

DECISION PAPER



December 7, 2018

Issue: California Assembly Bill #2912 (AB2912) – Implementation Plan

AB2912 is a new law, effective January 1, 2019, specific to common interest developments. The association needs to take actions to ensure compliance with the new law.

Background:

California recently passed AB2912 which is effective January 1, 2019. This new law institutes new board financial oversight responsibilities. Refer to **Attachment A** for the new law text, which is not repeated in this memorandum. Below is management’s recommendation for policy & procedure updates to ensure Tahoe Donner Association’s compliance with AB2912.

Section 5380 amended – Managing Agent specific requirement.

This entire section amendment is specific to ‘A managing agent of a common interest development’ and, as Tahoe Donner Association is self-managed, 5380’s requirements are not applicable.

Section 5500 amended / Section 5501 added – Board review of financial records on a monthly basis.

Beginning in January 2019 and every month thereafter, a board designated subcommittee shall review the following matters and issue a report (known as the CA5501 Report) on said review. The Report shall be ratified at the board meeting subsequent to the review by subcommittee.

- a. Subcommittee members
 1. Board Treasurer
 2. Another Board member, rotating every month (determined by Board in December each year, schedule for the upcoming year)
 3. Finance Committee member, rotating every month (determined by Finance Committee in December each year, schedule for the upcoming year) (recommend Chair participate every month)
 4. Director of Finance and Accounting
 5. Controller
 6. Optional Attendees – General Manager, other Finance Committee Members

- b. Monthly Review Schedule
 - The 3rd Tuesday of every month, if date is on or after the 20th
 - The 4th Tuesday of month, if date of the 3rd Tuesday is the 19th or earlier
 - All review documents provided digitally 3 days prior to Review meeting Date
 - Meeting is initially estimated to last 5 hours
 - Participants may join the review meeting in person or via teleconference
 - Participants are encouraged to review all documents prior to review meeting

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- c. Monthly Review Meeting Items
 - a. Current reconciliation of association's operating accounts
 - b. Current reconciliation of association's reserve accounts
 - c. Current year's actual operating revenues and expenses compared to budget
 - d. Latest account statements prepared by the financial institutions for all accounts
 - e. An income and expense statement for the association's operating and reserve accounts
 - f. Check register, monthly general ledger, and delinquent assessment receivable reports
- d. Monthly CA5501 Report
 - a. A statement that subcommittee members have reviewed the items in c. above
 - b. A statement regarding any findings of noteworthiness, including any corrections which need to be made to the review month and or subsequent months.
 - c. Acknowledgment by subcommittee participants of participation in review

Section 5502 added – Transfers require Board prior written approval

This new section requires ANY transfer greater than \$10,000 to have prior written board approval. Recommended compliance policy and procedure:

1. December 2018 – Board approve any transfer of funds through December 31, 2019 between the following Funds/accounts:
 - a. Any transfer of funds between an account of Operating Fund to another Operating Fund account
 - b. Any transfer of funds from an Operating Fund account to any of the following reserve accounts: Replacement Reserve Fund, Development Fund, New Equipment Fund
 - c. Recurring Transfers –Payroll cycles, Payroll Taxes, and 401k funding, American Express payments, state and federal agencies tax payments
2. Transfers from Replacement Reserve Fund, Development Fund, or New Equipment Fund accounts: Board action at regular board meetings, as necessary throughout the year
3. Transfers from Operating Fund to a third party (non-Association account). Board action at regular board meetings, as necessary throughout the year. Not covered in item 1.c. above.

December 2019 – Renew the above for subsequent year

Section 5806 added – Fidelity Bond Coverage

This new requirement was handled in October 2018 and shall be reviewed annually with policy renewal in September/October of each year.

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Attachment A – California Assembly Bill #2912 Association finances – Bill Text

Attachment B – Resolution 2018-08 - Section 5500/5501 Board Subcommittee Appointment, Duties and Schedule for 2019 and CA5501 Report content

Attachment C – Resolution 2018-09 - Transfers Approval Through December 31, 2019

Options:

A. Board adopt Resolution #2018-08, Attachment B, including designation of 2nd board member designee for participation each month of 2019.

