

**SUPPLEMENT TO THE  
DECLARATION OF RESTRICTIONS, CONDITIONS  
COVENANTS AND AGREEMENTS**

Provided to the Board of Directors of  
Mt. Shasta Vista Property Owners Association

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**Supplement to the Declaration of Restrictions, Conditions, Covenants and Agreements Affecting Real Property Known as Mount Shasta Vista Subdivision, Siskiyou County, California. recorded November 3, 1965 as document number 4321 in book 522 at pages 635 to 638 (The CC&Rs), and the Revised Bylaws of Mt. Shasta Vista Property Owners Association (The Bylaws).**

California Civil Code Sections 4000 through 6150 are known as the Davis Stirling Act (Davis-Stirling). Davis-Stirling is California code that controls the actions and governance of common interest communities such as the Mount Shasta Vista Property Owners Association Inc. (MSVPOA). When the CC&Rs or Bylaws of an association are in conflict with Davis-Stirling or are silent on topics that Davis-Stirling covers, Davis-Stirling controls. In the case of MSVPOA, due to the age and limited scope of the CC&Rs and Bylaws, Davis-Stirling should be considered to be the controlling document for the association. A copy of the Davis-Stirling act including recent amendments promulgated through SB-323 will be included with this supplement. SB-323 takes effect on January 1, 2020.

What follows is a brief analysis of selected sections of Davis-Stirling that are of extreme relevance to MSVPOA as well as a discussion of the recent amendments to Davis-Stirling through SB-323. These sections are not exhaustive, and Davis-Stirling should be referenced as the controlling document to ensure compliance.

**Voting Rules:**

Voting is addressed in the current Bylaws in Section 2.7. The bylaws state that there is one vote allowed per member, regardless of the number of lots owned. This restriction goes significantly against the intent of Davis-Stirling, and while the code does not specifically bar an association from voting in this way, it would likely be overturned by the Court if a member protested. Otherwise, this section is superseded in full by Davis-Stirling and by SB-323.

Please refer to Davis-Stirling starting at §5100 for the rules related to association voting.

SB-323 modifies Davis-Stirling as follows:

§5100.

An association must hold election for seats on the board of directors at the end of each director's corresponding term or at the minimum, once every four years. This means that directors may not

hold terms longer than 4 years in any situation.

§5100 is further amended to codify the automatic election of directors. Unfortunately, the Davis-Stirling states that this is effective only for associations that have more than 6,000 membership units. Furthermore, to qualify for this section the association must provide individual notice of the election and the procedure for nominating candidates at least 30 days before the closure of the nominations to its members and the association must permit all candidates to run if nominated, provided they are not disqualified pursuant to Civil Code §5105 (c) which is discussed in greater length below.

It has not been conclusively determined if election by acclamation by smaller associations is still allowed. §5100 (a) does require that election of directors be held by ballot, but only when the election requires a vote. If the election is uncontested, then it would seem as though there is no need for a vote and therefore acclamation is appropriate, so the law remains in conflict with itself. To be sure, the bylaws should be amended to clearly state that acclamation is permitted when the number of directors is less than or equal to the number of positions open.

§5105.

§5105 (a)(7) requires that the association retain, as election materials, a candidate registration list and voter list which shall include the name, voting power, the physical address/APN or both of the voter. If just the APN of the voter is listed, the mailing address must be included as well. The association must allow the member to review this information for correctness at least 30 days before any ballots are distributed. This review can be done in person, or by providing the information to the member by mail with sufficient time allowed for the member to receive the document, review it and reply. The association or member must report any errors on either list to the election inspector. A more complete timeline for the election process is included below.

§5105 (b) has been modified to include that an association shall disqualify a person from nomination as a candidate if they were not a member of the association at the time of the nomination. §5105 (b) then carves out an exemption for a developer making a nomination based on their developer voting powers, which may allow the developer to non-member as stated in the regulations of the Department of Real Estate and the association's governing documents. Further, legal entity that holds property may appoint a natural person to be their representative member for nomination.

§5105 (c) limits how an association can disqualify a member from nomination to the board. First, a nominee may be disqualified for a failure to pay regular and special assessments. However, there is an extensive carveout for what is considered a failure to pay assessments which is discussed below in §5105 (d). A POA may also disqualify a nominee if the candidate, if elected would share ownership with another member such as a husband & wife situation or if the property is held by a corporate entity where only one representative from the entity or couple may represent the property at once. Finally, the POA can disqualify a nominee if the nominee has a prior criminal conviction that would, if elected, prevent the association from purchasing a fidelity bond or terminate the association's existing fidelity bond.

