

[TO BE PRINTED ON TAHOE DONNER ASSOCIATION STATIONERY]

April __, 2019

Re: 2019 Tahoe Donner Association Governing Document Revision Project

Dear Tahoe Donner Association Members:

Over the past several years the Board of Directors of Tahoe Donner Association and a diverse group of volunteers called “The Stakeholder Group” have been working with the Tahoe Donner Staff and the Association’s legal counsel (now Sproul Trost LLP) to update the governing documents of Tahoe Donner. The principal impetus for this project was to bring our Association’s governing documents into compliance with the total restatement and reorganization of the Davis-Stirling Common Interest Development Act that became effective on January 1, 2014. The Davis-Stirling Act is the principal body of statutory law in California that regulates common interest developments such as Tahoe Donner. Many of the provisions of our community’s Declaration of CC&Rs and the Association’s Bylaws reflect various provisions and requirements of the Davis-Stirling Act. Therefore, the complete overhaul of California’s common interest regulatory scheme has necessitated revisions to many provisions in both Governing Documents. The last major revision of Tahoe Donner’s Governing Documents were approved by order of the Nevada County Superior Court in 1991—almost 28 years ago.

Beginning in 2011, the California Law Revision Commission, which is an independent California agency responsible for recommending reforms of State law, undertook an ambitious project to revise and re-organize the Davis-Stirling Act—a law that had initially been adopted in 1985 for the limited purpose of locating all laws relating to condominiums and planned developments at one spot in the Civil Code. Prior to adoption of the original Davis-Stirling Act, the laws regulating planned developments (i.e., developments such as Tahoe Donner that include both individually owned lots improved by residences and common area parcels owned or managed by an association) had been located in the Business & Professions Code while the laws regulating condominium projects were found in the Civil Code.

The separation of those statutes in different California Codes had led to changes being made in one body of law that should—but were not—incorporated into the other law. Accordingly, for no logical reason, over a period of many years planned developments and condominiums became subject to different rules and regulations, even if two projects (one a condominium and the other a planned development) were located side-by-side and to all external appearances were identical. Furthermore, beginning in the 1970s the Department

of Real Estate (DRE) began regulating common interest developments under the Subdivided Lands Act and the DRE's Regulations began to take on the appearance of defacto legislative amendments to the statutes regulating common interest developments by requiring specific provisions to be included in common interest governing documents in order to protect the general public from rapacious developers. For many years the State's statutory laws lagged behind the DRE regulations.

Although the Davis-Stirling Act began with that modest goal to improve and achieve consistency in similar laws, in subsequent years the number of homes located in common interest developments in the State of California substantially increased. With that growth came public frustration, if not out-right hostility, regarding what many perceived to be an overly intrusive role of private owner associations in matters of the hearth-and-home. As a result, the Davis-Stirling Act became a repository for spot legislative amendments aimed at specific perceived problems or shortcomings in the concept of private residential governance. These spot amendments to the Act resulted in a hodgepodge of statutory regulations that presented topics in no logical order. Because there were no strong industry or owner interest groups who could comment on, influence, and improve (or stop) these legislative proposals as they were being introduced, multiple amendments to the Davis-Stirling Act—both good and bad—became law without much oversight or informed analysis. Many provisions of the Act were poorly drafted and provisions dealing with related subjects were often separated in the Code.

It was that statutory “clutter” in the Davis-Stirling Act that piqued the interest of the California Law Revision Commission. Like the original Davis-Stirling Act, the goal of the revised and re-codified law is simply to provide clarity to the Act by a more sensible organization of related topics. The Commission also divided very long statutes (such as pre-2014 Civil Code section 1367.1 which dealt with the manner in which owner associations pursued the collection of delinquent assessments) into a series of several smaller statutes, with the goal being to make the smaller sections easier to understand. Because these reorganization efforts expanded the number of Code sections in the Davis-Stirling Act, it was no longer feasible to retain the Act in its original location in the Civil Code (beginning at Civil Code section 1350). Commencing January 1, 2014, the Act was relocated to Civil Code sections 4000 through 6150. That change, alone, called for an update of all Civil Code section references in Tahoe Donner's Governing Documents a useful reference tool for the Board, the Members, and management.

