shall include a legal description or the assessor's parcel number of all the separate interests. A request recorded pursuant to this subdivision shall include the name and address of the association and a statement that it is a homeowners' association. Subsequent requests of an association shall supersede prior requests. A request pursuant to this subdivision shall be recorded before the filing of a notice of default. The mortgagee, trustee, or other authorized person shall mail the requested information to the association within 15 business days following the date the trustee's deed is recorded. Failure to mail the request, pursuant to this subdivision, shall not affect the title to real property.

**(2)** A request filed pursuant to paragraph (1) does not, for purposes of Section 27288.1 of the Government Code, constitute a document that either effects or evidences a transfer or encumbrance of an interest in real property or that releases or terminates any interest, right, or encumbrance of an interest in real property.

**(g)** No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

**(h)** "Business day," as used in this section, has the meaning specified in Section 9.

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2929.4.

**(a)** Prior to imposing a fine or penalty for failure to maintain a vacant property that is subject to a notice of default, that is purchased at a foreclosure sale, or that is acquired through foreclosure under a mortgage or deed of trust, a governmental entity shall provide the owner of that property with a notice of the violation and an opportunity to correct that violation.

**(b)** This section shall not apply if the governmental entity determines that a specific condition of the property threatens public health or safety.

2929.45.

(a) An assessment or lien to recover the costs of nuisance abatement measures taken by a governmental entity with regard to property that is subject to a notice of default, that is purchased at a foreclosure sale, or that is acquired through foreclosure under a mortgage or deed of trust, shall not exceed the actual and reasonable costs of nuisance abatement.

(b) A governmental entity shall not impose an assessment or lien unless the costs that constitute the assessment or lien have been adopted by the elected officials of that governmental entity at a public hearing.

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**§ 798.15. Required provisions; Incorporation by reference of chapter**

The rental agreement shall be in writing and shall contain, in addition to the provisions otherwise required by law to be included, all of the following:

(a) The term of the tenancy and the rent therefor.

(b) The rules and regulations of the park.

(c) A copy of the text of this chapter shall be attached as an exhibit and shall be incorporated into the rental agreement by reference. Management shall do one of the following prior to February 1 of each year, if a significant change was made in this chapter by legislation enacted in the prior year:

(1) Provide all homeowners with a copy of this chapter.

(2) Provide written notice to all homeowners that there has been a change to this chapter and that they may obtain one copy of this chapter from management at no charge. Management must provide a copy within a reasonable time, not to exceed seven days upon request.

(d) A provision specifying that (1) it is the responsibility of the management to provide and maintain physical improvements in the common facilities in good working order and condition and (2) with respect to a sudden or unforeseeable breakdown or deterioration of these improvements, the management shall have a reasonable period of time to repair the sudden or unforeseeable breakdown or deterioration and bring the improvements into good working order and condition after management knows or should have known of the breakdown or deterioration. For purposes of this subdivision, a reasonable period of time to repair a sudden or unforeseeable breakdown or deterioration shall be as soon as possible in situations affecting a health or safety condition, and shall not exceed 30 days in any other case except where exigent circumstances justify a delay.

(e) A description of the physical improvements to be provided the homeowner during his or her tenancy.

(f) A provision listing those services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the fees, if any, to be charged for those services.

(g) A provision stating that management may charge a reasonable fee for services relating to the maintenance of the land and premises upon which a mobilehome is situated in the event the homeowner fails to maintain the land or premises in accordance with the rules and regulations of the park after written notification to the homeowner and the failure of the homeowner to comply within 14 days. The written notice shall state the specific condition to be corrected and an estimate of the charges to be imposed by management if the services are performed by management or its agent.

(h) All other provisions governing the tenancy.

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**§ 799.1. Application of article; Ownership and operation by nonprofit mutual benefit corporation**

(a) Except as provided in subdivision (b), this article shall govern the rights of a resident who has an ownership interest in the subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park in which his or her mobilehome is located or installed. In a subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park, Articles 1 (commencing with Section 798) through Article 8 (commencing with Section 798.84) shall apply only to a resident who does not have an ownership interest in the subdivision, cooperative, or condominium for mobilehomes, or the

resident-owned mobilehome park, in which his or her mobilehome is located or installed.

**(b)** Notwithstanding subdivision (a), in a mobilehome park owned and operated by a nonprofit mutual benefit corporation, established pursuant to Section 11010.8 of the Business and Professions Code, whose members consist of park residents where there is no recorded condominium plan, tract, parcel map, or declaration, Article 1 (commencing with Section 798) through Article 8 (commencing with Section 798.84) shall govern the rights of members who are residents that have a rental agreement with the corporation.

