

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2025-2026 Regular Session**

SB 1238 (Wahab)  
Version: April 16, 2026  
Hearing Date: April 21, 2026  
Fiscal: No  
Urgency: No  
ID

**SUBJECT**

Common interest developments: management

**DIGEST**

This bill makes various changes to the laws regarding common interest developments (CIDs), including: by requiring homeowners association (HOA) managers to maintain fiduciary duties to the HOA and its members; expanding the information required in exterior elevated element (EEE) inspection reports; prohibiting the use of HOA reserve funds for any litigation, except as permitted; and expanding the information that a seller of a unit within a CID must provide a prospective buyer regarding the CID's EEEs.

**EXECUTIVE SUMMARY**

Common Interest Developments (CIDs) are self-governing housing developments comprised of individually-owned housing units and common space that all homeowners and residents of the CID can enjoy. CIDs are managed and governed by homeowner associations (HOAs), of which every owner within the CID is a member. The laws that regulate CIDs are encompassed in the Davis-Sterling Common Interest Development Act (Civ. Code §§ 4000 et seq.), and require HOAs to regularly inspect and maintain major components of the CID and the exterior elevated elements (EEEs) for which the HOA is responsible. The Davis-Sterling Act also requires a seller of a unit within the CID to provide specified disclosures to a prospective buyer, and requires that the HOA conduct regular reserve studies regarding the needs of the HOA's reserve fund. SB 1238 requires HOA managers to maintain fiduciary duties to the HOA and its members; expands the information required in EEE inspection reports; prohibits the use of HOA reserve funds for any litigation, except as permitted; and expands the information that a seller of a unit within a CID must provide a prospective buyer regarding the CID's EEEs.

SB 1238 is sponsored by the California Association of Realtors, and is supported by the Center for California Homeowner Association Law. It is opposed by the California Association of Community Managers. SB 1238 previously passed out of the Senate Housing Committee by a vote of 9 to 0. Should the bill pass this Committee, it will then be referred to the Senate Appropriations Committee.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Defines an “agent” as one who represents another, called the principal, in dealings with third persons, and calls this representation agency. (Civ. Code § 2295.)
- 2) Establishes the Davis-Stirling Common Interest Development Act, providing rules and regulations governing the establishment and operation of residential Common Interest Developments (CIDs) and the rights and responsibilities of a CID’s homeowner association (HOA) and its members. (Civ. Code §§ 4000 et seq.)
- 3) Requires an owner of a separate interest in a CID to provide to a prospective buyer of the separate interest specified documents, as soon as practicable before the transfer of title or execution of a real property sales contract, including:
  - a) a copy of all governing documents;
  - b) a statement that a restriction limiting the occupancy, residency, or use of the separate interest is only enforceable to the extent permitted by law, if applicable;
  - c) a copy of the most recent HOA annual budget and financial documents; a true statement of the amount of the HOA’s current regular and special assessments and fees, any assessments levied upon the owner’s interest that are unpaid, and any monetary fines that are unpaid;
  - d) a copy or summary of any notice sent by the HOA to the owner for an alleged violation of the governing documents that remains unresolved;
  - e) a copy of the initial list of construction defects for the CID, unless the builder entered into a settlement agreement to resolve the defects;
  - f) information regarding any settlement agreement with a builder to resolve construction defects;
  - g) any change in the HOA’s current regular and special assessments and fees that have been approved by the HOA but have yet to go into effect;
  - h) a statement describing any provision in the HOA’s governing documents that prohibits the rental or leasing of separate interests in the HOA;
  - i) and a copy of the minutes of HOA board meetings over the previous 12 months, if requested. (Civ. Code § 4525.)
- 4) Requires an HOA to provide an owner of a separate interest a copy of the documents specified in (2), above, within 10 days of any request for these

documents, including a written estimate of the fees that will be assessed for providing such documents. (Civ. Code § 4530.)

- 5) Specifies that any person who willfully violates the provisions described in (2) and (3), above, is liable to the purchaser of a separate interest for actual damages, and a civil penalty of up to \$500. Specifies that, in any civil action to enforce those provisions, reasonable attorney's fees must be awarded to the prevailing party. (Civ. Code § 4540.)
- 6) Provides that, unless the declaration states otherwise, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incidental thereto, screens and windows, or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest. (Civ. Code § 4145(b).)
- 7) Provides that, unless otherwise provided in the declaration of a CID, the HOA is responsible for repairing, replacing, and maintaining the common area; the owners of each separate interest are responsible for repairing, replacing, and maintaining their separate interest; and the owner of each separate interest is responsible for maintaining the exclusive use common area appurtenant to that separate interest; and the association is responsible for repairing and replacing the exclusive use common area. (Civ. Code § 4775.)
- 8) Requires the board of directors of an HOA to cause to be conducted, at least once every three years, a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the CID. (Civ. Code § 5550.)
- 9) Requires this study pursuant to (8), above, to include the date and amount of any change in regular assessment or special assessments needed to fund the reserve funding plan, and requires this plan be adopted by the board at an open meeting. (Civ. Code § 5560.)
- 10) Requires an HOA board of a condominium project with buildings containing three or more multifamily units to cause a reasonably competent and diligent visual inspection to be conducted by a licensed structural engineer or architect of a random and statistically significant sample of the exterior elevated elements of the CID for which the HOA has maintenance or repair responsibility. (Civ. Code § 5551(b).)
  - a) Requires the inspection to determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with applicable standards. (Civ. Code § 5551(b)(2).)

