



Lido Sands Community Association

Directors Handbook

Updated 2010



# Lido Sands Community Association

## Directors Handbook

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### **OVERVIEW**

Lido Sands is an exclusive neighborhood in Newport Beach, California that includes privately-owned homes, commonly-owned streets and a commonly-owned recreation center. Each of the homeowners of the 82 homes are considered “Members” of Lido Sands Community Association (LSCA) and are jointly responsible for operating and maintaining the common areas.

The direct responsibility for coordinating the common area management activities of LSCA rests with the **Board of Directors**, which consists of eleven (11) volunteers elected by a quorum of Members at the Annual Meeting held in May of each year. Directors generally meet each month in an open forum to report on various aspects of management duties and other related projects, and to discuss and strategize future projects. LSCA has historically been a “self-managed” community association whereby the Directors not only dictate policy, but also manage the association’s day-to-day operations in lieu of hiring professional managers.

This Director’s Handbook provides operating guidelines for the Directors of LSCA.

Important note: This handbook was developed to provide Directors basic information about the operations of LSCA in plain English. While the information contained within provides a comprehensive and detailed review of the underlying legal documents that control the operation of LSCA, this is not a formal legal document and has been prepared for informational purposes only. The governing documents and underlying laws should be referred to when LSCA management circumstances arise, and when necessary legal counsel should be retained.



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### **I. LEGAL BACKGROUND**

Lido Sands was incorporated on December 21, 1956 as “Newport Sands Community Association”, commencing with the construction of the neighborhood. On April 18, 1957 the name was legally changed to “Lido Sands Community Association”. LSCA is a non-profit California corporation encompassing Tract 3162 in Newport Beach, in its entirety. Tract 3162 consists of approximately 11.5 acres divided into 83 parcels and streets, including:

- 82 separately owned lots (Lots 1-82)
- Recreation Center at the eastern end of the Tract (Lot 83)
- 3 Private streets that provide access to the northern side of the Tract (Lot “A”): Lido Sands Drive, Caryl Court & JoAnne Place.

Up until 1984, the land encompassing Tract 3162 was leased. On October 17, 1984, Tract 3162 was transferred to LSCA subject to the Declarations of Covenants, Conditions and Restrictions (CC&Rs) and the lots were made available for purchase to the individual homeowners.

In 1985, the California Legislature enacted the Davis-Stirling Common Interest Development Act, which greatly expanded and revised the laws governing common interest developments. This section of law is in Civil Code 1350-1377 and each year is subject to revision by the California legislature.



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### **II. LEGAL AUTHORITY**

The legal basis that governs LSCA is contained in the Governing Documents and the applicable laws and ordinances of the State of California, County of Orange and City of Newport Beach.

#### **A. GOVERNING DOCUMENTS**

LSCA's Governing Documents consist of Articles of Incorporation, Bylaws, CC&Rs, and any Rules and Regulations adopted by the Board of Directors and/or Membership. These are described below:

1. **Articles of Incorporation** – the legal declaration that established the association in 1956 as a California non-profit corporation. There are eight articles in the declaration that certify basic information about the association such as name, location and purpose of the association. The declaration also established powers of the corporation, named the first Directors and authorized the Directors to establish and adopt of a set of Bylaws that provides the detailed rules of the association.
2. **Bylaws** – the official association document that defines: Membership qualifications; powers to levy dues and assessments and rules related to collection of dues and assessments; guidelines for annual Member meeting; Directors powers, terms and election procedures; Officers' duties; Member powers; and, other miscellaneous operating terms of the association. The original Bylaws were established in 1957 and were amended in 1958 to allow open Director nominations from the floor, and amended again in 1980 to update several provisions. The Bylaws may only be amended by a majority vote of the Members. Corporations Code 7150 provides other guidance related to Adoption, Amendment or Repeal of Bylaws.
3. **Covenants, Conditions and Restrictions (CC&Rs)** – the legal declaration that describes the rights and obligations of the Members to the association; and, likewise, the association to the Members. This includes specific definitions of property, maintenance responsibilities and restrictions on the use of the property, membership and voting rights, specific rules, powers and duties, further detail on assessments, and other general provisions. There are no Architectural Standards, Requirements or Guidelines contained in the CC&Rs. The declaration of the CC&Rs was made on October 17, 1984 and was amended in 1989 to allow the association to enter into an agreement with the City of Newport Beach related to the granting of an easement for the Pacific Coast Highway sound wall. The CC&Rs may only be amended by a 75% majority vote of the Members.
4. **Rules & Regulations** – by the powers granted in the CC&Rs, the Directors may establish rules and regulations related to the common areas. The following sets of rules and regulations are currently in effect: Parking Regulations, Recreation Center Rules & Regulations, including Pool Rules and Recreation Center reservation requirements. There are currently no Architectural Standards, Requirements or Guidelines in effect for LSCA. Prior to October 17, 1984 when Tract 3162 was transferred to LSCA, the Ground Lease which was in effect between each homeowner and the landowner (BEECO) provided the Board powers to regulate alterations, additions and conditions of the individual lots. In



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1959, the Board approved regulations entitled “Improvement Standards and Building Guides” and established an Architectural Committee to enforce those regulations. In 1984 when the Tract was transferred to LSCA, and subsequently the individual lots were sold to the homeowners, the Ground Lease effectively expired and therefore eliminated the Board’s powers to maintain and enforce Architectural Standards, Requirements and Guidelines.

**Conflicts in provisions between governing documents** in general can be resolved by referring to the hierarchy of authority, as follows: 1.) CC&Rs, 2.) Articles of Incorporation, 3.) Bylaws, 4.) Rules & Regulations. However, statutes and case law may also control particular issues – see “Rules of Interpretation” below.

### **B. APPLICABLE LAWS & ORDINANCES**

1. **California Law** – the main body of California law that governs homeowner associations is found in the California Civil Code 1350-1377 (“Davis-Stirling Common Interest Development Act”). This Act was enacted in 1985, and since then there has been a significant amount of revisions to cover an expansive level of guidance on homeowner associations. The Davis-Stirling Act provides detail on the following general topics:

- Chapter 1 – General Provisions (1350-1351)
- Chapter 2 – Governing Documents (1352-1357)
- Chapter 3 – Ownership Rights (1358-1362)
- Chapter 4 – Governance (1363)
- Chapter 5 – Operations (1364-1367)
- Chapter 6 – Ownership Transfer (1368)
- Chapter 7 – Civil Actions & Liens (1368-1369)
- Chapter 8 – Interpretation & Zoning (1370-1374)
- Chapter 9 – Construction Defects & Litigation (1375)
- Chapter 10 – Improvements (1376-1378)

Other laws affecting community associations can be found in the following California statutes: Corporations Code, Labor Code, Health & Safety Code, Vehicle Code, Internal Revenue Code, Code of Civil Procedure, and Government Code

2. **County Ordinances** – the County of Orange has jurisdiction over various aspects of the community association. For example, the swimming pool safety requirements are dictated by the County. The County also monitors vector control.
3. **City Ordinances** – the City of Newport Beach has jurisdiction over several aspects of the community association. For example, the City enforces building code requirements over the common areas.

### **C. RULES OF INTERPRETATION**

Since there can be conflicts between California statutes and association governing documents, the following general rules of interpretation should apply:



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1. **Statute Overrides Governing Documents** - If the statute uses words such as "notwithstanding any provision of the governing documents to the contrary" or any similar language, the statute overrides the association's governing documents. For example: Section 1366(b) of the Civil Code starts with "Notwithstanding more restrictive limitations placed on the board by the governing documents . . ." and then goes on to set a 20% limit on raising regular dues and a 5% limit on special assessments. This means that if your governing documents have a 10% cap on regular dues and a 3% cap on special assessments, they were nullified by statute and the higher limits of 20% and 5% now prevail.
2. **Statute Defers to Governing Documents** - If the statute uses words such as "Unless the governing documents otherwise provides..." or similar language, the governing documents will prevail. For example, Section 1362 of the Civil Code states: Unless the declaration otherwise provides . . . the common areas are owned as tenants in common, in equal shares, one for each unit or lot.
3. **Statute is Silent** - Frequently, the Davis-Stirling Act is silent on which controls, the statute or the governing documents, and you must decide from the general language of the statute which controls. For example, Section 1363(a) does not contain any of the language described above, nonetheless, it clearly controls because of its use of the word "shall": A common interest development shall be managed by an association which may be incorporated or unincorporated. The association may be referred to as a community association.