## Assembly Bill No. 2284

### CHAPTER 674

An act to add and repeal Chapter 4.5 (commencing with Section 630.01) of Title 8 of Part 2 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 30, 2010. Filed with  
Secretary of State September 30, 2010.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2284, Evans. Jury trial: rules of court.

Existing law establishes the right to a trial by jury, and provides that a jury may be waived in a civil case only pursuant to specified manners. Under existing law, a jury trial consists of 12 persons, except that in civil actions and cases of misdemeanor, it may consist of 12 or any number less than 12, upon which the parties may agree. Existing law provides for the review of a judgment or order in a civil action or proceeding by appeal, and requires the Judicial Council to prescribe rules for the practice and procedure on appeal consistent with state law. Existing law requires the Judicial Council to provide by rule the practice and procedure for coordination of civil actions in convenient courts, including provision for giving notice and presenting evidence. Existing law authorizes the Judicial Council to promulgate rules governing pretrial conferences, and the time, manner, and nature thereof, in civil cases at issue, or in one or more classes thereof, in the superior courts.

This bill would establish the Expedited Jury Trials Act that would be operative until January 1, 2016. The bill would establish procedures for conducting expedited jury trials in civil cases where the parties sign a consent order to stipulate that those procedures apply, including provisions for a jury of 8 or fewer members, with no alternates, a limit of 3 peremptory challenges for each side, and a limit of 3 hours for each side to present its case. This bill would also provide that all parties waive all rights to appeal and to move for a directed verdict or to make any post-trial motions, except as provided. The bill would provide that the verdict in an expedited jury trial is binding, subject to any written high/low agreement, as defined. The bill would require the Judicial Council, on or before January 1, 2011, to adopt additional rules and uniform procedures, as provided.

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known as the Expedited Jury Trials Act.

SEC. 2. Chapter 4.5 (commencing with Section 630.01) is added to Title 8 of Part 2 of the Code of Civil Procedure, to read:

## CHAPTER 4.5. EXPEDITED JURY TRIALS

630.01. For purposes of this chapter:

(a) “Expedited jury trial” means a consensual, binding jury trial before a reduced jury panel and a judicial officer.

(b) “High/low agreement” means a written agreement entered into by the parties that specifies a minimum amount of damages that a plaintiff is guaranteed to receive from the defendant, and a maximum amount of damages that the defendant will be liable for, regardless of the ultimate verdict returned by the jury. Neither the existence of, nor the amounts contained in any high/low agreements, may be disclosed to the jury.

(c) “Post-trial motions” do not include motions relating to costs and attorney’s fees, motions to correct a judgment for a clerical error, and motions to enforce a judgment.

630.02. The rules and procedures applicable to expedited jury trials are as follows:

(a) The procedures in this chapter and in the implementing rules of court shall apply to expedited jury trials, unless the parties agree otherwise, as permitted under subparagraph (E) of paragraph (1) of subdivision (e) of Section 630.03, and the court so orders.

(b) Any matters not expressly addressed in this chapter, in the implementing rules of court, or in a consent order authorized by this chapter and the implementing rules, are governed by applicable statutes and rules governing civil actions.

630.03. (a) All parties agreeing to participate in an expedited jury trial and, if represented, their counsel, shall sign a proposed consent order granting an expedited jury trial.

(b) Except as provided in subdivision (d), the agreement to participate in the expedited jury trial process is binding upon the parties, unless either of the following occurs:

(1) All parties stipulate to end the agreement to participate.

(2) The court, on its own motion or at the request of a party by noticed motion, finds that good cause exists for the action not to proceed under the rules of this chapter.

(c) Any agreement to participate in an expedited jury trial under this chapter may be entered into only after a dispute has arisen and an action has been filed.

(d) The court shall approve the use of an expedited jury trial and any high/low agreements or other stipulations for an expedited jury trial involving either of the following:

(1) A self-represented litigant.

(2) A minor, an incompetent person, or a person for whom a conservator has been appointed.

(e) The proposed consent order submitted to the court shall include all of the following:

(1) A preliminary statement that each named party and any insurance carrier responsible for providing coverage or defense on behalf of that party,

individually identified in the proposed consent order, have been informed of the rules and procedures for an expedited jury trial and provided with a Judicial Council information sheet regarding expedited jury trials, have agreed to take part in or, in the case of a responsible insurance carrier, not object to, the expedited jury trial process, and have agreed to all the specific provisions set forth in the consent order.