- b) Requires the first inspection to be completed by January 1, 2025, and then every nine years thereafter, in coordination with the reserve study inspection. (Civ. Code § 5551(i).)
- 11) Requires the inspector to perform the visual inspections in accordance with the random list described in (10), above, and specifies that, if during the inspection the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, creating the potential for damage to the load-bearing components, the inspector is authorized to conduct a further inspection exercising their best professional judgment in determining the necessity, scope, and breadth of further testing. (Civ. Code § 5551(d).)
- 12) Requires the inspector to issue a written report based on the inspection required in (15), above, containing the following information:
- a) The identification of the building components comprising the load-bearing components and associated waterproofing system;
  - b) The current physical condition of the load-bearing components and associated waterproofing system, including whether the condition presents an immediate threat to the health and safety of the residents;
  - c) The expected future performance and remaining useful life of the load-bearing components and associated waterproofing system; and
  - d) Recommendations for any necessary repair or replacement of the load-bearing components and associated waterproofing system. (Civ. Code § 5551(e).)
- 13) Requires the summary of an HOA's reserves included in the HOA's annual budget report to be based on the most recent review or reserve study, and to include specified information, including the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component. (Civ. Code § 5565.)
- 14) Defines "association records" to mean a variety of documents, including certain financial documents and financial statements, executed contracts regarding the HOA, written board approval of vendor or contractor proposals and invoices, tax returns, reserve account balances and records of payments, the governing documents, and inspection reports of EEAs, among others. (Civ. Code § 5200.)
- 15) Specifies that an HOA must make association records available, as specified, and that association records are subject to member inspection for specified time periods. (Civ. Code §§ 5205-5210.)
- 16) Requires the signatures of at least two directors of the HOA, or one officer who is not a director and one who is, for any withdrawal of funds from the HOA's reserve accounts. Prohibits the board from expending funds from the HOA reserve fund for

any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components for which the HOA is responsible. (Civ. Code § 5510.)

- 17) Permits an HOA board to authorize the temporary transfer of funds from a reserve fund to the HOA's general operating fund to meet short-term cashflow requirements or other expenses, if the board provides notice of its intent to consider such an action at a board meeting, and requires the HOA board to issue a written finding in the board's minutes explaining the reasons the transfer is needed, and describing when and how the funds will be repaid in the reserve fund. (Civ. Code § 5515.)
- 18) Specifies that, when a decision is made to use reserve funds or to temporarily transfer funds from the reserve fund, the HOA must provide general notice to the HOA members of that decision, and the availability of an accounting of those expenses, as specified. (Civ. Code § 5520.)
- 19) Creates a process by which CID managers may be certified through completion of a specified examination or educational coursework created by a professional association for CID managers. (Bus. & Prof. Code § 11501.)

This bill:

- 1) Specifies that "management services," for the purposes of the provisions relating to the certification of professional common interest development managers, means acts performed by an agent, as defined in Civil Code section 2295.
- 2) Defines, for the purposes of the provisions relating to the certification of professional CID managers, "professional association for common interest development managers" to mean an organization that employs an agent or agents, as defined in Civil Code section 2295.
- 3) Amends the definition of agent to include any person or company that facilitates activities related to the financial reporting and management of an HOA, and that is required to provide a fiduciary duty to the HOA board and its members.
- 4) Requires a seller of a unit within a CID to provide a prospective buyer, if requested by the prospective buyer, as soon as practicable before the transfer of title or execution of a real property sales contract, to disclose, the location on the first page of the report that lists: the number of EEEs and units posing an immediate threat to the safety of occupants; the number of EEEs and units recommended to be included in the next reasonably competent and diligent visual inspection of major components; and the EEEs recommended for inspection in the next nine-year EEE

inspection; and any EEE identified in the EEE inspection report that requires more than \$10,000 of repairs.

- 5) Includes the three-year reserve study in the definition of association records.
- 6) Prohibits reserve funds from being used for litigation other than litigation involving the repair, restoration, replacement, or maintenance of the major components for which the HOA is responsible, and requires the HOA board to diligently disclose any reserve funds used for litigation.
- 7) Requires the HOA board to provide notice in its annual budget report if the HOA becomes involved in litigation, and permits any member receiving this notice to request the name of the court and the case number of any litigation.
- 8) Includes EEEs identified in a nine-year EEE inspection in the definition of major components for the purposes of the required three-year reserve study inspection of accessible major components.
- 9) Requires the inspection report compiled pursuant to the EEE inspection required every nine years to include, on the first page, the total number of inspected EEEs and the number of units impacted that, as of the date of the inspection:
  - a) are identified as posing an immediate threat to the safety of the occupants;
  - b) are recommended to be included in the next reasonably competent and diligent visual inspect of the major components;
  - c) are recommended for reinspection in the next nine-year EEE inspection; and
  - d) demonstrate no need for repair at the time of inspection.
- 10) Requires the HOA's reserve funding plan to include repairs identified pursuant to the nine-year EEE inspection.
- 11) Requires the HOA's summary of its reserves in its annual budget report to include repairs identified in the required nine-year EEE inspection.

### COMMENTS

1. Author's statement:

According to the author:

SB 1238 will protect homeowners who reside in communities with a homeowner's association (HOA) by requiring additional disclosures to the homeowner and ensuring HOAs act in the homeowners' best interest by requiring a fiduciary duty be provided by HOA managers to the HOA board and

the HOA members. Under current law HOA managers have no licensing requirements or duties to the homeowner. This bill will establish a minimum standard by requiring HOA managers to provide a fiduciary duty to the homeowner while also prohibiting HOAs from using HOA reserve funds to sue homeowners seeking to hold boards and managers accountable for property maintenance required under CA law.

## 2. Common Interest Developments in California

Common Interest Developments (CIDs) are self-governing housing developments comprised of individually-owned housing units and common space that all homeowners and residents of the CID can enjoy. Arrangements of CIDs can vary widely, from condominiums, townhouses, and detached single-family homes, to apartment-like high rises. They may be comprised of only a few housing units, or thousands. CIDs are commonly referred to as homeowner associations, or HOAs, for the body that provides for the CID's self-governance.

