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NEW LAW GIVES HOA MEMBERS BETTER ACCESS TO FINANCIAL DATA

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California homeowners associations members will have much wider access to HOA records, as a result of Assembly Bill 1098 ("AB 1098"), which was signed into law October 3, 2005 and takes effect July 1, 2006.

Current law had required that HOA members had access to "accounting books and records." HOA members throughout the state receive, or are supposed to receive, annual financial statements. These records are not usually audited.

AB1098 amends and adds to Section 1365 of the Civil Code to provide that association members shall have access to "enhanced association records" – meaning "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."

Early opposition to AB1098 had expressed concern that the requirements of the bill might lead to HOA liability for disclosing information that could result in identity theft or an invasion of privacy. Thus, the final version of the bill allows associations to withhold or redact information that might lead to identity theft. Further, it provides that no HOA officer, director, employee or agent shall be liable for such damages to a member, provided that the failure to withhold or redact information was neither intentional nor negligent.

The bill provides that requests to access records within the current fiscal year shall be completed within 10 business days. Requests to see records prepared during the previous two fiscal years must be met within 30 calendar days. If a requesting member wishes to have copies of the records requested, the association may bill him for the "direct and actual cost of copying requested documents." The member is to be informed of the costs before the copying is done. A member may bring an action to enforce his or her rights to inspect and copy association records for a legitimate purpose.

Association records "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 judicial action against anyone who violates that provision.

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