§5105 (d) goes into detail on how a nominee avoids being disqualified for non-payment of dues. Dues under Davis-Stirling are restricted to special and regular assessments and the section specifically notes that fines renamed as assessments, collection charges, late charges or third-party costs do not count as actual assessments and therefore do not disqualify the nominee. The nominee is also protected from disqualification if they have paid the regular or special

assessment pursuant to §5658 or if they have entered into a payment plan.

§5105 (e) protects a nominee from disqualification if they were not provided the opportunity to enter into dispute resolution regarding their delinquent fines.

§5105 (f) allows for candidates to be nominated at membership meetings or any other manner. This means that candidates for a position may be nominated from the floor of the meeting, or by any other means allowed in the bylaws/CC&R's to appear on the ballots for that election. The section further allows for write in candidates on ballots.

§5105 (e) creates the biggest change in voting rules for a POA, as it bars the association from denying any member a ballot for ANY reason other than not being a member at the time the ballots are distributed. This means that being delinquent on payments or being sanctioned by the association does not bar the member from voting.

§5105 (e) further requires inspectors of elections to deliver the ballots and a copy of the election operating rules at least 30 days before the election. The election operating rules are considered to be delivered if they are posted on a website with instructions to the site appearing on the ballot itself with the phrase "The rules governing this election may be found here:" in 12-point font, or if the rules themselves are individually delivered to the member. This section overlaps with §5115 below in that both sections require delivery of notices by the inspector and by the association to the membership before the election.

To save time and resources, either the association or the inspector should be delegated the task of mailing all of the required notices, including the ballots, operating rules and notice of election rather than have both entities mailing documents.

§5110

§5110 adds language about who can be the inspector for an election. As described in §5110 (a) the association must select one or three independent third parties to inspect the elections. The independent third party may be a volunteer poll worker, a licensee of the California Board of Accountancy or a notary public. The third party may also be a member but may not be a director or candidate for director or related to a director or candidate for director. Most importantly, the inspector may NOT be a person, business entity or subdivision of a business entity who is currently employed or under contract to the association for compensable services other than serving as the inspector of the election.

§5115 requires that the association provide general notice to members of the procedure and deadline for submitting a nomination at least 30 days before the deadline for submitting a nomination. A member may request individual notice of the deadline. At least 30 days before the ballots are distributed, members must be given notice of the date, time and physical address where the ballots must be returned to, the date time and location of where the ballots will be counted and a list of all candidates names that will appear on the ballots.

As discussed above, to save time and money these notices should be sent by the same entity as the ballots and operating rules.

§5125 requires that the ballots, signed envelopes, voter list, proxy votes and candidate registration list be held in the custody of the inspector or at a location designated by the inspector until after the vote and after the time to challenge the election has expired. Once this time has expired, the materials shall be transferred to the association. A major change to this section is that all of the materials may be inspected by a member or authorized representative upon a challenge or recount in the election. This includes the signed envelopes and does expose the members to some risk of other members being able to review their signatures on the ballots. As

stated in §5200 (c) the voter envelopes may be inspected, but not copied.

§5145 allows a member to bring a civil action against the association for a violation of Davis-Stirling election laws. If the member establishes by a preponderance of the evidence that the laws were not followed, a court shall void any results.

#### **Annual Meeting Timeline:**

As a result of the new regulations, the timeline for notice and elections should be as follows, the timeline has been extended by approximately two weeks to ensure time to comply and to allow for each of the required actions to fall on the same day of the week.

- **At Least 119 Days Prior to the Annual Meeting:** Set date for the Annual Meeting. Give notice of the election procedure, the deadline for submitting nominations and the method for submitting nominations.
- **At least 89 Days Prior to the Annual Meeting:** Deadline for submitting nominations. Allow 5 extra days for remaining mailed nominations to arrive.
- **At Least 84 Days Prior to the Annual Meeting:** Select 1 or 3 inspector(s) of elections. Prepare a candidate registration list and a voter list. The voter list must include each voter's name, voting power and the physical address of the voter's separate interest, parcel number, or both. The mailing address for the ballot must be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used. Send Pre-Ballot Notice including the date, time and physical address to mail or hand deliver ballots, the date, time and location for the ballot counting meeting and the list of candidates to appear on the ballots.
- **At Least 77 Days Prior to the Annual Meeting:** Allow members to verify the accuracy of their individual information on the candidate registration list and voter list. Such verification can be done in person or digitally. The code does not specify how the association must provide the verification, only that they provide it.
- **At Least 35 Days Prior to the Annual Meeting:** The inspector must deliver, or cause to be delivered ballots and a copy of the election rules.
- **Annual Meeting:** Call for any additional casting of ballots and then close balloting. Inspectors open and count ballots. Announce results.
- **At Most 15 days After the Annual Meeting:** Post results of election.
- **At Least 1 year after the Annual Meeting:** Inspector may dispose of ballots, signed voter envelopes, voter list, and other voting materials from the election.