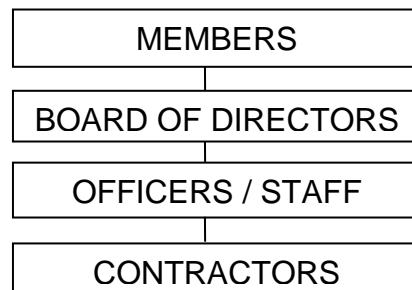
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### III. DIRECTORS POWERS, DUTIES & LIABILITY

#### A. DIRECTORS, OFFICERS & MEMBERS DEFINED

Below is a flowchart illustrating the hierarchy of the entities in LSCA. The Board of Directors is LSCA's governing body elected by and operating on behalf of the Members. The Officers coordinate the management activities through Staff and answer to the Board. Under the current "self-managed" arrangement Directors also play the role of Officers and/or Staff.



1. **Directors** – Individuals that make up the governing body of LSCA known as the Board of Directors or the Board. The Board is granted authority to exercise all corporate powers related to the business and affairs of LSCA, subject to the limitations of what actions must be authorized or approved by the Members. The governing documents specify that: the Board consists of eleven (11) Directors elected at the Annual meeting by the Members; that a Director must be a Member (*with limited exceptions\**); and, that only one Director may be elected from any one residential lot. Directors are elected for two-year staggered terms in order to create Board stability and continuity, so no more than six (6) Directors should need to be replaced in any given year. *\*While the CC&R's state that the Board be composed of "record owners of units", in circumstances where there are not enough Member volunteers willing to serve as Directors Civil Code 1370 allows the CC&R's to be liberally construed in an independent and severable manner to facilitate the operation of the association by allowing non-owner residents to volunteer as Directors subject to the normal approval process by the Board of Directors.*
2. **Officers** – The corporate positions required by statute (Corporations Code 7213) and the governing documents. The governing documents identify the following Officer positions: President, Vice-President, Secretary & Treasurer, and specify that Officers shall be selected annually by the Board, not the Members. The Officer positions are typically filled by Directors; however, there is no requirement that an Officer must be a Director.
3. **Members** – an LSCA homeowner. There are 82 Members in LSCA. Each Member is represented by an LSCA homeowner from each one of the 82 lots in LSCA. The primary power of a Member is the ability to vote for Directors at the Annual meeting. Members do not have the power to vote on the day-to-day business affairs of LSCA, as that is the responsibility of the Directors. However, the Board is prohibited from taking certain





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actions unless affirmative approval is granted by the Members, subject to the guidelines of the governing documents and statutes.

- a.) “Good Standing” – Members are deemed to be in “good standing” when all assessments, regular or special, have been paid to date (not “past due”) and/or the Member is not currently suspended from Membership privileges via a Board imposed action resulting from Member’s violation of LSCA rules and regulations. Membership privileges include, but are not limited to, Recreation Center access, Homeowner & Resident Parking Permits, and Visitor Passes.
- b.) Transfer of Membership – Membership may only be transferred upon the title transfer of the underlying LSCA home. Membership transfer must occur through the escrow process of the underlying LSCA home. The escrow company generally initiates the Membership transfer process by delivering an HOA Document Request (see Appendix B1 for sample). The request is fulfilled by providing the list of requested documents together with a demand request for the Transfer Fee (\$250) plus the remainder of the regular dues (Common Charge Assessments) for the current fiscal year. The demand may also include that Membership’s portion of any special assessments or other fees outstanding. Response to document request should have a cover letter identifying contents of delivery, and if possible should be delivered via e-mail with documents attached as pdf files (see Appendix B2 for sample). In addition the Buyer must execute a Non-Commercial Use acknowledgement (see Appendix B3 for sample).
- c.) Legal Relationship – The Member has an important legal contractual relationship with LSCA as is detailed in the Governing Documents, Rules & Regulations. Because of the importance of this relationship, the passing of Membership from one owner to the next should be performed through the escrow process, similar to the transfer of title. The proper trail of documentation and consideration (Transfer Fee) is important to establish the validity that membership has been properly transferred to the new owner. The Transfer fee also pays for the documentation costs and other tasks related to the Membership transfer process, subject to the limitations imposed by applicable law.

### **B. POWERS & RESTRICTIONS OF THE BOARD**

The LSCA governing documents grant the Board powers to manage the association; however, certain actions require a vote of the Members. Below lists a summary of the Board’s powers (however the actual powers are listed in the governing documents and statutes):

1. **General Powers** – The Board’s powers generally consist of the following, subject to limitations contained in the governing documents and statutes (which change periodically):
  - a.) Enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed by the CC&Rs (*CC&Rs Article IV Section A*);
  - b.) Conduct, manage and control the affairs and business of LSCA and adopt Rules and Regulations as they may deem best, subject to guidelines of Civil Code 1357 (*Bylaws Article IV Section 1b, CC&Rs Article IV Section B & Section M*);



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- c.) Fill Directors positions vacated during the term because of death, resignation, sale of home, or as a result of that Director's removal (*Bylaws Article IV Section 4*);
  - d.) Select and remove Officers, contractors and employees of the association, determine duties, compensation and terms (*Bylaws Article IV Section 1a, CC&Rs Article IV Section N*);
  - e.) Appoint executive committees to delegate any powers and authority of the Board, subject to the control of the Board (*Bylaws Article IV Section 1f*);
  - f.) Fix and levy dues and assessments upon Members for operating costs of the association, and suspend Membership privileges if such dues are delinquent (*Bylaws Article IV Section 1g*);
  - g.) Impose regular assessments on the membership up to 20% of the prior year's budgeted gross expenses regardless of any limitations that might be found in the governing documents, subject to financial reporting requirements of Civil Code 1365 (*Civil Code 1366b*);
  - h.) Enforce liens on Member lots and foreclose in accordance with statutes in effect that govern the foreclosure of mortgage on real property (*Bylaws Article II Section 7*);
  - i.) Borrow money and incur indebtedness up to 1½ times the annual operating expenses of LSCA (*Bylaws Article IV Section 1e*);
  - j.) Initiate and execute disciplinary proceedings against Members for violations of the governing documents in accordance with the proceedings therein contained (*CC&Rs Article IV Section E*);
  - k.) Suspend privileges of Members for use of the association-owned facilities by reason of any violation of the published rules adopted for use, for protection of Members and facilities, based on unanimous vote of the Directors and only effective for maximum of 180 days (*Bylaws Article IV Section 1j*);
  - l.) Fix and levy transfer fees (*Bylaws Article IV Section 1h*);
  - m.) Determine place, date and hour of Regular meetings of the Board with proper Notice to Members (*Bylaws Article IV Section 7*);
  - n.) Call Special meetings in between Regular meetings for any purpose by President, Vice-President, Secretary or any two Directors with proper Notice to Members (*Bylaws Article IV Section 8*);
  - o.) Submit proposed adoptions, repeals and amendments to the governing documents to the Members for approval (*Bylaws Article VII Section 1, CC&Rs Article VII Section 1*).
2. **Restrictions** – The Board is prohibited from taking such actions, except as noted:
- a.) Receive payment of salary for services as Director or Officer, not including reimbursement of expenses (*Bylaws Article IV Section 13, CC&Rs Article IV Section O3*);
  - b.) Adopt, repeal or amend the governing documents without approval of Members (*Bylaws Article VII Section 1, CC&Rs Article VIII Section 1*);
  - c.) Incur aggregate expenditures for capital improvements to the common areas in any fiscal year in excess of five percent (5%) of the budgeted gross expenses for the association in that fiscal year (*CC&Rs Article IV Section O1*);
  - d.) Sell any property of the association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the association for that fiscal year (*CC&Rs Article IV Section O2*);



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- e.) Levy special assessments without approval of Members (CC&Rs Article V Section 3c & Section 4, Civil Code 1366b);