The laws that regulate CIDs are encompassed in the Davis-Sterling Common Interest Development Act (Civil Code §§ 4000 et seq.). Many of the rules and structure of the CID are determined by the Declaration of Covenants, Conditions, and Restrictions (CC&Rs) that are filed with the county recorder when the CID is established. These CC&Rs identify the CID's common area, the HOA's responsibilities, the obligation of the HOA to collect assessments from homeowners to cover the HOA's expenses, and a variety of other topics. All homeowners in the CID are members of the HOA, which provides for the self-governance of the CID, managing and maintaining the common space of the CID, setting the rules for the CID, and resolving disputes. The HOA elects a board of directors, and usually has bylaws outlining the governance rules of the HOA and its board of directors (board).

The board has a number of duties and powers for the management of the community, including setting the regular, monthly assessments that members must pay in order to cover communal expenses. The board may increase the regular assessments every year by as much as 20 percent without approval of the membership. (Civ. Code § 5605.) When a homeowner in the CID does not pay their assessments, the HOA board has the authority to impose a lien and foreclose on the individual's property. (Civ. Code §§ 5660, 5700.) The HOA may also impose fines on individual members for violations of the rules of the HOA.

## 3. HOA boards and HOA managers' duties to HOA members

Thus, the HOA board has significant power over individual members of the HOA. The HOA itself has a fiduciary relationship with its members.<sup>1</sup> In addition, members of the

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<sup>1</sup> *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal. App. 3d 642, 650-651.

HOA's board of directors also owe a fiduciary duty to the HOA and its members, including a duty of loyalty and a duty of care.<sup>2</sup> These duties ensure that the HOA board acts in the best interests of the HOA and its members, and helps members of the HOA hold board members accountable if they fail to properly operate the HOA or have a conflict of interest. Members of the HOA can sue the board for failing their duties of loyalty or care, though board members are protected from liability against claims of a breach of the duty of care in many cases by the "business judgement rule" that presumes that directors' decisions are based on sound business judgement.<sup>3</sup>

Because HOA board members are volunteer members of the HOA and the rules governing CIDs are complex, HOAs often hire an HOA management company or manager to help manage the HOA and conduct the HOA's day-to-day operations. The management company may, in some circumstances, have a fiduciary relationship with the HOA board under the contract it signs with the HOA; however, the management company does not have a fiduciary relationship to the members of the HOA.<sup>4</sup> The manager serves the members of the HOA at the direction of the board, but they do not have a direct contractual relationship with the members.

- a. *SB 1238 would give HOA managers and management companies a fiduciary duty to the HOA and its members*

SB 1238 would make HOA managers and HOA management companies agents of the HOA board and the members of the HOA, and would require the manager or management company to provide a fiduciary duty to the board and the members of the HOA. The author asserts that HOA managers and management companies are not subject to any oversight by a state agency, unless required to obtain a real estate license subject to a local ordinance, and owe no duties to the members of the HOA. By making HOA managers and management companies fiduciaries to the members, SB 1238 would make HOA managers responsible directly to HOA members. If a member believes that the HOA manager has breached their fiduciary duty, the member could sue the manager for that breach.

As already mentioned, HOA managers sometimes have a fiduciary duty to the HOA board. Under SB 1238, the manager could owe a fiduciary duty to the members at the same time as it owes fiduciary duty to the board. It is unclear how the manager could serve both interests in the case that the interests of the board and the interests of the members diverge, such as during a dispute between the board and HOA members regarding the enforcement or interpretation of the CID's rules. It is true that, without the HOA manager having a fiduciary duty to individual HOA members, members aggrieved by the action or inaction of the manager must go to the board to rectify the

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<sup>2</sup> *Francis T. V. Village Green Owners Ass'n* (1986) 42 Cal. 3d 490.

<sup>3</sup> *Ritter & Ritter, Inc. Pension & Profit Plan v. The Churchill Condominium Assn.* (2008) 16 Cal. App. 4th 103, 123.

<sup>4</sup> *Berryman v. Merit Property Management, Inc.* (2007) 152 Cal. App. 4th 1544, 1558.

issue. However, the board is responsible to the membership, as they are elected by the HOA and owe a fiduciary duty to all members. Thus, if the HOA manager mismanages the HOA, HOA members can demand that the board take corrective action, including action against the HOA manager or replacement of the manager.

4. HOAs must conduct regular inspections of the HOA's balconies and major components

The Davis-Sterling Act also sets out the various responsibilities for the maintenance of the facilities of the CID between the HOA and the individual homeowners. The HOA is generally responsible for repairing, replacing, and maintaining the common area in the CID, while each owner is responsible for repairing, replacing, and maintaining their separate interest in the CID (typically their individual unit). (Civ. Code § 4775.)

Exclusive use common areas appurtenant to an owner's separate interest must be maintained by the owner of the separate interest, while the HOA is responsible for repairing and replacing this exclusive use common area. (Civ. Code § 4775(a)(3).) An exclusive use common area is a portion of the common area designated by the CID's declaration for the exclusive use of one or more, but fewer than all, owners of a separate interest in the CID, and which is tied to the respective separate interest or interests. (Civ. Code § 4145.) Exclusive use common areas are typically balconies, patios, exterior entryways, and designated parking spaces.