Board adopt Resolution #2018-09, Attachment C.

B. Board approve something other as directed by the Board to comply with the new law.

Recommendation:

Option A

Prepared By: Michael R. Salmon, Director of Finance, 12/7/2018

Board Meeting Date: December 15, 2018

General Manager Approval to Place on the Agenda: _____


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AB-2912 Association finances. (2017-2018)

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Assembly Bill No. 2912

CHAPTER 396

An act to amend Sections 5380 and 5500 of, and to add Sections 5501, 5502, and 5806 to, the Civil Code, relating to common interest developments.

[Approved by Governor September 14, 2018. Filed with Secretary of State September 14, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2912, Irwin. Association finances.

(1) Existing law, the Davis-Sterling Common Interest Development Act, limits the personal liability of a volunteer officer or director of an association of a common interest development in excess of the coverage of specified insurance if certain conditions are met.

This bill would require the association to maintain fidelity bond coverage, as specified.

(2) The act requires a managing agent of a common interest development who accepts or receives funds belonging to the association to, upon written request by the board, deposit those funds into an interest-bearing account in a bank, savings association, or credit union in this state, provided certain requirements are met.

This bill would prohibit transfers greater than \$10,000 or 5% of an association's total combined reserve and operating account deposits, whichever is lower, without prior written approval from the board.

(3) The act requires, unless the governing documents impose more stringent requirements, the association board to review various financial documents and statements on at least a quarterly basis.

This bill would require those reviews on a monthly basis. The bill would also require monthly reviews of the check register, monthly general ledger, and delinquent assessment receivable reports and would authorize these requirements to be met when every member of the board, or a subcommittee of the board including the treasurer and at least one other board member, reviews these documents and statements independent of a board meeting if the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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

SECTION 1. It is the intent of the Legislature, in enacting this act, to take important initial steps to protect the owners in a common interest development from fraudulent activity by those entrusted with the management of the association's finances, recognizing that still further action may be necessary to achieve that goal.

SEC. 2. Section 5380 of the Civil Code is amended to read:

5380. (a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit those funds that are not placed into an escrow account with a bank, savings association, or credit union or into an account under the control of the association, into a trust fund account maintained by the managing agent in a bank, savings association, or credit union in this state. All funds deposited by the managing agent in the trust fund account shall be kept in this state in a financial institution, as defined in Section 31041 of the Financial Code, which is insured by the federal government, and shall be maintained there until disbursed in accordance with written instructions from the association entitled to the funds.

(b) At the written request of the board, the funds the managing agent accepts or receives on behalf of the association shall be deposited into an interest-bearing account in a bank, savings association, or credit union in this state, provided all of the following requirements are met:

(1) The account is in the name of the managing agent as trustee for the association or in the name of the association.

(2) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(3) The funds in the account are kept separate, distinct, and apart from the funds belonging to the managing agent or to any other person for whom the managing agent holds funds in trust except that the funds of various associations may be commingled as permitted pursuant to subdivision (d).

(4) The managing agent discloses to the board the nature of the account, how interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and any notice requirements or penalties for withdrawal of funds from the account.

(5) No interest earned on funds in the account shall inure directly or indirectly to the benefit of the managing agent or the managing agent's employees.

(6) Transfers of greater than ten thousand dollars (\$10,000) or 5 percent of an association's total combined reserve and operating account deposits, whichever is lower, shall not be authorized from the account without prior written approval from the board of the association.

(c) The managing agent shall maintain a separate record of the receipt and disposition of all funds described in this section, including any interest earned on the funds.

(d) The managing agent shall not commingle the funds of the association with the managing agent's own money or with the money of others that the managing agent receives or accepts, unless all of the following requirements are met:

(1) The managing agent commingled the funds of various associations on or before February 26, 1990, and has obtained a written agreement with the board of each association that the managing agent will maintain a fidelity and surety bond in an amount that provides adequate protection to the associations as agreed upon by the managing agent and the board of each association.