### **C. DUTIES OF THE BOARD**

1. **General Duties** – The governing documents and statutes assign the Board responsibility for a wide array of duties in conjunction with managing LSCA. Below lists a summary of most of the Board's duties (this is only a summary – the governing documents and statutes contain the actual wording):
  - d.) Provide written notices of annual meeting, board meetings, or special meetings to each Member within at least 4 days prior (Bylaws Article III Section 2, Civil Code 1363.05g);
  - e.) Maintain and manage all the common properties, facilities, improvements and landscaping thereon (CC&Rs Article IV Section 2C & 2F);
  - f.) Pay any real and personal property taxes and other charges assessed against the Common Properties (CC&Rs Article IV Section 2G);
  - g.) Grant easements where necessary for utilities and sewer facilities over the common properties to serve the common properties and the Lots (CC&Rs Article IV Section 2H);
  - h.) Maintain liability, property & casualty, or any other appropriate insurance coverage's to comply with applicable law for the common properties (CC&Rs Article IV Section 2I, 2J & 2K);
  - i.) Maintain funds in a bank account and render an annual accounting to its Members within ninety (90) days after the end of the fiscal year (CC&Rs Article IV Section 2L);
  - j.) Review the financial records of the association on quarterly basis, including a current reconciliation of operating accounts, the reserve accounts, bank statements for operating and reserve accounts, an income and expense statement for the association's operating and reserve accounts, and the reserve study annually (Civil Code 1365.5);
  - k.) Prepare budgets and financial statements as prescribed by the governing documents & statutes (CC&Rs Article IV Section 2D);
  - l.) Provide to Members all required disclosures as prescribed by the governing documents & statutes (CC&Rs Article IV Section 2L & various CA statutes – see listing within);
2. **Fiduciary Duty of Directors** – Directors are fiduciaries with two primary duties:
  - a.) Duty of care (due diligence) – must be diligent and careful in performing the duties they have undertaken by attending and participating in meetings so they can be informed about the association's business, and making reasonable inquiries before making a decision.
  - b.) Duty of Loyalty (no self-dealing) – Directors must act in the best interests of the association even at the expense of their own interests.



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### **D. LIMITED LIABILITY OF DIRECTORS AND OFFICERS**

LSCA Directors have extremely limited personal liability. The California Civil Code and Corporations Code specifically address the issue of Director and Officer liability:

1. **Civil Code Protections** – a summary of Civil Code 1365.7 is as follows: Volunteer Directors and Officers who manage an association that is exclusively residential, shall not be personally liable in excess of the coverage of insurance to any person who suffers bodily injury, emotional distress, wrongful death, or property damage or loss as a result of an act or omission of the volunteer Director or Officer if the act or omission: a.) was performed within the scope of the Director or Officer's association duties, b.) was performed in good faith, c.) was not willful, wanton, or grossly negligent. This law requires the association to carry Directors and Officers insurance of at least \$500,000.
2. **Corporations Code Protections** – Volunteer officers and directors are protected against personal liability for mistakes they make while carrying out their duties.
  - a.) Corporations Code 5047.5(b) states: "...no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a nonprofit corporation";
  - b.) Corporations Code 7231(a) – known as the "Business Judgment Rule" states that Directors can avoid personal liability even if they make poor decisions *if* they perform their duties (i) in good faith, (ii) in a manner which the director believes to be in the best interests of the corporation and (iii) with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;
  - c.) Corporations Code 7231.5(a) states:"... there is no monetary liability on the part of, and no cause of action for damages shall arise against, any volunteer director or volunteer executive officer of a nonprofit corporation ...". This law requires associations with annual budgets in excess of \$50,000 to carry general liability insurance of at least \$1,000,000;

### **E. JOB DESCRIPTIONS OF DIRECTORS & OFFICERS**

LSCA has historically been a "self-managed" community association whereby the Directors not only dictate policy, but also manage the association's day-to-day operations in lieu of hiring professional managers. Each Director has a specific area of responsibility and title which is determined by the Board after elections at the Annual Meeting every year. While the Officer positions are readily defined in the governing documents and statutes, the other Director positions are determined at the discretion of the Board.

1. **Officer Positions** – The corporate positions required by statute and the governing documents, which identify descriptions for the following positions:



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- a.) President - The President shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and Officers of LSCA. The President shall preside at all Member and Board meetings, and shall be a member of all the standing committees, if any. The President shall have the general powers and duties of management usually vested in the office of President of an association, and shall have such other powers and duties as may be prescribed by the Board.
  - b.) Vice-President - In the absence or disability of the President, the Vice President designated by the Board, shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for them by the Board.
  - c.) Secretary. The Secretary shall keep a book of minutes of all Member and Board meetings, noting the time and place, whether regular or special, and if special, how authorized, the notice given thereof, the names of those present at Directors' meetings, the number of Members present or represented at Members' meetings and the proceedings thereof. The Secretary shall keep, or cause to be kept, a membership register, or a duplicate membership register, showing the names of the Members and their property addresses. The Secretary shall give, or cause to be given, Notice of all meetings of the Members and the Board by law, and shall have such other powers and perform such other duties as may be prescribed by the Board.
  - d.) Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of LSCA. The books of account shall be open to inspection by Members pursuant to statute. The Treasurer shall deposit all monies and other valuables in the name of LSCA with such depositories as may be designated by the Board. The Treasurer shall disburse the funds as may be ordered by the Board, and shall render to the Directors, whenever requested or required, the financial condition of LSCA, and shall have such other powers and perform other duties as may be prescribed by the Board.
2. **Other Director Positions** – The operating positions designated by the Board from time to time, currently as follows:
- a.) Grounds – Director in charge of maintaining the landscaping in the common areas, which in general means managing the various contractors performing these maintenance services.
  - b.) Lighting – Director in charge of maintaining the lighting systems in the common areas, which in general means managing the contractors performing these maintenance services.
  - c.) Membership – Director in charge of maintaining the association's official roster.



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- d.) Parking – Director in charge of managing the association’s responsibilities related to enforcing parking control of the private streets pursuant to the parking regulations.
- e.) Pool – Director in charge of maintaining the association’s swimming pool, which in general means managing the contractors performing maintenance services and interfacing with county safety inspectors.
- f.) Sandpiper – Director in charge of publishing the association’s newsletter.
- g.) Social – Director in charge of coordinating the association’s social activities.



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### **IV. MEETINGS**

#### **A. OPEN MEETING ACT**

Civil Code 1363.05 requires that any Member of the association may attend a Board meeting. "Meeting" includes any congregation of a majority of the Board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session. The Board shall permit any Member to speak at any Board meeting, except for meetings held in executive session. A reasonable time limit for all Members to speak to the Board shall be established by the Board. Members may observe the meeting, but do not have the right to participate in the Board's deliberations or votes. Members may address issues during the open forum portion of the meeting. If an attendee becomes disruptive, he or she may be expelled from the meeting and/or fined. The Open Meeting Act does not give the general public a right to attend Board meetings; however, that does not preclude non-Members from attending as invited guests.

#### **B. EXECUTIVE SESSION**

Pursuant to Civil Code 1363.05, the Board may adjourn to Executive Session to:

1. consider litigation;
2. consider matters relating to the formation of contracts with third parties;
3. consider Member discipline;
4. consider personnel matters;
5. meet with a Member, upon the Member's request, regarding the Member's payment of assessments as specified in Civil Code 1367 or 1367.1.

Any matter discussed in executive session shall be generally noted in the minutes of the immediately following the meeting that is open to the Members.

#### **C. NOTIFICATION REQUIREMENTS**

It is required that Members shall be given notice of the time and place of a meeting at least **four days prior to the meeting** (Civil Code 1363.05). Notice shall be given by posting the notice in a prominent place or places within the common area **and** by mail to any owner who had requested notification of Board meetings by mail. Notice may also be given, by mail or delivery of the notice to each unit or by newsletter or similar means of communication (Corporations Code 5016).

#### **D. ANNUAL MEETING**

Pursuant to the Bylaws, the Annual meeting of Members shall be held on the second Saturday of May of each year between 10:00 A.M. and 2:00 P.M. The primary purpose of the Annual meeting is for the Members to elect Directors. Written notices of each annual meeting shall be given to each member entitled to vote, either personally or by sending a copy of the notice through the mail to the address appearing on the books.