Although the official position of the Law Revision Commission was that the new law made no substantive changes in the laws regulating common interest developments, the re-codified Davis-Stirling Act does, in fact, include several substantive changes. For example, the new Act introduces two new important documents that must be distributed annually to all property owners, namely the Annual Budget Report and the Annual Policy Statement. The

new Act also introduces new terms such as “Individual Notice” and “General Notice” that need to be referenced frequently in the proposed new governing documents of any common interest development.

Other Reasons for Updating This Association’s Governing Documents:

In addition to the need to update the current Tahoe Donner Governing Documents to reflect the 2014 Davis-Stirling Act, there are several other reasons to undertake this project in 2019. In the almost 30 years since Tahoe Donner’s Governing Documents were last subjected to a comprehensive revision, many changes in the law were made that are not reflected in our documents. For example, the following sections illustrate major changes to the Bylaws and CC&Rs that are either (i) mandated by the Davis-Stirling governing scheme (indicated in yellow), or (ii) are discretionary, but come highly recommended for the 2019 drafts (indicated in green):

1. **Tahoe Donner Association Bylaws; Davis-Stirling Mandated Changes:**

a. Article I: Recitals and Definitions

Article I of the proposed Bylaws adds definitions for the terms “General Notice” and “General Delivery”; “Individual Notice” and “Individual Delivery”; “Inspector(s) of Election”; and “Reserves”, “Reserve Accounts”, and “Reserve Studies”. As provided in more detail below, inclusion of these terms is necessary to reference updates that are mandated by Civil Code sections 4045, 5110, and 5550, respectively.

b. Article IV: Membership Voting

In Section 4.04 of the proposed Bylaws entitled “Manner of Casting Votes”, language was added to subparagraph (a) to reflect the secret ballot voting rules set forth in Civil Code sections 5100-5135. Subparagraph (j) lists the actions requiring Member approval where the secret ballot voting procedures are required to be used and that list encompasses practically all important Member votes. Accordingly, subparagraph (j) was added to reflect the Secret Ballot Voting Requirements of Civil Code sections 5100-5135 in their entirety. This addition necessitated the amendments to the above-stated provisions in the Bylaws.

In Section 4.05 of the proposed Bylaws entitled “Prohibition of Proxy Voting”, clarifying language was added to state that proxy voting shall not be allowed when Members’ votes are solicited by the secret ballot voting procedures, pursuant to Civil Code section 5115. With practically all important Member votes being solicited by a secret ballot, vote-by-mail system, there is little need for a proxy holder to appear at a meeting to vote on behalf of an absent Member.

Section 4.06(c) of the proposed Bylaws entitled “Content of Written Ballots” added compliance rules with respect to the secret ballot voting requirements mandated by Civil Code sections 5100 through 5135.

c. Article V: Membership Meetings

In Section 5.01 of the proposed Bylaws entitled “Place of Meeting and Conduct of the Meeting”, Civil Code section 5000(b) of the Davis-Stirling Act requires that the Board permit any Member to speak at any meeting of the membership of the Association. Language has been added to this Section of the Bylaws to reflect that requirement.

In Section 5.03 of the proposed Bylaws entitled “Special Meetings”, under circumstances in which Members present a petition to the Board of Directors demanding that a special meeting be called regarding matters that can only be voted on by use of a secret mailed ballot (due to Civil Code section 5100(a)), it is my interpretation of the current law that a two-step process is required in response to the Members’ petition:

(i) First, the Board determines that the requisite number of Members have signed the petition (5% or more of the Members) to demand that a meeting be held and, if so, then a special meeting is called in response to the petition within the time deadlines stated in Corporations Code section 7511(c).

(ii) However, at that meeting, if the demand relates to a matter that must be presented to the Members by a secret ballot (and assuming that a quorum of the members attend), then the vote at the meeting is simply to approve or to disapprove that action (i.e., to mail the ballots for the secret Member vote). Subparagraph (c) has been added to Section 5.03 to reflect that two-step process.

d. Article VII: Board of Directors:

Section 7.05(a) of the proposed Bylaws entitled “Right of Self-Nomination” was added to reflect the requirements of Civil Code section 5105(a)(3), which states that any Member who is in Good Standing has the right to place his or her own name in the nomination pool for director elections. This change in the law was added at the urging of critics of owner association governance who believed that when nominations were limited to persons selected or recommended by the Nominating Committee the result was to perpetuate an “old boys” culture of governance.