In 2015, a balcony at an apartment complex in Berkeley collapsed, killing six people and injuring seven more.<sup>5</sup> An investigation by the California State Contractors Licensing Board found that the accident was the result of substantial water damage, moisture saturation, and dry rot in the balcony's supports, resulting from a combination of poor building materials and failures to waterproof the structure during construction.<sup>6</sup> Following this tragedy, the Legislature enacted a number of laws meant to increase oversight over the construction of balconies and to increase regular inspection of balconies. In 2019, the Legislature passed SB 326 (Hill, Ch. 207, Stats. 2019) to place inspection requirements for balconies (exterior elevated elements, or EEEs) in CIDs. SB 326 requires that the HOA board arrange a reasonably competent and diligent visual inspection every nine years of a statistically-significant sample of the CID's balconies over which the association has maintenance or repair responsibility. (Civ. Code § 5551(b).) The purpose of the inspection is to "determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with applicable standards." The inspector must prepare a report of the inspection for the Board, which also must be incorporated into the HOA's reserve study. (Civ. Code § 5551(e).) SB 325

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<sup>5</sup> Jason Hanna and Pere Taggart, Balcony collapses during Irish students' party in Berkeley, killing 6. CNN (Jun. 16, 2015), available at <https://www.cnn.com/2015/06/16/us/california-balcony-collapse/index.html>.

<sup>6</sup> Cal. Contractors State Licensing Board, Berkeley Balcony Investigation Materials (May 30, 2017), available at [https://www.cslb.ca.gov/About\\_Us/Library/Reports.aspx](https://www.cslb.ca.gov/About_Us/Library/Reports.aspx).

requires that the first required inspection be conducted by the HOA by January 1, 2025, and every nine years thereafter. (Civ. Code § 5551(i).)

- a. *SB 1238 requires the EEE inspection report to include additional information on the first page*

This required EEE report must include specified information on the first page, including: the date of the inspection; the total number of units in the condominium project; the number of units with EEEs; the total number of EEEs in the development and the number of EEEs inspected; and the number of inspected EEEs identified as of the date of the inspection that pose an immediate threat to the safety of the occupants, and the number of units impacted. SB 1238 would additionally require that this first page include, as of the date of the inspection, the EEEs recommended to be included in the next triannual visual inspection of the CID's major components; the EEEs recommended for reinspection during the next nine-year EEE inspection; and the EEEs that demonstrate no need for repair.

5. Disclosures of balcony inspections by a seller of a unit within a CID to prospective buyers

When an owner in a CID plans to sell their unit, they must provide a prospective buyer with a number of documents related to the CID and the owner's unit. These documents include: a copy of the CID's governing documents; a statement regarding the limited enforcement of any restriction on the occupancy of units by age; a copy of the most recent annual budget report; a true statement in writing as to the amount of the HOA's current regular and special assessments and fees, and any unpaid fees of the seller; a copy or summary of any notice previously sent to the seller regarding an unresolved violation of the governing documents; a copy of the initial list of construction defects and the latest information regarding these defects; and any change in the HOA's current regular or special assessments and fees that have been approved by the board but not yet due, among others. (Civ. Code § 4525.) These documents and disclosures must be provided to the prospective buyer as soon as practicable before the transfer of title or execution of a real property sales contract.

- a. *SB 1238 would require a seller of a unit within the CID to provide additional disclosures to a prospective buyer regarding the CID's balconies*

Recent legislation expanded these required disclosures to also require the seller to provide a prospective buyer a copy of the most recent EEE inspection (SB 410 (Grayson) Ch. 516, Stats. 2025). SB 1238 expands upon these changes by requiring the seller to provide, if requested by the buyer, the location on the first page of the EEE report where it lists: the number of EEEs and units identified as posing an immediate threat to the safety of the occupants; the EEEs recommended to be included in the next triennial inspection of the CID's major components; and the EEEs recommended for reinspection

in the next nine-year EEE inspection. It also requires that the seller provide, if separately requested by the buyer, information on any EEE identified in the report as needing repairs that exceed \$10,000.

6. Enforcement of the Davis-Sterling Act and the HOA board and manager's responsibilities

The Davis-Sterling Act requires that the HOA complete what is called a reserve study at least every three years. (Civ. Code § 5550.) The study must include: an identification of the major components of the CID that the HOA is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years; identification of the probable remaining useful life of the components with less than 30 years remaining, as identified; an estimate of the cost to repair, replace, restore, or maintain the identified aging components; an estimate of the total annual contributions necessary to defray the cost to repair, replace, restore, or maintain the identified aging components at the end of their useful life, beyond the current total reserves; and a reserve funding plan that indicates how the HOA plans to fund the contributions required to repair, restore, replace, or maintain the identified aging components. (Civ. Code § 5550.) To complete this reserve study, the HOA board must arrange for a visual inspection of the accessible areas of the major components that the HOA is obligated to repair, replace, restore, or maintain.

The rules of the CID on individual homeowners can be enforced by the association or by other individual homeowners through a lawsuit. In addition, an individual homeowner may sue the HOA for failing to comply with the Davis Sterling Act or the board for failing to fulfill one of its duties, though provisions of the Davis Sterling Act require arbitration in many circumstances before a suit can be brought.

- a. *SB 1238 would require three-year inspections of major components to include inspections of the EEEs for which the HOA is responsible*

SB 1238 would require that EEEs be considered "major components," such that EEEs must also be visually inspected every three years as part of the HOA's reserve study. Thus, EEEs would need to be inspected on a nine-year basis by a specified engineer, and also on a three-year basis along with the other accessible major components of the CID as part of the reserve study.

- b. *SB 1238 would prohibit an HOA from using reserve funds to fund certain litigation expenses*

When the board sets aside funds into a reserve fund, such funds are only permitted to be used for certain purposes. Specifically, they may only be used for the repair, restoration, replacement, or maintenance of major components of the HOA for which the HOA is responsible. (Civ. Code § 5510.) Reserve funds may also be used for

litigation involving the repair, restoration, replacement, or maintenance of major components. (*Id.*)

SB 1238 would specify that reserve funds may not be used for any litigation expenses or legal services other than those permitted related to the major components.