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1. **Voting By Proxy** - Each Member entitled to vote shall have the right to do so either in person or by an agent authorized by a written proxy executed by such person and filed with the Secretary. The proxy shall only be valid at that Annual meeting. Typically a proxy card is included in the written notice of the meeting enabling the Member to file their proxy beforehand with the Secretary.
2. **Quorum** - The presence in person or by proxy of members entitled to cast one-fourth of votes represented by all Members shall constitute a quorum for the transaction of business. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. (Bylaws Article III, Section 6)
3. **Nominating Committee** - In February of each year, the President will name five members of a Nominating Committee, one of whom will also be delegated as chairperson of the Nominating Committee and the designated committee will be instructed to present a slate of Members to replace Directors whose terms of office will expire at the next Annual meeting. Any two Directors may challenge a person or persons named to the Nominating Committee, and the President must replace the member so challenged by two directors. The President will instruct the Nominating Committee to place people of ability, experience, availability and character for nomination as a Director. The chairperson of the Nominating Committee must nominate the committee's slate when called upon to do so by the President at the Annual meeting. Upon completion of this duty, the Nominating Committee is automatically dissolved, but the President must then make a call for nominations from the floor before declaring the nominations to be closed.
4. **Agenda** – A typical agenda for the Annual Meeting includes the following items:
  - a.) Call to Order & announcement of quorum
  - b.) Reading & approval of minutes (or motion to waive)
  - c.) President Report, Guest Speakers (if any) & Management Reports
  - d.) Nomination of Nominating Committee's slate of Director Candidates
  - e.) Nominations from the floor & statements by nominees (if any)
  - f.) Voting
  - g.) Open Forum – Members are free to speak on any matter of interest to the community, but must observe rules of decorum, and are limited to 3 minutes each
  - h.) Announcement of Election Results
  - i.) Adjournment
  - j.) Organizational Meeting of Board

### **E. BOARD MEETINGS**

1. **Types of Meetings:**
  - a.) **Regular Meetings** – Directors generally meet monthly, usually at the home of one of the Directors, to report on various aspects of management duties and other related projects, and to discuss and strategize future projects. Typically each Director reports on their assigned responsibility.





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- b.) Special Meetings – Special board meetings are called between Regular meetings to conduct business that cannot wait until the next Board meeting. Notice is required for Special meetings.
  - c.) Emergency Meetings - Emergency meetings of the Board may be called by the President or by any two Board members other than the President, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide notice as required by law.
2. Conducting Meetings – While Member meetings are required to be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt (Civil Code 1363(d)), there is no requirement that Board meetings be conducted under *Robert's Rules of Order* or any other system of parliamentary procedure. Boards are free to use more flexible guidelines if they so choose, or none at all, unless the governing documents specifically require the use of Robert's Rules, in which case the Board must follow the association's governing documents. The LSCA governing documents do not specify guidelines on how meetings are to be conducted.
  3. Establishing a Quorum - When a majority of Directors are present at a meeting, a quorum has been established. A vacancy on the Board does not change the number of Directors needed to make a quorum - the Board needs a majority of the number authorized in the Bylaws. For example, since the LSCA Bylaws authorize eleven (11) Directors, in order to conduct official business **six (6) Directors need to be present** at the meeting (Corp Code 7211(a)7). If there is a loss of a quorum at a meeting where a quorum was initially established, the remaining Directors may continue to conduct business, provided that any action taken is approved by at least a majority of the Directors required for a quorum. For example, if seven (7) Directors are present to start the meeting and two (2) Directors leave, business can continue to be conducted; however, any actions will require approval four (4) Directors, which is the majority of the required quorum (Corp Code 7211(a)8).
  4. Proxies Not Allowed – Directors must attend Board meetings in person or by speakerphone, meaning they cannot attend by proxy. Proxies are only for use by Members at membership meetings, not by Directors at Board meetings (Corp Code 7211(a)6).
  5. President Voting – Although some parliamentary procedures discourage Presidents from voting unless needed to break a tie, the LSCA governing documents do not have this provision; therefore, the President may vote on all issues that come before the Board.
  6. Agenda – *Effective 1/1/2008 state law (Civil Code 1363.05i) requires that a meeting agenda be posted at least 4 days prior to a meeting, and prohibits board action or discussion on items not listed on the posted agenda, with limited exceptions (e.g., emergency situations).*



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A typical agenda for the Regular Meetings includes the following items:

- a.) Call to Order
  - b.) Special guests (if any)
  - c.) Open Forum – Members are free to speak on any matter of interest to the community, but must observe rules of decorum, and are limited to 3 minutes each
  - d.) Reading & approval of minutes (or motion to waive)
  - e.) Financial Report – Status report on association finances & dues collections; on quarterly basis review financial records (see “*Duty to Review Financial Records*” below)
  - f.) Committee Reports – Status reports on each Directors area of responsibility
  - g.) Old Business – Discussion/Action related to on-going projects/efforts
  - h.) New Business – Discussion/Action related to newly introduced items of interest to the community
  - i.) Adjournment
7. **Minutes** - Corporations are required to maintain written minutes of Board, Members, and Committee meetings. Minutes should never be a transcript of every statement made by Directors and/or attendees. As a rule of thumb, minutes should record what was done at a meeting, not what was said.
- a.) Essential information that should be found in every set of minutes:
    - The type of meeting (regular, special, emergency, executive session);
    - Date, time and location of meeting;
    - Directors who were present and who was absent, along with their titles (President, Treasurer, etc.). The minutes should also list guests who were invited to speak to the Board, such as contractors bidding on projects, the association's attorney, etc. It is not necessary to list Members who attended the meeting;
    - Motions and how each person voted, including abstentions;
    - General description of matters discussed in executive session;
    - Date for the next meeting; and
    - Time the meeting was adjourned.
  - b.) Attachments to Minutes - Contract proposals reviewed by the Board are generally not attached to the minutes. Documents may be attached to and made part of the minutes but only with Board approval. Individual Directors do not have the right to attach documents without first obtaining Board approval.
  - c.) Who May Take Minutes - Minutes may be taken by someone other than the Secretary. If so, that person should be designated in the minutes as the "assistant secretary" or recording secretary. The minutes may be signed by the secretary or assistant secretary. Once signed, the minutes become prima facie evidence that the meeting was held.
  - d.) Distribution of Minutes - Minutes of the Board's meetings, other than executive sessions, must be made available to the Members within 30 days, even if only in draft form (which should be stamped “Draft”). The minutes, proposed minutes, or summary



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minutes must be distributed to any Member upon request and upon reimbursement for reproduction costs.

- e.) Annual Notice of Right to Obtain Minutes - At the time the association distributes its annual budget to the Members, or at the time of any general mailing to the entire membership of the association, the Board must advise Members, of their right to obtain copies of the minutes of the Directors meetings and how and where those minutes can be obtained.
8. **Duty to Review Financial Records** – The Board is required (Civil Code 1365.5(a)) to review:
- a.) A current reconciliation of the association’s operating and reserve accounts on at least a quarterly basis;
  - b.) The current year’s actual reserve revenues and expenses compared to the current year’s budget, on a quarterly basis;
  - c.) The latest bank statements for operating and reserve accounts;
  - d.) An income and expense statement for the association’s operating and reserve accounts on at least a quarterly basis;
  - e.) The reserve study annually.



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### V. ANNUAL DISCLOSURES

#### A. THE BUDGET

1. **Preparation of Budget** – The Board is required to prepare a pro forma operating budget pursuant to Civil Code 1365 (Civil Code 1363(b)). The Board is allowed to raise dues by up to 20% without Membership approval, only if the pro forma budget is distributed to the Members as is stated below (Civil Code 1366(b)).
2. **Required Elements** - The operating budget must include all of the following:
  - a.) Estimated revenues and expenses on an accrual basis
  - b.) A summary of the association's reserves
  - c.) A statement as to whether the board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefore
  - d.) A general statement addressing the procedures used for the calculation and establishment of those reserves (Civil Code 1365(a)).
3. **Distribution of Budget** – The budget must be distributed to the Members not less than 30 days nor more than 90 days prior to the beginning of the association's fiscal year (Civil Code 1364(e)4). The written notice that is distributed to each of the Members shall be in at least 10-point boldface type on the front page of the summary of the budget (Civil Code 1365(c)).
4. **Pro Forma Budget** – A pro forma budget is one that is based on anticipated or projected income and expenses. Each line item in the budget should be a good faith projection of revenues the association expects to receive from dues, interest earned on reserves, etc. as well as expenses for utilities, insurance, maintenance, legal, etc. Because each line item is a projection, associations typically experience variances throughout the year with some expenses being higher than anticipated and others lower.
5. **Budget Calendar** – The Treasurer may publish a Budget Calendar to assist Directors in fulfilling their budgeting responsibilities in a timely manner. A sample timeline is as follow:
  - **November Meeting** – Treasurer provides budget worksheets to Directors containing current expense info and three years of historical expense information.
  - **January Meeting** – Directors present completed budget worksheets to Treasurer which lists the itemized projected expenses for the coming fiscal year.
  - **February Meeting** – Treasurer presents Directors with a draft budget based on budget worksheets and a calculation of assessments to cover projected expenses. Final opportunity for the Board to approve proposed budget
  - **March 1<sup>st</sup>** – Deadline to distribute budget to Members.