#### **Annual Assessment Increases:**

The current section of the Bylaws related to Assessments is 2.5. Section 2.5 allows the POA to increase the Annual Assessment pursuant to California Civil Code § 1366(b). §1366(b) has since been restated to §5605 and retains the prior 20% increase maximum without a vote of the Members. Any increase of Annual Assessments over 20% requires Member approval.

Furthermore, Section 5605 of the Davis Stirling Act adds prerequisites to increasing the Annual Assessment including requiring that the board fully comply with sections 1, 2, 4, 5, 6, 7, and 8 of subdivision (b) of Section 5300 of the Davis Stirling Act. The Board must comply with these sections prior to increasing the Assessment. Section 5300 is discussed in greater detail later in the section titled Annual Policy Statement.

#### **Delinquent Assessments:**

Article 2 of Davis-Stirling controls actions related to delinquent assessments. Under Article 2, the Association may charge late charges and interest to delinquent members. Further, the

Association may, after following all the requirements of the Article, record the delinquent amounts as a lien against the interest of the Delinquent Member.

Pursuant to §5660, before filing the lien, the Association must first issue a pre-line notice. The notice must be sent by certified mail to the owner and must include the following:

- A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records pursuant to Section 5205, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed:

**IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.**

- An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.
- A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.
- The right to request a meeting with the board as provided in Section 5665.
- The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association's "meet and confer" program required in Article 2 (commencing with Section 5900) of Chapter 10.
- The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing with Section 5925) of Chapter 10 before the association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

If the owner is unable to pay the delinquent amount in full, pursuant to §5665, they may send a written request to meet with the board and discuss a payment plan for the debt. Further rules for payment plans are also discussed in §5665.

Under §5670, before recording a lien for delinquent assessments, the association shall offer the delinquent owner dispute resolution pursuant to the association's "Meet and Confer" program. As the POA does not currently have a "Meet and Confer" program, it must create one that conforms to §5900 of the Act.

After any "Meet and Confer" attempts but before recording the lien, pursuant to Section 5673 any new lien recorded for delinquent assessments shall require a majority vote of the directors in an open meeting and that those meeting minutes be recorded. The lien itself must conform to Section 5675 in that it must show the following:

- The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with subdivision (b) of Section 5650, shall be a lien on the owner's separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the

amount of the assessment and other sums imposed in accordance with subdivision (b) of Section 5650, a legal description of the owner's separate interest in the common interest development against which the assessment and other sums are levied, and the name of the record owner of the separate interest in the common interest development against which the lien is imposed.

- The itemized statement of the charges owed by the owner described in subdivision (b) of Section 5660 shall be recorded together with the notice of delinquent assessment.
- In order for the lien to be enforced by nonjudicial foreclosure as provided in Sections 5700 to 5710, inclusive, the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale.
- The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association.

Once the lien has been recorded, A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association's records, and the notice shall be mailed no later than 10 calendar days after recordation.

Although the recorded notice is a foreclosable lien, Section 5705 adds new requirements in to the procedure for foreclosing and selling the property, and allows the owner of the property to request a meet and confer option, requires the board to vote to foreclose and dictates that the owner of the property be served notice in accordance with the service of civil summons pursuant to Section 415.10 of Chapter 4, of Title 4 of Part 2 of the Code of Civil Procedure.

Fourth, Section 5715 adds a right of redemption after a foreclosure sale that persists for 90 days after the sale. This section further creates a requirement that the notice of sale must include a statement that the property is being subject to the right of redemption.

Fifth, Section 5720 bars the association from liening and foreclosing on a property for an assessment of less than \$1,800.00. The \$1,800.00 limit relates to the delinquent regular or special assessments, and does not include late charges, fees and collection of costs, nor attorney's fees. Section 5720 has further restrictions on the collection of late charges under \$1,800.00 allowing such a debt to be collected only through small claims court, liens or any other manner provided by law, except for judicial or nonjudicial foreclosure.

**Alternative Dispute Resolution:**

Sections 5925-5965 of the Davis Stirling Act control Alternative Dispute Resolution and should be referenced in full until such a time as the CC&R's or Bylaws are amended to include it.

Section 5965 requires that the POA provide every member with a summary of the provisions of Article 3 of the Davis Stirling Act annually that specifically references Article 3 and the rights and privileges therein. Such summary must be included in the annual policy statement as discussed below.