7. GSEs are denying financing to condominiums that do not make critical repairs

The author argues that SB 1238's provisions are aimed at helping units in HOAs receive financing so that they can be more easily sold and can retain their value. The main issue that many owners and would-be buyers in CIDs are encountering here is an inability to obtain financing due to alleged needed repairs.

All mortgages in the United States are either "federally-backed" mortgages, in which they are owned, insured, or guaranteed by an agency of the federal government, such as the Fair Housing Administration (FHA), or they are privately-backed mortgages. Of privately-backed mortgages, a majority are what are called "conforming mortgages," in which they are backed by Fannie Mae or Freddie Mac, which are Government-Sponsored Enterprises (GSEs). The GSEs issue servicing guidelines that regulate the rules for the mortgages that they will back and outline the obligations of mortgage servicers of these loans. In 2024, Fannie Mae updated its guidelines for condominium projects eligible to be backed by the GSE. This update specified that ineligible projects include those in need of critical repairs or replacements that significantly impact the safety, soundness, structural integrity or habitability of the project's buildings, or its financial viability or marketability.<sup>7</sup> Critical repairs include conditions like material deficiencies with the potential to result in or contribute to critical element or system failure, water intrusions, physical deterioration, unfunded repairs costing more than \$10,000 per unit that should be taken within the next 12 months, and projects that fail to pass state, county, or other mandatory inspections or certifications specific to structural safety, soundness, and habitability.<sup>8</sup> Serious issues with balconies can qualify as needed critical repairs. These new requirements have resulted in the creation of a "blacklist" by the GSEs of CID properties in which all units within the development are ineligible for GSE-backed mortgages.<sup>9</sup>

When an owner in an HOA cannot obtain a conventional loan backed by a GSE, they may have a harder time obtaining financing, and may have to obtain riskier financing with worse terms. It can also mean that the real estate sale falls through entirely, if the buyer is unable to find other, adequate financing. SB 1238 aims to help prevent this by

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<sup>7</sup> Fannie Mae, *Selling Guide: Fannie Mae Single Family*, B4-2.1-3, Ineligible Projects (Nov. 2024), available at <https://selling-guide.fanniemae.com/sel/b4-2.1-03/ineligible-projects#P4266>.

<sup>8</sup> *Id.*

<sup>9</sup> Jean Eaglesham and Nicole Friedman, "A secret mortgage blacklist is leaving homeowners stuck with unsellable condos," *The Wall Street Journal* (Mar. 17, 2025), <https://www.wsj.com/finance/regulation/condo-sales-home-insurance-crisis-a921362b>.

requiring more regular inspections of CID EEEs and by requiring a seller of a unit in a CID to disclose more information regarding the CID's balconies and any needed repairs. While this may not entirely keep a CID off of GSEs' blacklist, it could provide prospective buyers greater information regarding any structural issues with the balconies that may cause issues for obtaining financing. Moreover, its requirements that needed repairs to EEEs be included in the CID's reserve study may help the CID better prepare for and fund EEE repairs that otherwise may prevent a unit within the CID from receiving financing.

## 8. Amendments

The author has agreed to amendments that will change the bill's provisions providing a manager with a fiduciary duty to the HOA and its members to instead require that the manager provide a duty of care that is prudent and provides the highest good faith effort to the HOA and its members. In addition, the amendments remove the inclusion of "that employs an agent or agents, as defined in Section 2295 of the Civil Code" from the definition of "professional association for common interest development managers," thereby leaving the definition unchanged. A mock-up of these amendments is attached at the end of this analysis.

## 9. Arguments in support

According to the California Association of Realtors, which is the sponsor of SB 1238:

SB 1238 strengthens protections for the millions of Californians who live in common-interest developments by increasing transparency, accountability, and financial clarity within. As the Department of Real Estate reports, nearly all new housing construction now includes an HOA, yet current law provides virtually no state-level oversight of HOA managers or management companies. This lack of accountability has created long-term risks for homeowners, including opaque financial practices, limited access to essential documents, and costly barriers to enforcing their rights under the Davis-Stirling Act.

SB 1238 addresses these gaps by establishing clear standards of conduct and improving access to information necessary for homeowners to understand the financial health of their association – information that is especially critical during a real estate transaction or homeowners' refinance. As proposed to be amended, the bill:

- **Establishes accountability for HOA managers** ensuring a defined standard of care for professionals who manage millions of dollars in homeowner assets, budgets, and reserve accounts.
- **Closes loopholes that allow misuse of reserve funds**, clarifying that reserves cannot be spent on litigation not authorized under existing law and ensuring

that any legal defense costs appear transparently in the general fund rather than being hidden from homeowners.

- **Improves disclosure requirements**, ensuring homeowners can obtain timely, accurate information about the association’s finances, reserves, and operational health – information essential for safe, habitable buildings and for preventing the costly consequences of deferred maintenance.
- **Enhances clarity and transparency of inspection ratings**, helping boards, managers, and homeowners understand building conditions and plan for necessary maintenance to protect long-term structural and financial stability.

### SUPPORT

California Association of Realtors (sponsor)  
Center for California Homeowner Association Law

### OPPOSITION

California Association of Community Managers

### RELATED LEGISLATION

#### Pending Legislation:

SB 1007 (Menjivar, 2026) requires, among other things, the annual budget report to include a high-level summary breakdown of what the regular assessments fund, and a statement regarding the compensation a management company is receiving. SB 1007 is set to be heard in this Committee on April 28, 2026.

AB 739 (Jackson, 2026) requires the HOA board to review, on an annual basis, the fees charged by the HOA managing agent, as specified, and requires the HOA to deliver a statement of these fees through electronic means to an HOA member who requests them. AB 739 is currently pending in the Senate Rules Committee.