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### **B. THE RESERVE**

1. **Reserve Studies Required** – Associations are required to prepare a reserve study at least every 3 years, and update it annually (Civil Code 1365.5(e)). The Board is required to publish the reserve study annually with the budget and disclose how the Board plans to pay for major replacements and repairs (Civil Code 1365(a)). The Reserve Study identifies the association's long-term assets, and based on general assumptions calculates recommended annual funding levels, so that when it is time to replace these long-term assets there will be a sufficient amount of cash accumulated. Since there is a good chance that the cost estimates and other assumptions will not be completely accurate, the recommended funding levels may need to be modified based on actual circumstances.
2. **Funding the Reserves** – LSCA funds the reserve through the budgeting process, based on the recommended funding levels established in the Reserve Study. There is no requirement that the reserves actually be funded; however, recent case law opened up the possibility that failure of the Board to fund the reserves was a breach of their fiduciary duty. Boards have the power to special assess the membership for the purpose of replenishing the reserves. The allocation of reserve items is not written in stone. The projections are subject to revision annually as assets wear out at their own rates.
3. **Borrowing Reserves** – The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of major components which the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established (Civil Code 1365.5(c)). However, Boards are allowed to borrow from the reserve account to meeting short-term cash-flow problems or other expenses, subject to the following requirements:
  - a.) **Prior Notice** - The Board must provide notice of its intent to transfer funds. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund (Civil Code 1365.5(c)2).
  - b.) **Repayment Requirements** - The funds must be repaid within one year, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the association, temporarily delay the restoration. If necessary, the Board must levy a special assessment to recover the full amount of the expended funds within the required time limits, subject to the limitation imposed by Civil Code 1366 (i.e., Membership approval required).
4. **The Reserve Study** (Civil Code 1365.5(e)) – 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 which 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



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association which excludes 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. The study required by this subdivision shall at a minimum include:

- (1) Identification of the major components which the association is obligated to repair, replace, restore, or maintain which, 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) during and at the end of their useful life.
- (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.

### **C. FINANCIAL RECORDS**

The Board is required to “render an annual accounting to its Members within ninety (90) days after the end of the fiscal year” (*CC&Rs Article IV Section 2L*). If gross income exceeds seventy-five thousand dollars (\$75,000), a review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy and a copy of the review of the financial statement shall be distributed to the Members within 120 days after the end of the fiscal year (*Civil Code 1365(b)*).

1. **Operating Account** – An account funded by Members’ dues to pay expenses related to the general operations of the association. LSCA policy dictates that the account be held at a federally insured bank and that disbursement checks must be signed by two (2) Directors.
2. **Reserve Account** – An account used to accumulate monies designated for repairs and replacements of the association’s long-term assets. Funding is determined through the budgeting process and is transferred from the Operating Account on a monthly basis. Disbursements from the Reserve Account must be authorized by the signatures of two (2) Directors (*Civil Code 1365.5(b)*).
3. **Financial Statement** – Listing of revenues & expenses of the Operating Account by category as compared to the Budget for the fiscal year, the Assets and Liabilities of the association at the end of the fiscal year, and the activity of the Reserve Account for the fiscal year. Historically, it has been the general practice of the LSCA Board to authorize the transfer of any operating surplus to the Reserve Account, as of the fiscal year end.



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### **D. OTHER DISCLOSURES**

There are several other annual disclosures as required pursuant to the Civil Code, listed below (see Appendix A for a list and samples of LSCA's annual disclosures). Typically these disclosures are packaged together with a *State of the Community* letter from the President and distributed to Members around March 1<sup>st</sup> of every year.

1. **Operating Budget** – Must contain estimated revenues and expenses for the coming fiscal year, a summary of the reserves and specific information required by Civil Code 1365(a), and a statement whether the Board expects to levy any special assessments. Must be distributed to Members with the *Assessment and Reserve Funding Disclosure Summary* not less than 30 days nor more than 90 days prior to the start of the fiscal year.
2. **Notice of Assessments and Foreclosure** – Notification using exact language in 12-point type as set out in Civil Code 1365.1 to Members which outlines the rights and responsibilities of homeowners and associations. Must be distributed up to 60 days prior to the start of the fiscal year.
3. **Assessment and Reserve Funding Disclosure Summary** - A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain. The report shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (b) of Civil Code 1365.2.5, and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.
4. **Assessment Collection Policy** – Discloses the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments [Civil Code 1365(d)]. Must be distributed to Members not less than 30 days nor more than 90 days prior to the start of the fiscal year.
5. **Insurance Coverage** - Summarizes the association's property, general liability, and earthquake and flood, and fidelity insurance policies, which state the insurer's name, type of insurance, policy limits, and deductibles. A statement must be included in the disclosure using the exact language in Civil Code 1365(e)(4) in at least 10-point boldface type, which contains specific clarifying language. The association must also notify members if policies are canceled and not immediately replaced. Must be distributed to Members not less than 30 days nor more than 90 days prior to the start of the fiscal year.
6. **Regular Assessment Increase** – If the regular assessments are to be increased, notice must be mailed to the Members 30 to 60 days before the increase takes effect. In practice, assessment increases are generally made at the beginning of the fiscal year, and notification is made via the President's *State of the Community* letter.
7. **Right to Minutes** – Annual notification to Members of their right to receive draft of final minutes of open Board meetings within 30 days of the meeting, and how and where those minutes may be obtained (Civil Code 1363.05(d) & (e)).



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8. **Dispute Resolution** - Distribute a summary of the code sections that encourages the use alternative dispute resolution ("ADR") methods such as arbitration or mediation before lawsuits are filed to enforce the governing documents (Civil Code 1369.59).
9. **Description of Internal Dispute Resolution Process** – Distribute a description of the association's internal dispute resolution ("IDR") process for internally resolving disputes between the association and its members (Civil Code 1363.85).
10. **Architectural Procedures** – Disclose those things that require architectural approval and the procedures used for reviewing architectural applications. Currently, LSCA does not have Architectural Procedures established; therefore, this disclosure is not required at this time (Civil Code 1378).

### **E. FILING REQUIREMENTS**

Pursuant to Civil Code 1363.6, associations are required to file statements of information with the Secretary of State, as follows:

1. **Statement of Information** – Form SI-100 must be filed biennially.
2. **Statement of Common Interest Development** – Form SI-CID must be filed biennially at the same time the Statement of Information is filed.