(2) The managing agent discloses in the written agreement whether the managing agent is deriving benefits from the commingled account or the bank, credit union, or savings institution where the moneys will be on deposit.

(3) The written agreement provided pursuant to this subdivision includes, but is not limited to, the name and address of the bonding companies, the amount of the bonds, and the expiration dates of the bonds.

(4) If there are any changes in the bond coverage or the companies providing the coverage, the managing agent discloses that fact to the board of each affected association as soon as practical, but in no event more than 10 days after the change.

(5) The bonds assure the protection of the association and provide the association at least 10 days' notice prior to cancellation.

(6) Completed payments on the behalf of the association are deposited within 24 hours or the next business day and do not remain commingled for more than 10 calendar days.

(e) The prevailing party in an action to enforce this section shall be entitled to recover reasonable legal fees and court costs.

(f) As used in this section, "completed payment" means funds received that clearly identify the account to which the funds are to be credited.

SEC. 3. Section 5500 of the Civil Code is amended to read:

5500. Unless the governing documents impose more stringent standards, the board shall do all of the following:

- (a) Review, on a monthly basis, a current reconciliation of the association's operating accounts.
- (b) Review, on a monthly basis, a current reconciliation of the association's reserve accounts.
- (c) Review, on a monthly basis, the current year's actual operating revenues and expenses compared to the current year's budget.
- (d) Review, on a monthly basis, the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.
- (e) Review, on a monthly basis, an income and expense statement for the association's operating and reserve accounts.
- (f) Review, on a monthly basis, the check register, monthly general ledger, and delinquent assessment receivable reports.

SEC. 4. Section 5501 is added to the Civil Code, to read:

5501. The review requirements of Section 5500 may be met when every individual member of the board, or a subcommittee of the board consisting of the treasurer and at least one other board member, reviews the documents and statements described in Section 5500 independent of a board meeting, so long as the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting.

SEC. 5. Section 5502 is added to the Civil Code, to read:

5502. Notwithstanding any other law, transfers of greater than ten thousand dollars (\$10,000) or 5 percent of an association's total combine reserve and operating account deposits, whichever is lower, shall not be authorized from the association's reserve or operating accounts without prior written board approval. This section shall apply in addition to any other applicable requirements of this part.

SEC. 6. Section 5806 is added to the Civil Code, to read:

5806. Unless the governing documents require greater coverage amounts, the association shall maintain fidelity bond coverage for its directors, officers, and employees in an amount that is equal to or more than the combined amount of the reserves of the association and total assessments for three months. The association's fidelity bond shall also include computer fraud and funds transfer fraud. If the association uses a managing agent or management company, the association's fidelity bond coverage shall additionally include dishonest acts by that person or entity and its employees.



**TAHOE DONNER ASSOCIATION
BOARD OF DIRECTORS**

BOARD RESOLUTION 2018-8

**BOARD REVIEW OF FINANCIAL RECORDS IN ACCORDANCE WITH
CALIFORNIA CIVIL CODE SECTION 5500 AND 5501**

WHEREAS, the State of California approved Assembly Bill Number 2912 on September 14, 2018, which modifies Civil Code Section 3, Section 5500 and adds Section 5501, which dictates specific board of director responsibilities for monthly review of financial records of the association;

WHEREAS the new law is effective January 1, 2019 and the association shall be in compliance with these new law requirements;

NOW, THEREFORE, under the authority of the Board, the Board resolves the following to be in compliance with the new law:

Beginning in January 2019 and every month thereafter, a board designated subcommittee shall review the following matters and issue a report (known as the CA5501 Report) on said review. The Report shall be ratified at the board meeting subsequent to the review by subcommittee.