AB 2050 (Caloza, 2026) requires, beginning January 1, 2032, the reserve study to include the minimum reserve contribution level needed to prevent the projected reserve account from falling below zero, and requires the HOA to fund the reserve account on an annual basis, as specified. AB 2050 is currently pending before the Assembly Judiciary Committee.

Prior Legislation:

SB 410 (Grayson, Ch. 516, Stats. 2015) required the owner of a housing unit in a CID to provide a copy of the report issued from the most recent inspection of EEEs in the CID to a prospective purchaser of the housing unit, required inspection reports to contain specified information, and required HOAs to preserve inspection reports as HOA records.

AB 2579 (Quirk-Silva, Ch. 835, Stats. 2024) extended the deadline by one year, to January 1, 2026, for performing inspections of EEEs in all buildings containing three or more multifamily dwelling units.

AB 2114 (Irwin, Ch. 100, Stats. 2024) added licensed civil engineers to the types of inspectors eligible to perform visual inspections of EEEs for which an HOA has maintenance or repair responsibility.

SB 326 (Hill, Ch. 207, Stats. 2019) established minimum inspection requirements for EEEs within HOAs.

SB 721 (Hill, Ch. 445, Stats. 2018) established minimum inspection requirements for the EEEs, including balconies and decks, of buildings with three or more multifamily dwelling units, as specified.

**PRIOR VOTES:**

Senate Housing Committee (Ayes 9, Noes 0)

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**Mock-up of Proposed Amendments for 2025-2026 SB-1238 (Wahab)**  
*(Amendments subject to any technical changes required by Legislative Counsel)*

**Mock-up based on Version Number 98 - Amended Senate 4/16/26**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 11500 of the Business and Professions Code is amended to read:

**11500.** For purposes of this chapter, the following definitions apply:

(a) “Common interest development” means a residential development identified in Section 4100 of the Civil Code.

(b) “Association” has the same meaning as defined in Section 4080 of the Civil Code.

(c) “Financial services” means acts performed or offered to be performed, for compensation, for an association, including, but not limited to, the preparation of internal unaudited financial statements, internal accounting and bookkeeping functions, billing of assessments, and related services.

(d) “Management services” means acts performed or offered to be performed by an agent, as defined in Section 2295 of the Civil Code, in an advisory capacity for an association including, but not limited to, the following:

(1) Administering or supervising the collection, reporting, and archiving of the financial or common area assets of an association or common interest development, at the direction of the association’s board of directors.

(2) Implementing resolutions and directives of the board of directors of the association elected to oversee the operation of a common interest development.

(3) Implementing provisions of governing documents, as defined in Section 4150 of the Civil Code, that govern the operation of the common interest development.

(4) Administering association contracts, including insurance contracts, within the scope of the association’s duties or with other common interest development managers, vendors, contractors, and other third-party providers of goods and services to an association or common interest development.

(e) “Professional association for common interest development managers” means an organization ~~that employs an agent or agents, as defined in Section 2295 of the Civil Code, and~~ that meets all of the following:

(1) Has at least 200 members or certificants who are common interest development managers in California.

- (2) Has been in existence for at least five years.
- (3) Operates pursuant to Section 501(c) of the Internal Revenue Code.
- (4) Certifies that a common interest development manager has met the criteria set forth in Section 11502 without requiring membership in the association.
- (5) Requires adherence to a code of professional ethics and standards of practice for certified common interest development managers.

**SEC. 2.** Section 11501 of the Business and Professions Code is amended to read:

**11501.** (a) “Common interest development manager” means an individual who for compensation, or in expectation of compensation, provides or contracts to provide management or financial services, as defined in Section 11500, or represents himself to act in the capacity of providing management or financial services to an association. Notwithstanding any other provision of law, an individual may not be required to obtain a real estate or broker’s license in order to perform the services of a common interest development manager to an association.

(b) “Common interest development manager” also means any of the following:

(1) An individual who is a partner in a partnership, a shareholder or officer in a corporation, or who, in any other business entity acts in a capacity to advise, supervise, and direct the activity of a registrant or provisional registrant, or who acts as a principal on behalf of a company that provides the services of a common interest development manager.

(2) An individual operating under a fictitious business name who provides the services of a common interest development manager.

This section may not be construed to require an association to hire for compensation a common interest development manager, unless required to do so by its governing documents. Nothing in this part shall be construed to supersede any law that requires a license, permit, or any other form of registration, to provide management or financial services. Nothing in this section shall preclude a licensee of the California Board of Accountancy from providing financial services to an association within the scope of their license in addition to the preparation of reviewed and audited financial statements and the preparation of the association’s tax returns.

**SEC. 3.** Section 2295 of the Civil Code is amended to read:

**2295.** (a) An agent is one who represents another, called the principal, in dealings with third persons. This representation is called agency.

(b) An agent includes any person or company that facilitates activities pursuant to Sections 5300, 5310, and 5500, ~~and that is required to provide a fiduciary duty to the board of a homeowner’s association and its members.~~

**SEC. 4.** Section 4525 of the Civil Code is amended to read:

**4525.** (a) The owner of a separate interest shall provide the following documents to a prospective purchaser of the separate interest, as soon as practicable before the transfer of title or the execution of a real property sales contract, as defined in Section 2985:

(1) A copy of all governing documents. If the association is not incorporated, this shall include a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Article 7 (commencing with Section 5300) of Chapter 6.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Article 2 (commencing with Section 5650) of Chapter 8.

(5) A copy or a summary of any notice previously sent to the owner pursuant to Section 5855 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the initial list of defects provided to each member pursuant to Section 6000, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 6100. Disclosure of the initial list of defects pursuant to this paragraph does not waive any privilege attached to the document. The initial list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 6100.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the board, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(9) If there is a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, a statement describing the prohibition.