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### **VI. GENERAL INFORMATION**

#### **A. ADOPTING AND AMENDING RULES & REGULATIONS**

1. **Operating Rules** are defined as any regulation adopted by the Board that applies to the management and operation of the association or the conduct of its business and affairs (Civil Code 1357.100). This includes pets, parking, use of the common areas, member discipline, architectural standards, election procedures, etc. Excluded are decisions relating to common area maintenance, a specific matter (as opposed to a general policy), assessment amounts, a nondiscretionary rule change required by law, or a rule that repeats existing law or the Association's Bylaws, CC&Rs or Articles of Incorporation (Civil Code 1357.120).
2. **Enforceability** - Pursuant to Civil Code 1357.110, an operating rule is enforceable if it is:
  - a.) in writing,
  - b.) within the Board's authority,
  - c.) consistent with governing law and the associations governing documents,
  - d.) adopted in good faith, and
  - e.) reasonable
3. **Proposed Changes to Operating Rules** - At least 30 days before a vote on adopting or amending an operating rule, the Board must mail a copy of the proposed change to the Members, along with an explanation of their purpose and effect. After the 30-day period, the board may adopt the rules, after consideration of any comments made by Members. Within 15 days of voting on the rules, the Board must notify the Members of the results of the vote (Civil Code 1357.130).
4. **Member Veto of Rule Change** - Within 30 days of this notification, at least 5% of the Members can request a special meeting to reverse the Board vote. The Board must give 10 to 90 days' notice of a special meeting, at which a majority of a quorum can reverse the Board's decision. The Board must notify the Members of the results of this vote within 15 days. If an operating rule is reversed, it cannot be re-adopted by the Board for at least one year. However, the Board may vote on other "operating rules" covering the same subject (Civil Code 1357.140).
5. **Emergency Rule Change** - If the Board determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association, it may make an emergency rule change; and no notice is required. An emergency rule change is effective for 120 days (Civil Code 1357.130(d)).



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### **B. REGULATION OF MEMBER PROPERTIES**

Most of the Board's regulatory powers relate to the common areas of the Association (Recreation Center and Streets), and Members' activities thereon. While CC&Rs typically contain specific provisions that enable Boards to enforce powers over the modifications to and activities upon the individual properties, the current LSCA CC&Rs contain limited powers in this regard. Modifications can be made to the CC&Rs only by a 75% majority vote of the Members. The current CC&Rs do contain some broad provisions that enable the Board to enforce general rules and regulations over the individual properties, while also acknowledging the powers of other authoritative sources to regulate the individual properties.

- 1.) **Commercial Use Prohibited** – No part of the individual properties can be used for any commercial business (CC&Rs Article XII Section 1). This includes activities on the properties such as manufacturing, mercantile, storing, vending or other such nonresidential purposes. The most significant use of the provision by the Board on behalf of the Association is restricting the use of the individual properties for high volume occupancy purposes, specifically weekly rentals of the properties. This provision also provides the Association certain powers to restrict the use of the properties as rehabilitation or “group homes”. Current City zoning prohibits the conversion of properties into multi-units.
- 2.) **Restrictions on Nuisance Activities** – “Nuisance” is defined as noxious or offensive activity carried on upon the individual properties, in addition to anything done or kept on the individual properties which may become an annoyance to the neighborhood, or which shall in any way interfere with a Member's quiet enjoyment of their individual property or which in any way shall increase the rate of insurance (CC&Rs Article XII Section 2). California further defines “Nuisance” as anything which is injurious to health, including the illegal sale of controlled substances, or anything that is indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property (Civil Code 3479).
- 3.) **Accumulation of Rubbish Prohibited** – simply stated all rubbish, trash, and garbage shall be regularly removed from the individual properties and not allowed to accumulate (CC&Rs Article XII Section 3).
- 4.) **Compliance with Laws** – Related to the use and occupancy of the individual properties, prompt compliance is required by Members with all laws, statutes, ordinances, rules and regulations of Federal, State or municipal governments or authorities (CC&Rs Article XII Section 6).



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### **C. MEMBER'S RIGHT TO INSPECT AND COPY RECORDS**

Members have the right to inspect and copy the association's books and records (Civil Codes 1363(f) & 1365.2, Corp Code 8330 & 8333). The association may bill the requesting Member for the direct and actual cost of copying requested documents. The association must inform the Member of the amount of the copying costs before copying the requested documents (Civil Code 1365.2(b)(1), Corp Code 8311).

1. **Proper Purpose** - A Member's request to inspect records must be for a proper purpose reasonably related to his or her interests as a member of the association (Civil Code 1365.2(e), Corp Code 8330 & 8333). Association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a Member's interest as a member. Associations may bring actions against persons who violate this section for injunctive relief and damages (Civil Code 1365.2(e)).
2. **Right to Designate Agent** - Members may designate another person, agent or attorney to inspect records. The Member shall make the designation in writing (Civil Code 1365.2(b)(2), Corp Code 8311).
3. **Inspection Location** - Records must be made available at the association's onsite business office or, if there is none, at a mutually agreed upon location. If the parties cannot agree on a location or if the Member submits a request for copies of specifically identified records, the association may copy the documents and mail them to the Member. (Civil Code 1365.2(c)).
4. **Electronic Form** - Requesting parties shall have the option of receiving specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that electronic format (Civil Code 1365.2(h)).
5. **Records Subject to Inspection** - The following records are subject to inspection and copying (Civil Code 1365.2(a)). Except for minutes which are permanently available, associations need only produce records for the current and 2 previous fiscal years. Older records may be disposed of in accordance with a proper disposal policy.
  - financial documents required by Civil Code 1365 (budget, reserves, lien policies, insurance, financial statement, etc.);
  - financial documents required by Civ.Code 1368 (governing documents, assessments, violation notices, construction defects, etc.);
  - interim unaudited financial statements;
  - salaries paid to employees, vendors, or contractors (except as provided by attorney-client privilege) which shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information;
  - executed contracts that are not privileged (privileged contracts shall not include contracts for maintenance, management, or legal services);
  - state and federal tax returns;
  - reserve account balances and of payments from reserve accounts;



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- board, committee and membership meeting agendas and minutes;
  - membership lists; invoices, receipts, canceled checks, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.
6. **Records Not Subject to Inspection** - (Civil Code 1363.05(b) & 1365.2(d)):
- Board executive session agendas, minutes and information;
  - personnel records (other than payroll records);
  - litigation files or records protected by the attorney-client privilege;
  - pending contracts;
  - Legal invoices;
  - records likely to lead to identity theft;
  - records likely to lead to fraud;
  - records reasonably likely to compromise the privacy of an individual member (such as owner records, including goods or services provided to members for which the association received monetary consideration other than assessments);
  - disciplinary actions, collection activities, or payment plans of other owners;
  - personal information, including social security number, tax id number, driver's license number, credit card account numbers, bank account number, and bank routing number;
  - interior architectural plans for individual homes.

**Redacting Information** - The association may withhold or redact (blacken, strike through) records or information described above. However, if requested by the owner, the association shall provide a written explanation specifying the legal basis for withholding or redacting requested records (Civil Code 1365.2(d)).



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### **D. RECORDS RETENTION POLICY**

Following is a general guideline for how long records should be kept.

1. **Permanent**
  - a.) Financial Records (chart of accounts, general ledgers and journals, year-end financial statements, tax returns and worksheets)
  - b.) Employee Medical Records
  - c.) Governing Documents (CC&Rs, Bylaws, Articles of Incorporation)
  - d.) Minutes of Meetings
  - e.) Deeds
2. **Seven Years**
  - a.) Financial Records (accounts payable, accounts receivable ledgers, trial balances and billing records, canceled checks, expense analyses and expense distribution schedules, invoices from vendors)
  - b.) Expired Contracts  
Personnel Records (payroll records, employee records after termination)
  - c.) Insurance Records (accident reports, settled claims, expired policies, fidelity bonds)
3. **Four Years**
  - a.) Applications for Employment
  - b.) Financial Records (bank statements, deposit slips, reconciliations, budgets, petty cash vouchers, purchase orders);
  - c.) General Correspondence
4. **One Year**  
Ballots from elections



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### **VII. MISCELLANEOUS TOPICS**

#### **A. DAMAGE TO COMMON AREAS**

Even if the CC&Rs do not provide for reimbursement assessments, the Board can impose a monetary penalty as a means of reimbursing the association for costs incurred by the association repairing damage to common areas caused by a Member or the Member's guests or tenants (Civil Code 1367(b)). The Board should make sure the expenses are clearly documented and that the documentation is provided to the Member. In addition, the Board should hold a hearing to give the Member an opportunity to ask questions and/or dispute the charges. If the Member refuses to pay for the damage, the association may lien the Member's unit and foreclose as provided by statute (Civil Code 1367(b)).

#### **B. DUTY TO MAKE REPAIRS TO COMMON AREAS**

Associations are responsible for repairing common areas pursuant to the CC&Rs and California law (Civil Code 1364(a)). Boards are NOT obligated to fix every defect that might exist in the common areas as they are allowed to make business decisions about what to repair, when to repair it and how. While California law imposes no duty on associations to maintain common area assets in perfect condition, and residents and guests have a duty to use ordinary care for their own safety, the Board must move quickly to inspect reported defects and repair, if deemed necessary, in order to eliminate threats of injury to persons or property.