In Section 7.06 of the proposed Bylaws entitled “Election of Directors; Ballot Tabulation and Retention Requirements”, subparagraphs (a) through (i) were added to reflect the Secret Ballot Voting Requirements of Civil Code sections 5100-5135 and procedures that must be followed during director elections, including the use of independent “Inspectors of Election” to tabulate and announce the results of the vote.

In Section 7.07 of the proposed Bylaws entitled “Conflicts of Interest”, subparagraph (b) was added to reflect new conflicts of interest rules and prohibitions, applicable to both directors and members of committees that are now mandated by Civil Code section 5350.

e. Article VIII: Meetings of the Board of Directors:

Although section 8.01(b) of the current Tahoe Donner Association Bylaws (entitled “Requirements for Conducting Board Meetings by Conference Telephone or Other Electronic Means”) discussed the right of the Board to conduct meetings by use of conference telephone technology, in 2010 the Act did not require that when a meeting was conducted in that fashion, the notice of the meeting must now designate one physical location where members who are not directors may attend the meeting and at that designated physical location at least one director or other person designated by the Board must be present. That requirement, which is in the 2014 Davis-Stirling Act (Civil Code section 4090(b)) is now reflected in the proposed Restated Bylaws.

Section 8.06 of the proposed Bylaws entitled “Common Interest Development Open Meeting Act Provisions” was modified in its entirety, and subparagraphs (a) through (h) were added to comply with the Common Interest Development Open Meeting Act provisions that are found in Civil Code sections 4900 through 4955 of the Davis Stirling Act. The current Bylaws of the Tahoe Donner Association define a Board meeting in Section 8.06(c) differently than what is now required under Civil Code section 4155. The current law says that a “Board Meeting” includes not only matters that the Board intends to act on at a meeting, but also *any action that is within the authority of the board*. However, Civil Code section 4155 excludes from that expanded definition of “item of business” *any action that the Board has validly delegated to any other person or person, managing agent, officer of the association or committee of the Board comprising less than a quorum of the Board*. This delegation exception to the Open Meeting Act rules was not in the Davis-Stirling Act prior to the 2014 recodification.

f. Article XII: Member Assessment Obligations and Association Finances

In Section 12.05 of the proposed Bylaws, entitled “The Association’s Annual Budget Report”, subparagraphs (a) through (c) were added to reflect proper disclosures, summaries, and statements relating to the Association’s Proforma Operating Budget that detail the Association’s reserves, reserve funding plans, and reserve accounts as mandated in Civil Code sections 5550-5570.

Section 12.06 of the proposed Bylaws, entitled “Year-End Review of the Association’s Financial Statement”, was modified to include procedures on distribution of

the Association's annual financial statement that must be done by Individual Delivery, in accordance with the Davis-Stirling Act.

Section 12.07 of the proposed Bylaws adds the new requirement (effective this year) that owner association board must conduct a monthly (the requirement used to be on a quarterly basis) evaluation of the actual fiscal performance of the association to the projections presented in the Annual Budget Report and the association's reserve studies.

Section 12.08 "Required Reserve Studies" was added to the current Tahoe Donner Bylaws, to reflect Civil Code section 5550, and includes a list of information that must be included in the Association's Reserve Studies and requirements that at least once every three years a major reserve study (meaning one that has input from qualified independent professionals such as the Browning Reserve Group) must be commissioned that is then updated in a more informal manner on an annual basis.

g. Article XIII: Other Required Reports and Disclosures to Members

Section 13.01 of the proposed Bylaws lists the information that must be sent to all Members annually within thirty (30) to ninety (90) days before the end of the Association's fiscal year as part of an "Annual Policy Statement" (Civil Code section 5300). Most of the required information is not new, but the concept of a single Annual Policy Statement document is a new innovation that is designed to make it easier for boards and property managers to have a convenient check-list of required disclosure documents.