(2) The parties' agreement to all of the following:

(A) That all parties waive all rights to appeal and to move for directed verdict or make any post-trial motions, except as provided in Sections 630.08 and 630.09.

(B) That each side shall have up to three hours in which to present its case.

(C) That the jury shall be composed of eight or fewer jurors with no alternates.

(D) That each side shall be limited to three peremptory challenges, unless the court permits an additional challenge in cases with more than two sides as provided in Section 630.04.

(E) That the trial and pretrial matters will proceed under subparagraphs (A) to (D), inclusive, and, unless the parties expressly agree otherwise in the proposed consent order, under all other provisions in this chapter and in the implementing rules of court.

(f) The court shall issue the consent order as proposed by the parties, unless the court finds good cause why the action should not proceed through the expedited jury trial process, in which case the court shall deny the proposed consent order in its entirety.

630.04. (a) Juries in expedited jury trial cases shall be composed of eight jurors, unless the parties have agreed to fewer. No alternates shall be selected.

(b) The court shall allow each side three peremptory challenges. If there are more than two parties in a case and more than two sides, as determined by the court under subdivision (c) of Section 231, the parties may request one additional peremptory challenge each, which is to be granted by the court as the interests of justice may require.

630.05. Nothing in this chapter is intended to preclude a jury from deliberating as long as needed.

630.06. (a) The rules of evidence apply in expedited jury trials, unless the parties stipulate otherwise.

(b) Any stipulation by the parties to use relaxed rules of evidence may not be construed to eliminate, or in any way affect, the right of a witness or party to invoke any applicable privilege or other law protecting confidentiality.

(c) The right to issue subpoenas and notices to appear to secure the attendance of witnesses or the production of documents at trial shall be in accordance with this code.

630.07. (a) The verdict in an expedited jury trial case is binding, subject to any written high/low agreement or other stipulations concerning the amount of the award agreed upon by the parties.

(b) A vote of six of the eight jurors is required for a verdict, unless the parties stipulate otherwise.

630.08. (a) By agreeing to participate in the expedited jury trial process, the parties agree to waive any motions for directed verdicts, motions to set aside the verdict or any judgment rendered by the jury, or motions for a new trial on the basis of inadequate or excessive damages.

(b) The court shall not set aside any verdict or any judgment, shall not direct that judgment be entered in favor of a party entitled to judgment as a matter of law, and shall not order a new trial, except on the grounds stated in Section 630.09.

630.09. (a) By agreeing to participate in the expedited jury trial process, the parties agree to waive the right to bring post-trial motions or to appeal from the determination of the matter, except as provided in this section. The only grounds on which a party may move for a new trial or appeal are any of the following:

(1) Judicial misconduct that materially affected the substantial rights of a party.

(2) Misconduct of the jury.

(3) Corruption, fraud, or other undue means employed in the proceedings of the court, jury, or adverse party that prevented a party from having a fair trial.

(b) Within 10 court days of the entry of a jury verdict, a party may file with the clerk and serve on each adverse party a notice of the intention to move for a new trial on any of the grounds specified in subdivision (a). The notice shall be deemed to be a motion for a new trial.

(c) Except as provided in subdivision (b), parties to an expedited jury trial shall not make any post-trial motions except for motions relating to costs and attorney's fees, motions to correct a judgment for clerical error, and motions to enforce a judgment.

(d) Before filing an appeal, a party shall make a motion for a new trial under subdivision (b). If the motion for a new trial is denied, the party may appeal the judgment to the appropriate court with appellate jurisdiction and seek a new trial on any of the grounds specified in subdivision (a). Parties to an expedited jury trial may not appeal on any other ground.

630.10. All statutes and rules governing costs and attorney's fees shall apply in expedited jury trials, unless the parties agree otherwise in the consent order.

630.11. The Judicial Council shall, on or before January 1, 2011, adopt rules and forms to establish uniform procedures implementing the provisions of this chapter, including, but not limited to, rules for all of the following:

(a) Additional content of proposed consent orders.

(b) Pretrial exchanges and submissions.

(c) Pretrial conferences.

(d) Time limits for jury selection.

(e) Time limits for trial, including presentation of evidence and argument.

(f) Presentation of evidence and testimony.

(g) Any other procedures necessary to implement the provisions of this chapter.

630.12. This chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.