#### **C. ASSOCIATION'S STANDING TO SUE & DEFEND**

Associations have standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest without joining with it the individual owners, in matters pertaining to the following:

1. Enforcement of the governing documents.
2. Damage to the common areas
3. Damage to a separate interest that the association is obligated to maintain or repair.
4. Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair.



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### ***APPENDIX A – ANNUAL DISCLOSURE SAMPLES***

1. **Operating Budget**
2. **Notice of Assessments and Foreclosure**
3. **Assessment and Reserve Funding Disclosure Summary**
4. **Assessment Collection Policy**
5. **Insurance Coverage**
6. **Regular Assessment Increase**
7. **Right to Minutes**
8. **Dispute Resolution**
9. **Description of Internal Dispute Resolution Process**

**SEE THE FOLLOWING PAGES FOR EXAMPLES OF EACH DISCLOSURE**



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### **APPENDIX A – ANNUAL DISCLOSURE SAMPLES (cont.)**

#### **Operating Budget**

##### **LSCA Budget for Fiscal Year 4/01/2008 - 3/31/2009**

<b>EXPENSES</b>	<b>Amount</b>	
Accounting & Taxes	\$9,999	9.9%
Insurance	\$9,999	9.9%
Legal	\$9,999	9.9%
Membership	\$9,999	9.9%
Sandpiper	\$9,999	9.9%
Social	\$9,999	9.9%
Improvement & Repairs	\$9,999	9.9%
Grounds	\$9,999	9.9%
Maintenance & Improvements	\$9,999	9.9%
Lighting	\$9,999	9.9%
Parking	\$9,999	9.9%
Pool Maintenance	\$9,999	9.9%
Utilities	\$9,999	9.9%
<b>SUB-TOTAL</b>	<b>\$99,999</b>	
Addition to Reserve Fund	<b>\$99,999</b>	99.9%
<b>TOTAL EXPENSES</b>	<b><u>\$99,999</u></b>	
<b>REVENUES</b>		
Assessment per Lot	\$999	
x # of Lots	99	
<b>TOTAL REVENUES</b>	<b><u>\$99,999</u></b>	
Quarterly Assessment per Lot	\$999	





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### **APPENDIX A – ANNUAL DISCLOSURE SAMPLES (cont.)**

#### **Notice of Assessments and Foreclosure**

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

**NOTICE ASSESSMENTS AND FORECLOSURE.** This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the **Civil Code** indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

**ASSESSMENTS AND NONJUDICIAL FORECLOSURE.** Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 1366, 1367.1, and 1367.4 of the **Civil Code**)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the **Civil Code**)

The association must comply with the requirements of Section 1367.1 of the **Civil Code** when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the **Civil Code**)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the **Civil Code**)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the **Civil Code**)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

**PAYMENTS.** When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Sections 1367.1 of the **Civil Code**)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the **Civil Code**)

**MEETINGS AND PAYMENT PLANS.** An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the **Civil Code**) The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the **Civil Code**)



# Lido Sands Community Association

## Directors Handbook

### **APPENDIX A – ANNUAL DISCLOSURE SAMPLES (cont.)**

#### **Assessment and Reserve Funding Disclosure Summary - for FYE 3/31/2008**

- (1) The current regular assessment per ownership interest is \$ [REDACTED] per Quarter.
- (2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members: **Regular Assessments Increased to \$ [REDACTED] Per Quarter effective 4/1/2008**
- (3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association's obligation for repair and/or replacement of major components during the next 30 years? Yes **X** No \_\_\_\_\_
- (4) If the answer to #3 is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members? **N/A**
- (5) All major components are included in the reserve study and are included in its calculations.
- (6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5\*, the estimated amount required in the reserve fund at the end of the current fiscal year is \$ [REDACTED] based in whole or in part on the last reserve study or update prepared by LSCA as of November, 2005. The projected reserve fund cash balance at the end of the current fiscal year is \$ [REDACTED] resulting in reserves being **[REDACTED] % funded** at this date.
- (7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5\*, the estimated amount required in the reserve fund at the end of each of the next five budget years is **SEE BELOW**, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is **SEE BELOW**, leaving the reserve at the funded levels shown below at the end of the listed budget year.

<b>BUDGET YEAR</b>	<b>Estimated Reserves Required</b>	<b>Estimated Reserve Balance</b>	<b>Percentage Funded</b>
<b>FYE 3/31/09</b>	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %
<b>FYE 3/31/10</b>	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %
<b>FYE 3/31/11</b>	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %
<b>FYE 3/31/12</b>	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %
<b>FYE 3/31/13</b>	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] %

\* 1365.2.5(b)(4) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the board to fund reserves in accordance with this calculation.

**DISCLAIMER:** The information contained in this disclosure is a PROJECTION ONLY. Because the reserve study is a projection, the estimated lives and costs of components will likely change over time depending on a variety of factors such as (i) future inflation rates, (ii) levels of maintenance applied by future boards, and (iii) unknown defects in materials that may lead to premature failures, etc ... As a result some components may experience longer lives while others will experience premature failures. Some components may cost less at the time of replacement while others may cost more.



# Lido Sands Community Association

## Directors Handbook

### **APPENDIX A – ANNUAL DISCLOSURE SAMPLES (cont.)**

#### **Assessment Collection Policy**

##### **Statement of Policies and Practices in Enforcing Lien Rights**

Regular assessments for common charges (“Dues”) are determined each year by the Board annually through the budgeting process, and are payable by the members in four quarterly payments. A statement will be mailed to members quarterly, and payment will be due on the first day of each quarter (“Due Date”), as follows: April 1, July 1, October 1, and January 1. Non-receipt of a statement shall in no way relieve the member of the obligations to pay the amount due by the Due Date. **No Reminders will be sent.** It shall be the responsibility of the member to advise the Board, in writing, of any change in billing address.

The account will become delinquent if payment is not received thirty-one (31) days after the Due Date (“Delinquent Date”). Delinquent accounts will be charged a 10% late charge as of the Delinquent Date. Notices of delinquency will be mailed to members, reflecting the addition of the late charge to the account balance.

If the account balance is not paid in full within thirty (30) days of the Delinquent Date, the account balance shall accrue interest at 12% from the Delinquent Date, and the Board may, at its option, bring an action at law against the member. Any delinquent balance, including unpaid late charges, shall be deemed basis for legal action. Legal action may include turning the account over to an attorney for collection and the filing of a lien on the property. The delinquent member will be responsible for costs associated with such legal action.

In addition, the Board may, at its option, declare the balance of the assessment for the fiscal year due and payable immediately, and accrue late charges and interest on the increased account balance pursuant to rates previously established. The Board may also suspend the voting rights and membership privileges, including the right of the member, family, and guests to use the community recreational facilities, until the delinquent balance, including late charges, accrued interest, collection fees and reasonable attorneys’ fees, is paid in full.



# Lido Sands Community Association

## Directors Handbook

### ***APPENDIX A – ANNUAL DISCLOSURE SAMPLES (cont.)***

#### **Annual Insurance Disclosure Statement**

The California Civil Code offers civil liability protection to owners, including Directors and Officers, within common interest developments (such as Lido Sands Community Association) if minimum limits of liability insurance are maintained. The following is information regarding the purchased insurance coverage for Lido Sands Community Association, which satisfies the minimum requirements set forth in the California Civil Code (sections 1365.7 and 1365.9):

Name of Insurer:  
Name of Agent:



Insurance Type	Term	Policy Limits	Deductibles
Property	—	\$	\$
General Liability	—	\$ / \$	\$
Directors & Officers	—	\$ / \$	\$
Fidelity	—	\$	\$

The Association is not required to carry Earthquake or Flood Insurance for the common area, and therefore currently does not purchase those coverages.

**This summary of the association’s policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association’s insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association’s policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.**

#### **Right to Minutes**

The association must annually disclose to its members their right to receive minutes of open board meetings within 30 days of the meeting, and how and where those minutes may be obtained. The following disclosure will satisfy the requirement:

Minutes of all open meetings of the board are available to members within 30 days of the meeting. The minutes, proposed minutes or summary minutes may be obtained at by contacting the President or Secretary of the association. In addition, the minutes, proposed minutes or summary will be distributed to any member of the association upon request and upon reimbursement of the association’s costs for making that distribution.