In Section 13.02 "Notification to the Members of Rule Changes", Civil Code sections 4340 - 4370 provide that before the board of directors of an owners' association can adopt what the Code defines as "Operating Rules", the Board must first distribute proposed rules to the members for a 30 day comment period. These requirements were in the Davis-Stirling Act in 2010, however, under the version of the Act in effect at that time, if Members wanted to challenge an Operating Rule, their only remedy was to demand that the Board call a special meeting of the Members. Under the current version of the Act, five percent of the Members can demand that a mailed, secret ballot vote be conducted to overturn proposed Operating Rules or changes in existing Operating Rules. By using mailed ballots there is a much better chance of letting all Members participate in the vote to reverse a rule change or a new rule. These new requirements are addressed in Section 3.07 of the proposed CC&Rs and in Section 13.02 of the proposed Bylaws.

h. Article XIV: Miscellaneous

Section 14.01 of the proposed Bylaws, entitled "Member Inspection Rights", details the requirements of Civil Code section 5200 through 5240 to properly set forth the expanded Member inspection rights under the revised Davis-Stirling Act.

Section 14.06 of the proposed Bylaws, entitled “Notice Requirements”, is necessary to reflect that any notice or other document permitted or required to be delivered as provided in the Bylaws must be delivered in either the manner or form of delivery mandated by the Davis-Stirling Act or by Individual Delivery or General Delivery, as those two terms are defined in Civil Code sections 4040 and 4045.

2. **Tahoe Donner Association Bylaws; Discretionary Changes**

a. Article I: Recitals and Definitions

The remainder of new terms added to the Bylaws that are not seen in Tahoe Donner’s current bylaws are included in this new draft as a helpful reference tool for terms that are frequently encountered throughout the document. Of note, “Good Standing” was added to define those Members who are eligible to vote in the election of directors or with respect to any action requiring approval of the Members. The purpose of imposing a requirement that candidates for election to the board and sitting directors be “members in good standing” is to hold them to the same requirements as Members to set a good example (e.g. all Members, including directors, must pay assessments on time). Why should a person be permitted to serve on the Board and to vote on important fiscal matters if the person is not personally honoring his or her obligations to pay Association assessments in a timely manner?

b. Article III: Membership

Section 3.01 “Members of the Association” was added to distinguish those members who own residential lots from those persons who own commercial lots or commercial condominium units, which importantly highlights that commercial owners are not “Members” of the Association and do not have the voting rights of Members.

c. Article V: Membership Meetings

Section 5.05 was modified in part to add quorum requirements with respect to voting in an election of directors to be established at twenty-five percent. This means that at least twenty-five percent (25%) of the Members must cast secret ballots in the election of directors on or before the deadline established for the return of ballots in order to have a valid director election. Because practically all Member votes must now be conducted by use of a mailed, secret ballot, satisfying minimum quorum requirements is determined by the number of ballots received from Members within the time stated for the return of ballots in order to be counted.

d. Article VII: Board of Directors:

Section 7.07 of the proposed Bylaws, entitled “Vacancies Generally”, provides additional guidance for filling vacancies on the Board and for the removal of directors by the Board. This guidance complements the requirements of Corporations Code section 7230 and allows the Board to take action when a director becomes delinquent in his or her payment of assessments. As an element of fairness, the authority of the Board to remove a sitting director for failure to pay assessments in a timely manner is subject to these due process protections: “In the event that the basis for removal of an incumbent director is the director’s failure to remain current in the payment of Assessment obligations to the Association, the Board shall take no action to declare the delinquent director’s seat to be vacated unless and until the director has received the Pre-Lien Delinquency Notice prescribed in Section 4.10(b)(i) of the Declaration and Civil Code section 5660 and a period of at least thirty (30) days has elapsed following delivery of that Notice to the Director without payment in full of all delinquent Assessments and other duly levied fees, interest, and reasonable costs of collection. An incumbent director who is a party to a Board-approved payment plan to retire delinquent assessments in accordance with Civil Code section 5665 and who is in compliance with the terms of that plan shall be deemed to be in Good Standing for purposes of continued Board service unless the terms of the payment plan call for the director to resign from office.”

e. Article VIII: Meetings of the Board of Directors:

Section 8.05 “Notice of Board Meetings” sets out the minimum time requirements and the specific manner in which notice of a special meeting of the Board must be distributed to both members and directors. The format of this section nicely separates the content of the notice from its form of distribution to provide members and directors a greater understanding of each step of the process. For example, the section complements the general/individual notice and delivery requirements mandated by the Davis Stirling Act.

f. Article XI: Officers

Section 11.11 “The General Manager” was added in its entirety to these new bylaws to delineate the General Manager’s duties with respect to executive direction of day to day and long term operations and capital projects of the Association. This section helps members and the Association understand what situations require the assistance of the General Manager.