- a. Board appointed Subcommittee members
 1. Board Treasurer
 2. Another Board member, rotating every month (determined by Board in December each year, schedule for the upcoming year)
 3. Finance Committee member, rotating every month (determined by Finance Committee in December each year, schedule for the upcoming year) (recommend Chair participate every month)
 4. Director of Finance and Accounting
 5. Controller
 6. Optional Attendees – General Manager, other Finance Committee Members
- b. Monthly Review Schedule
 - The 3rd Tuesday of every month, if date is on or after the 20th
 - The 4th Tuesday of month, if date of the 3rd Tuesday is the 19th or earlier
 - All review documents provided digitally 3 days prior to Review meeting Date
 - Meeting is initially estimated to last 5 hours
 - Participants may join the review meeting in person or via teleconference
 - Participants are encouraged to review all documents prior to review meeting

Meeting dates subject to change.

The 2nd Board director designee subject to change (the designee shall find a replacement director if cannot make the meeting due to schedule conflict).

Calendar Schedule for 2019

Financial Data/Information Month	5501 Subcommittee Review Meeting Date	2 nd Board director designee for Subcommittee	CA5501 Report review and ratification of Report by Board of Directors Date
December 2018	January 22		February
January 2019	February 26		March
February 2019	March 26		April
March 2019	April 23		May
April 2019	May 21		June
May 2019	June 25		July
June 2019	July 23		August
July 2019	August 20		September
August 2019	September 24		October
September 2019	October 22		November
October 2019	November 26		December
November 2019	December 23 (Mon)		January 2020

c. Monthly Review Meeting Items

- a. Current reconciliation of association's operating accounts
- b. Current reconciliation of association's reserve accounts
- c. Current year's actual operating revenues and expenses compared to budget
- d. Latest account statements prepared by the financial institutions for all accounts
- e. An income and expense statement for the association's operating and reserve accounts
- f. Check register, monthly general ledger, and delinquent assessment receivable reports

d. Monthly CA5501 Report

- a. A statement that subcommittee members have reviewed the items in c. above
- b. A statement regarding any findings of noteworthiness, including any corrections which need to be made to the review month and or subsequent months.
- c. Acknowledgment by subcommittee participants of participation in review

ACCEPTED AND DATED: December 15, 2018

JENNIFER JENNINGS, President

_____, Vice President

DON KOENES, Secretary

JEFF CONNORS, Treasurer

DARIUS BROOKS, Director



**TAHOE DONNER ASSOCIATION
BOARD OF DIRECTORS**

BOARD RESOLUTION 2018-9

BOARD AUTHORIZATION OF TRANSFER OF FUNDS FOR 2019

WHEREAS, the State of California approved Assembly Bill Number 2912 on September 14, 2018, which added Civil Code Section 5502, which dictates specific board of directors approval of fund transfers over \$10,000 from all account;

WHEREAS the new law is effective January 1, 2019 and the association shall be in compliance with these new law requirements;

NOW, THEREFORE, under the authority of the Board, the Board resolves the following to be in compliance with the new law:

1. The Board hereby this resolution approves any transfer of funds through December 31, 2019 between the following Funds/accounts:
 - a. Any transfer of funds between an account of Operating Fund to another Operating Fund account
 - b. Any transfer of funds from an Operating Fund account to any of the following reserve accounts: Replacement Reserve Fund, Development Fund, New Equipment Fund
 - c. Recurring Transfers –Payroll cycles, Payroll Taxes, and 401k funding, American Express payments, state and federal agencies tax payments
2. Transfers from (out of) Replacement Reserve Fund, Development Fund, or New Equipment Fund accounts: Require Board action at regular board meetings, as necessary throughout the year
3. Transfers from Operating Fund to a third party (non-Association account). Board action at regular board meetings, as necessary throughout the year. If not covered in item 1.c. above.

December each year the Board shall review, revise, and renew the above Section 5502 matters for the upcoming calendar year.

ACCEPTED AND DATED: December 15, 2018

JENNIFER JENNINGS, President

, Vice President

DON KOENES, Secretary

JEFF CONNORS, Treasurer

DARIUS BROOKS, Director