(10) If requested by the prospective purchaser, a copy of the minutes of board meetings, excluding meetings held in executive session, conducted over the previous 12 months, that were approved by the board.

(11) (A) A copy of the report issued pursuant to the most recent inspection conducted pursuant to Section 5551.

(B) The following information, if separately requested by the purchaser:

(i) The location on the first page of the report where the following information may be found:

(I) The number of exterior elevated elements, and the number of units identified pursuant to clause (i) of subparagraph (F) of paragraph (5) of subdivision (e) of Section 5551.

(II) The number of exterior elevated elements identified pursuant to clause (ii) of subparagraph (F) of paragraph (5) of subdivision (e) of Section 5551.

(III) The number of exterior elevated elements identified pursuant to clause (iii) of subparagraph (F) of paragraph (5) of subdivision (e) of Section 5551.

(ii) Any balcony identified in the report as needing repairs that exceed ten thousand dollars (\$10,000).

(C) (i) The following information indicating whether:

(I) The covenants, codes, and restrictions require a unit owner, with the exclusive right to use the exterior element, to individually maintain exterior elevated elements.

(II) The association reserve study includes a minimum annual budgeted replacement reserve allocation of 10 percent for repairs of the exterior structures.

(III) The association reserve study has been updated to include identified repairs contained within the balcony inspection report.

(ii) The requirements of clause (i) of this subparagraph may be satisfied by identifying where this information is addressed in the documents disclosed pursuant to paragraphs (1) and (3) of subdivision (a).

(b) This section does not apply to an owner that is subject to Section 11018.6 of the Business and Professions Code.

**SEC. 5.** Section 5200 of the Civil Code is amended to read:

**5200.** For the purposes of this article, the following definitions shall apply:

(a) “Association records” means all of the following:

(1) Any financial document required to be provided to a member in Article 7 (commencing with Section 5300) or in Sections 5565 and 5810.

(2) Any financial document or statement required to be provided in Article 2 (commencing with Section 4525) of Chapter 4.

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

(A) Balance sheet.

(B) Income and expense statement.

(C) Budget comparison.

(D) 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 paragraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

(4) Executed contracts not otherwise privileged under law.

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

(6) State and federal tax returns.

(7) Reserve study pursuant to Section 5550, reserve account balances, and records of payments made from reserve accounts.

(8) Agendas and minutes of meetings of the members, the board, and any committees appointed by the board pursuant to Section 7212 of the Corporations Code; excluding, however, minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900).

(9) Membership lists, including name, property address, mailing address, email address, as collected by the association in accordance with Section 4041 where applicable, but not including information for members who have opted out pursuant to Section 5220.

(10) Check registers.

(11) The governing documents.

(12) An accounting prepared pursuant to subdivision (b) of Section 5520.

(13) An “enhanced association record” as defined in subdivision (b).

(14) “Association election materials” as defined in subdivision (c).

(15) All inspector’s reports compiled pursuant to Section 5551.

(b) “Enhanced association records” means invoices, receipts, and canceled checks for payments made by the association, purchase orders approved by the association, bank account statements for bank accounts in which assessments are deposited or withdrawn, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.

(c) “Association election materials” means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, the candidate registration list, and the tally sheet of votes cast by electronic secret ballot. Signed voter envelopes may be inspected but may not be copied. An association shall maintain association election materials for one year after the date of the election.

**SEC. 6.** Section 5510 of the Civil Code is amended to read:

**5510.** (a) The signatures of at least two persons, who shall be directors, or one officer who is not a director and one who is a director, shall be required for the withdrawal of moneys from the association’s reserve accounts.

(b) The board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components that the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(c) The board shall not expend funds designated as reserve funds for other litigation or legal services that are not identified in subdivision (b).

**SEC. 7.** Section 5550 of the Civil Code is amended to read:

**5550.** (a) In addition to the inspection mandated pursuant to Section 5551 every nine years, the board shall cause to be conducted a reasonably competent and diligent visual inspection once every three years of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association, excluding the association’s reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board’s analysis of the reserve account requirements as a result of that review to ensure the maintenance of components under the association’s control.

(b) The study required by this section shall at a minimum include:

(1) Identification of the major components that the association is obligated to repair, replace, restore, or maintain, including those identified pursuant to Section 5551, that, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(5) A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired.

(c) For purposes of this section, "major components" includes associated waterproofing systems, exterior elevated elements and load-bearing components defined and inspected pursuant to Section 5551, and gas, water, and electrical service to the extent that the association is responsible for repair or replacement of those lines pursuant to Section 4775.

**SEC. 8.** Section 5551 of the Civil Code is amended to read:

**5551.** (a) For purposes of this section, the following definitions apply:

(1) "Associated waterproofing systems" include flashings, membranes, coatings, and sealants that protect the load-bearing components of exterior elevated elements from exposure to water.

(2) "Exterior elevated elements" mean the load-bearing components together with their associated waterproofing system.

(3) "Load-bearing components" means those components that extend beyond the exterior walls of the building to deliver structural loads to the building from decks, balconies, stairways, walkways, and their railings, that have a walking surface elevated more than six feet above ground level, that are designed for human occupancy or use, and that are supported in whole or in substantial part by wood or wood-based products.

(4) "Statistically significant sample" means a sufficient number of units inspected to provide 95 percent confidence that the results from the sample are reflective of the whole, with a margin of error of no greater than plus or minus 5 percent.

(5) "Visual inspection" means inspection through the least intrusive method necessary to inspect load-bearing components, including visual observation only or visual observation in conjunction with, for example, the use of moisture meters, borescopes, or infrared technology.

(b) (1) At least once every nine years, the board of an association of a condominium project shall cause a reasonably competent and diligent visual inspection to be conducted by a licensed structural or civil engineer or architect of a random and statistically significant sample of exterior elevated elements for which the association has maintenance or repair responsibility.