3. **Tahoe Donner Association CC&Rs; Davis-Stirling Mandated Changes**

a. Article I: Recitals and Definitions

Since the Association is required to provide to its Members an Annual Budget Report and an Annual Policy Statement on an annual basis pursuant the Civil Code sections

5300 and 5310, respectively (as discussed in more detail below in the proposed Bylaws), including terms for “Annual Budget Report” and “Annual Policy Statement” was necessary for this CC&R update. On a similar premise, definitions for “General Notice” and “General Delivery”; “Individual Notice” and “Individual Delivery”; “Inspector(s) of Election”; and “Reserves”, “Reserve Accounts”, and “Reserve Studies” were included in the CC&Rs list of defined terms in order to reference updates that are mandated by Civil Code sections 4045, 5110, and 5550, respectively.

The following additional definitions were added to Article I: “Majority of a Quorum” (added to complement the term as used in the Bylaws and also as defined in Civil Code section 4070); and “Good Standing” (added to clarify for certain prerequisites and requirements for being a candidate for election to the Board of Directors). Although some of these definitions are not mandated by specific changes to the Davis-Stirling Act, many of the terms are identified in Sections of the Declaration which are required to be included under the Davis-Stirling Act relating to either Member approval requirements or the preparation of proper reserve studies.

b. Article II: Property Rights and Obligations of Owners

In Section 2.04 “Obligation of Owners”, subparagraph (c) sets out the obligation of Owner’s and their successors to provide a number of important documents regarding the Tahoe Donner development to prospective buyers, pursuant to Civil Code section 4525. Therefore, subparagraphs (c)(i)-(vi) were added to reflect these updates. Subparagraph (c) reflects the manner of delivery of such documents, and was included in these draft CC&Rs in accordance with Civil Code section 4530.

c. Article III: Tahoe Donner Association

In Section 3.07 “Association Rules”, subparagraph (b) was added to reflect updates in the Davis Stirling Act, specifically Civil Code section 4045, that require a copy of the Association Rules be delivered to each Owner by General Notice.

Additionally in Section 3.07, subparagraphs (c)(i)-(iv) (regarding adoption or amendment of Association Rules) were added or amended as required by Civil Code Sections 4355-4370 to set out notice requirements to the Members, detail the minimum content for election rules, and impose restrictions on Rules that have the effect of prohibiting use of drought-tolerant plants.

d. Article IV: Assessments

In Sections 4.01(b) and (c) of the revised Declaration of CC&Rs which related to the collection of delinquent assessments and the enforcement of lien and foreclosure rights in association collection proceedings provisions were added to specify procedures that the Association must follow under Civil Code Sections 5600 and 5650 in order to pursue those remedies. Provisions were also added that prohibit the Association from pursuing foreclosure as a means of collecting delinquent assessments until such time as the targeted owner is more than \$1800 in arrears or the delinquency has been outstanding for more than 12 months (Civil Code section 5720(b)).

The remainder of the Article IV revisions reflect updates to the Reserve Account requirements, mailing of notices, and imposition of special and emergency assessments. Specifically, Section 4.09 of the revised CC&Rs entitled "Maintenance and Expenditure of Assessment Funds," adds subparagraph (d) which details the limitations on the use of accumulated reserve funds as mandated by Civil Code section 5550.

e. Article X: Insurance

In accordance with Civil Code section 5300 of the Davis Stirling Act, Sections 10.02 through 10.05 of this Article were added to this new draft of the Declaration, and dictate required disclosures and notifications to Members regarding the insurance maintained by the Association (Section 10.11).

f. Article XIII: Breach and Default

In this Article, Sections 13.09 and 13.13 were modified in part to include mandatory dispute resolution procedures required by Civil Code sections 5900-6000, including updated notice provisions, procedures for assessment collection actions, and court actions to enforce the governing documents.

g. Article XIV: Notices

Section 14.01 "Mailing Addresses" added an additional Paragraph to this Article to include requirements for general delivery and electronic delivery of notices to the Association or a Member, as mandated by Civil Code Sections 4040 through 4050.