# Lido Sands Community Association

## Directors Handbook

### **APPENDIX A – ANNUAL DISCLOSURE SAMPLES (cont.)**

#### **Alternative Dispute Resolution**

Sections 1369.510 to 1369.590 of the Civil Code require that before owners and associations file lawsuits against each other for declaratory relief or injunctive relief in connection with a claim for money damages under \$5,000 or for enforcing the association's governing documents, the filing party shall endeavor to submit the dispute to alternative dispute resolution ("ADR"). Forms of ADR include mediation, negotiation, and binding or nonbinding arbitration. This provision does not apply to the filing of cross-complaints.

The ADR process is initiated by one party serving a Request for Resolution upon the other parties to the dispute. The request must include (i) a brief description of the dispute, (ii) a request for ADR, (iii) a notice that a response must be received within thirty (30) days or it will be deemed rejected, and (iv) a copy of Civil Code Sections 1369.510 to 1369.590.

If the individual receiving the request agrees to ADR, the process must be completed within ninety (90) days unless otherwise extended by agreement. The cost of ADR is to be paid by the participating parties. If a civil suit is filed, the filing party must submit to the court a Certificate of Compliance indicating the party has complied with the requirements of Sections 1369.510 to 1369.590. Failing to do so would be grounds for challenging the lawsuit.

Although the prevailing party is entitled to reasonable attorneys' fees and costs, the court may consider a party's refusal to participate in ADR when making the award. A description of the Association's internal dispute resolution process, as required by Civil Code Section 1363.850, is below.

NOTE: Failure by any member of the association to comply with the alternative dispute resolution requirements of Civil Code §1369.520 may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.

#### **Description of Internal Dispute Resolution Process (Civil Code Section 1363.850)**

1. This policy applies to a dispute between the Association and a member involving their rights, duties, or liabilities under the Davis-Stirling Act, under the provisions of the Corporations Code relating to mutual benefit corporations (commencing with Corporations Code Section 7110), or under the Association's governing documents.
2. Either party to a dispute within the scope of this article may invoke the following procedure:
  - a.) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
  - b.) A member of the Association may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
  - c.) The Association's Board of Directors shall designate a member of the Board to meet and confer.
  - d.) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
  - e.) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.
3. A member of the Association will not be charged a fee to participate in the process.



# Lido Sands Community Association

## Directors Handbook

### **APPENDIX B1 – HOA DOCUMENT REQUEST**

This form will vary by Escrow Company; however, some Escrow officers don't have a format, so this can be forwarded as a sample.

ABC Escrow Co.  
Address  
City, State ZIP  
Phone # / FAX #

SAMPLE

TO: Lido Sands Community Association  
P.O. Box 1373  
Newport Beach, CA 92659

Date: \_\_\_\_\_

Escrow No: \_\_\_\_\_

Seller: \_\_\_\_\_

Property Address: \_\_\_\_\_

An escrow has been opened in our office for the transfer of the above referenced property. Please furnish the following information in connection with the Homeowner's Association affecting the property:

Amount of Dues \$ \_\_\_\_\_ Payable: ( ) Monthly ( ) Quarterly ( ) Annually  
Dues are currently paid to: \_\_\_\_\_ Next Due Date: \_\_\_\_\_  
Makes checks payable to: \_\_\_\_\_  
Delivery for address: \_\_\_\_\_  
Transfer Fee of \$: \_\_\_\_\_ Payable to: \_\_\_\_\_  
Other Fees (upfront), if any \_\_\_\_\_ Payable to: \_\_\_\_\_  
Special Assessments: \_\_\_\_\_ Pending Lawsuits? Yes/No \_\_\_\_\_

Please furnish copies of the following documents:

- **Statement of Account**
- **Articles of Incorporation**
- **By-Laws**
- **Conditions, Covenants & Restriction's (CC&R's)**
- **Current Financial Statement**
- **Budget**
- **Policies & Procedures**
- **Pending Assessments, if any**
- **12 Months Minutes**
- **Litigation, if any**
- **Blanket Insurance Policy covering the individual units, if applicable**

Insurance Agent: \_\_\_\_\_ Phone \_\_\_\_\_  
Address: \_\_\_\_\_

Please complete, sign on the next line and returned to the undersigned.

**FORM COMPLETED BY:** \_\_\_\_\_ **PHONE** \_\_\_\_\_

Sincerely,  
ABC Escrow Company  
<Name>, <Title>



# Lido Sands Community Association

## Directors Handbook

### **APPENDIX B2 – HOA DOCUMENT REQUEST RESPONSE**

This can be customized to fit the circumstances.



Lido Sands Community Association  
Post Office Box 1373, Newport Beach, CA 92659

VIA E-MAIL ONLY

<Date>

To: <Name>, <Title>  
Escrow Officer, ABC Escrow Company  
<Address>, <City, State, ZIP>

Re: Escrow # \_\_\_\_\_  
<Property Address>  
Escrow opened by <Seller>

As requested, the following documents are attached (pdf files) for delivery to the buyer:

- By-Laws, Articles of Incorporation, and CC&R's
- Financial Statement - FY Ending 3/31/20XX
- Budget for fiscal year 20XX-XX
- 12 Months Minutes (Mmm 20XX – Mmm 20XX)
- Policies and Procedures
  - LSCA Parking Regulations
  - LSCA Recreation Center Rules & Regulations
- Insurance Certificate (see below for information on insurance)

Association Dues are presently \$\$\$\$ for the fiscal year April 1, 20XX through March 31, 20XX. Dues are payable immediately (i.e., April 1<sup>st</sup>); however, as a courtesy, Members can make payments in quarterly installments of \$\$\$, due April 1<sup>st</sup>, July 1<sup>st</sup>, October 1<sup>st</sup>, and January 1<sup>st</sup>. Payment must be made payable to Lido Sands Community Association, and can be added to the Transfer fee of \$250 in one payment (see next paragraph).

Please note that attached behind this page is a Notice to Buyer form which discusses significant points in the CC&R's which requires buyer's acknowledgement. **The Transfer fee of \$250 payable to Lido Sands Community Association can be paid at closing.**

There is currently no pending litigation and no special assessments are anticipated. In response to the letter inquiry, **there is no blanket insurance policy** covering the individual units as each homeowner is responsible for purchasing homeowners insurance coverage for their individual property. The insurance coverage maintained by LSCA is related to the common areas and Directors & Officers of LSCA.

Upon close of Escrow please advise us on the names and the current telephone number of the new owners, in order that the Association's Membership Chairman may contact them. Also if the new owners will not be receiving mail at <Property Address>, please provide a current mailing address.

If you require any additional information please contact me at \_\_\_\_\_.

Sincerely,




# Lido Sands Community Association

## Directors Handbook

### **APPENDIX B3 – NOTICE TO HOME BUYERS**

#### **CERTIFICATION OF NON-COMMERCIAL USE**



**Lido Sands Community Association**  
Post Office Box 1373, Newport Beach, CA 92659

VIA E-MAIL ONLY

<Date>

To: <Name>, <Title>  
Escrow Officer, ABC Escrow Company  
<Address>, <City, State, ZIP>

Re: Escrow # \_\_\_\_\_  
<Property Address>  
Escrow opened by <Seller>

**Notice to Home Buyers of lot in Lido Sands Community Association:**

Please be advised that special attention should be given to the following sections in the CC&R's:

**Article IV – Powers & Duties**  
Section 1 - Management  
Section 2 – Authority of Board of Directors  
Section 2A – Enforcement  
Section 2B – Rules

**Article XII – Miscellaneous Covenants**  
Section 1 – Commercial Use  
Section 2 – Nuisance  
Section 6 – Compliance with Laws

Pursuant to these governing document provisions **Weekly Rentals** are considered lodging and therefore considered Commercial Use and in violation of Article XII, Section 1 of the CC&R's.

Sincerely,

A signed and dated copy must be returned to the above address prior to the close of Escrow in order for the buyer to receive the following: **Community Keys**, **Parking Permits**, and **Guest Passes**.

Buyer Name \_\_\_\_\_

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_