(2) The inspection shall determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with applicable standards.

(c) Prior to conducting the first visual inspection, the inspector shall generate a random list of the locations of each type of exterior elevated element. The list shall include all exterior elevated elements for which the association has maintenance or repair responsibility. The list shall be provided to the association for future use.

(d) The inspector shall perform the visual inspections in accordance with the random list generated pursuant to subdivision (c). If during the visual inspection the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, thereby creating the potential for damage to the load-bearing components, then the inspector may conduct a further inspection. The inspector shall exercise their best professional judgment in determining the necessity, scope, and breadth of any further inspection.

(e) Based upon the inspector's visual inspections, further inspection, and construction and materials expertise, the inspector shall issue a written report containing the following:

(1) The identification of the building components comprising the load-bearing components and associated waterproofing system.

(2) The current physical condition of the load-bearing components and associated waterproofing system, including whether the condition presents an immediate threat to the health and safety of the residents.

(3) The expected future performance and remaining useful life of the load-bearing components and associated waterproofing system.

(4) Recommendations for any necessary repair or replacement of the load-bearing components and associated waterproofing system.

(5) On the first page of the report, all of the following:

(A) The date of inspection.

(B) The total number of units in the condominium project.

(C) The total number of units in the condominium project with exterior elevated elements.

(D) The total number of exterior elevated elements in the condominium project.

(E) The total number of exterior elevated elements inspected pursuant to subdivision (b).

(F) As of the date of inspection in subparagraph (A), the total number of inspected exterior elevated elements identified in the inspector's written report and the number of units impacted in each of the following repair urgency categories:

(i) The total number of inspected exterior elevated elements identified as posing an immediate threat to the safety of the occupants, pursuant to subdivision (g), and the number of units impacted.

(ii) Exterior elevated elements recommended to be included in the next reasonably competent and diligent visual inspection conducted pursuant to Section 5550 or recommended for reinspection within the next three years.

(iii) Exterior elevated elements recommended for reinspection in the next inspection conducted pursuant to this section.

(iv) Exterior elevated elements demonstrating no need for repair at the time of inspection.

(G) A certification that the inspector has conducted a visual inspection and evaluated a statistically significant sample of the exterior elevated elements within the condominium project, as required by subdivision (b).

(f) The report issued pursuant to subdivision (e) shall be stamped or signed by the inspector, presented to the board, and incorporated into the study required by Section 5550.

(g) (1) If, after inspection of any exterior elevated element, the inspector advises that the exterior elevated element poses an immediate threat to the safety of the occupants, the inspector shall provide a copy of the inspection report to the association immediately upon completion of the report, and to the local code enforcement agency within 15 days of completion of the report. Upon receiving the report, the association shall take preventive measures immediately, including preventing occupant access to the exterior elevated element until repairs have been inspected and approved by the local enforcement agency.

(2) Local enforcement agencies shall have the ability to recover enforcement costs associated with the requirements of this section from the association.

(h) Each subsequent visual inspection conducted under this section shall commence with the next exterior elevated element identified on the random list and shall proceed in order through the list.

(i) The first inspection shall be completed by January 1, 2025, and then every nine years thereafter in coordination with the reserve study inspection pursuant to Section 5550. All written reports shall be maintained for two inspection cycles as records of the association.

(j) (1) The association shall be responsible for complying with the requirements of this section.

(2) The continued and ongoing maintenance and repair of the load-bearing components and associated waterproofing systems in a safe, functional, and sanitary condition shall be the responsibility of the association as required by the association's governing documents.

(k) The inspection of buildings for which a building permit application has been submitted on or after January 1, 2020, shall occur no later than six years following the issuance of a certificate of occupancy. The inspection shall otherwise comply with the provisions of this section.

(l) This section shall only apply to buildings containing three or more attached multifamily dwelling units.

(m) The association board may enact rules or bylaws imposing requirements greater than those imposed by this section.

(n) A local government or local enforcement agency may enact an ordinance or other rule imposing requirements greater than those imposed by this section.

**SEC. 9.** Section 5560 of the Civil Code is amended to read:

**5560.** (a) The reserve funding plan required by Section 5550 shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan.

(b) The plan shall be adopted by the board at an open meeting before the membership of the association as described in Article 2 (commencing with Section 4900) of Chapter 6.

(c) The plan shall include repairs identified in the inspection required pursuant to Section 5551.

(d) If the board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in Section 5605.

**SEC. 10.** Section 5565 of the Civil Code is amended to read:

**5565.** The summary of the association's reserves required by paragraph (2) of subdivision (b) of Section 5300 shall be based on the most recent review or study conducted pursuant to Section 5550, shall be based only on assets held in cash or cash equivalents, shall be printed in boldface type, and shall include all of the following:

(a) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component and shall include repairs identified in the inspection required pursuant to Section 5551.

(b) As of the end of the fiscal year for which the study is prepared:

(1) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(3) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to paragraph (2). Instead of complying with the requirements set forth in this paragraph, an association that is obligated to issue a review of its financial statement pursuant to Section 5305 may include in the review a statement containing all of the information required by this paragraph.

(c) The percentage that the amount determined for purposes of paragraph (2) of subdivision (b) equals the amount determined for purposes of paragraph (1) of subdivision (b).

(d) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of paragraph (2) of subdivision (b) from the amount determined for purposes of paragraph (1) of subdivision (b) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.

**SEC. 11. Section 5390 is added to the Civil Code, to read:**

**5390. Any person or entity that facilitates activities pursuant to Sections 5300, 5310, and 5500, or other activities pursuant to this Part that are authorized by the board, owes a duty of care that is prudent and provides the highest good faith effort to the association and its members.**