4. Tahoe Donner Association CC&Rs; Discretionary Changes

a. Article I: Recitals and Definitions

As noted in the discretionary changes to the Bylaws, the same reasons for changes to the CC&Rs exist. The remainder of new terms added to the CC&Rs that are not seen in the First Amended and Restated CC&Rs (1991) are included in this new draft as a helpful reference tool for terms that are frequently encountered throughout the document.

b. Article II: Property Rights and Obligations of Owners

Section 2.03 “Annexation of Additional Property to the Development” was added to grant the Board of Directors the right to acquire other association property for association purposes through use of a procedure of filing a declaration of annexation. The same rights exist with respect to the Association’s ability to deannex property so long as the terms of sale are approved by the same vote that would have been required to acquire the property that is the subject of the transaction.

c. Article III: Tahoe Donner Association

Section 3.06(b) “Powers and Authority of the Association” grants the Board of Directors the power and authority to use the Development Funds raised by a development fund special assessment to provide for the construction, installation, or acquisition of capital improvement projects without a vote of the Members, so long as the Development Funds are used for the purpose designated in an election for the Development Fund Special Assessment. This is instituted solely to improve property that will be for the benefit of all Association members.

d. Article V: Architectural Approval

The entirety of this Article V was modified in full to specifically walk an owner/applicant through the Architectural Approval Process with the Architectural Standards Committee. The sections clearly state what happens when an application is approved, disapproved, and what timing requirements apply to the proposal. The Committee must have a basis for approval or disapproval of an application, as such must be made in good faith and not unreasonable, arbitrary, and capricious. Both owners of residential lots and commercial lots must adhere to the architectural review process.

e. Articles VI through VIII: Minimum Improvement Standards, Maintenance Responsibilities, and Property Use Restrictions.

Many Sections in these Articles that were specific to the Tahoe Donner community were transferred over from the First Amended and Restated Declaration of CC&Rs; however, many other provisions were updated in terminology so as to deliver to the Members a more complete and modern package. All provisions of Articles VI through VIII that were newly added to the proposed CC&Rs are those required to be included in the Association's Annual Budget Report and Annual Policy Statement (documents mandated by the Davis-Stirling Act), which modifies those Articles to reflect current law.

f. Article X: Insurance

The other provisions in this Article relating to Association and property owner insurance obligations were added to create a clear line of distinction between Association- and Owner-maintained insurance policies, as well as responsibility and liabilities for certain conditions affecting insurance.

Why are completely new documents being proposed?

The answer to this question should be clear from the above summary of the number of changes, large and small, that have been made to conform the Tahoe Donner Governing Documents to the re-codified, 2014 Davis-Stirling Act and other changes in underlying law that the State has adopted in the years since the Tahoe Donner CC&Rs were last revised in 1991. Any effort to address the new statutory requirements via an amendment document would result in a new document that would probably be longer than the existing CC&Rs and Bylaws and yet would need to be interpreted by reference to those outdated documents. By restating the Bylaws and the CC&Rs of Tahoe Donner in their entirety, the Association and its Members will have two documents that reflect current law and read, cover-to-cover as revised, instead of having to go back and forth between the old documents and lengthy amendment documents.

Your Board of Directors is unanimous in recommending approval of these new, Restated Governing Documents. This is a project that is long overdue and having new documents will be of considerable benefit to the volunteer directors and our management staff who are legally obligated to follow the laws and rules that pertain to common interest developments and owner associations and to administer those laws fairly and correctly.

The vote to approve the proposed new Restated Declaration of CC&Rs and the new Restated Bylaws must be conducted by use of a mailed, secret ballot. Your Board intends to distribute those ballots to the Members on _____, 2019 and a forty-five (45) day period ending on _____, 2020 has been established for the return of ballots.

Additional information regarding the balloting rules is set forth in the accompanying balloting materials.

Sincerely,

TAHOE DONNER ASSOCIATION

By: _____
Jennifer Jennings, President

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