Section 5910.1 bars an association from filing a civil action regarding a dispute when the member has requested dispute resolution, unless the association has fully complied with dispute resolution procedures after the member requests them. This is not a substantive change to the existing law but should be noted to ensure that dispute resolution is provide to members when

requested.

**Annual Budget Report:**

The POA must provide an annual budget report pursuant to Article 7 of the Davis-Stirling Act, Section 5300. The annual budget report must be made available to the members and shall include;

- A pro forma operating budget showing the estimated revenue and expenses on an accrual basis.
- A summary of the associations reserves prepared pursuant to Davis Stirling Section 5565 which requires specific information be provided including the current cost, life and use of each major of each major asset, the estimate of the amount necessary to repair, replace, restore or maintain the major assets, the actual amount held to make such repairs or replacements and other such budget items.
- A summary of the reserve funding plan adopted by the board pursuant to Section 5550.
- A statement on if the board has determined to defer or not undertake repairs or replacement of any assets, including the justification for not doing such repairs.
- A statement if the board as determined or anticipates the need of any special assessments to repair, replace or restore assets.
- A statement which explains how the board will fund reserves to repair or replace assets.
- A statement addressing the procedures used for calculating the reserves to defray the future repairs or replacement of assets.
- A statement as to whether the association has any outstanding loans with a term of more than a year, including the loan information.
- A statement summarizing the insurance held by the association including the insurer, limits and type of insurance as well as the extensive statement explaining the insurance provided in Section 5300 (b)(9) of the Davis Stirling Act.
- Further the report will include a financial statement prepared by a licensed CPA if the gross income exceeds \$75,000 for the year.
- The annual budget report must be distributed to the members within 30-90 days of the end of the fiscal year and will further include the information required by Section 5310.

Upon completion of the report, the POA may deliver either the full report or a summary of the report to the POA members, provided the summary includes a general description of the report. Instructions on how to request a complete copy at no cost must be printed on the front page of the summary in at least 10 point bold.

**Annual Policy Statement**

In addition to an annual budget report, section 5310 of the Davis Sterling act requires an annual policy statement. Such policy statement must be distributed to the members within 30 to 90 days before the end of the POA's fiscal year and shall include the following information.

- The name and address of the person designated to receive official communications to the association, pursuant to Section 4035.
- A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses, pursuant to subdivision (b) of Section 4040.
- The location, if any, designated for posting of a general notice, pursuant to paragraph (3)

- of subdivision (a) of Section 4045.
- Notice of a member's option to receive general notices by individual delivery, pursuant to subdivision (b) of Section 4045.
- Notice of a member's right to receive copies of meeting minutes, pursuant to subdivision (b) of Section 4950.
- The statement of assessment collection policies required by Section 5730.
- A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.
- A statement describing the association's discipline policy, if any, including any schedule of penalties for violations of the governing documents pursuant to Section 5850.
- A summary of dispute resolution procedures, pursuant to Sections 5920 and 5965.
- A summary of any requirements for association approval of a physical change to property, pursuant to Section 4765.
- The mailing address for overnight payment of assessments, pursuant to Section 5655.
- Any other information that is required by law or the governing documents or that the board determines to be appropriate for inclusion.

The annual policy statement shall be made available to the members pursuant to Section 5320.

### **Reserve Fund & Study**

A reserve fund is used to repair, replace, restore or maintain the major common area components of the Association. The amount needed for the reserve fund is calculated through a reserve study.

Davis-Stirling section 5550 mandates that all associations are required to prepare a reserve study, unless the total replacement cost of all major common area components are less than 50% of the gross budget of the association, excluding the association's reserve account for that period.

If the total cost of replacement of the major common area components is more than 50% of the gross budget, excluding the association's reserve account for that period, At least once every three years, the board of directors shall cause to be conducted 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. reserve study is not actually a "study" of the roofs, boilers, streets, etc. Instead, it is a list of the major common area components with an estimate of their remaining useful life. Reserve studies should be done by someone who specializes in reserve studies.

The reserve study process is as follows:

- A reserve study company is retained by the Association and identifies all of the major components, their life span and the cost to repair.
- The reserve study company calculates the timetable and amounts of money necessary for the repairs.
- The board discusses and determines how the reserve will be funded, either through regular or special assessments.
- A summary of the annual review of the reserve study funding plan must be included in

the annual budget report provided to the members.

### Fidelity Bond

Under Davis-Stirling 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.

As discussed above, an association may not have as a director or as a nominee a person, who if elected would prevent the association from attaining a fidelity bond or would cause the association's bond to be revoked.

### Conclusion

The sections discussed above do not cover the entirety of the regulations of the Davis-Stirling Act and the Act itself should be referenced for any issues related to the governance of MSVPOA until such as time as the CC&Rs' and Bylaws are updated.