

EVERYTHING YOU NEED TO KNOW TO SEND ASSOCIATION DOCUMENTS VIA E-MAIL

(AND A FORM TO HELP YOU DO IT!)

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Effective January 1, 2010, Civil Code section 1350.7 was amended to permit California homeowner associations to, with the owner's written consent, distribute "annual disclosure packages" and other specified association documents to owners via electronic mail, facsimile or other electronic means (such as posting on the association's website) instead of sending those documents out by regular mail or personal delivery. This article will provide you with what you need to comply with the new law, such as

- identification of the documents that you can send out electronically,
- what you need from owners to enable you to e-mail (instead of "snail mail") Association documents,
- record keeping requirements, e.g., the owner's written consent and other information that you should keep on file to show that you sent out documents electronically, and
- a form that you can customize and ask owners to complete and return so you can start sending Association documents via e-mail.

Association Documents That Can Be Delivered Electronically

Under Civil Code section 1350.7, as amended, the following documents can be delivered to owners electronically (via e-mail or posting on the association's official website) or by fax, provided the owner has given his or her written consent:

- Assessment and Reserve Funding Disclosure Summary (form)
- Pro Forma Operating Budget or Pro Forma Operating Budget Summary
- Assessment Collection Policy
- Notice/Assessments and Foreclosure (form)
- Insurance Coverage Summary
- Board Minutes Access
- Alternative Dispute Resolution (ADR) Rights (summary)
- Internal Dispute Resolution (IDR) Rights (summary)
- Architectural Changes Notice
- Secondary Address Notification Request
- Monetary Penalties Schedule
- Reserve Funding Plan

- Review of Financial Statement
- Annual Update of Reserve Study
- Disclosure Documents Index (Civil Code section 1363.005)

In addition, existing law already allows associations to transmit the following documents electronically or by fax (again with the owner’s written consent):

- Notice of Proposed Rule Changes/New Rules or Policies
- Adopted Rule Changes/New Rules or Policies
- Notice of a Member “Petition” to Overturn Rule Changes/ New Rules or Policies
- Notice of Availability of Year-End Financial Report

Association Documents That Cannot Be Delivered Electronically

At present, the law does not permit an association to satisfy its disclosure obligations by sending out any other association documents electronically that are not listed above. Those documents must still be “snail mailed” or hand-delivered.

For example, Civil Code section 1366(d) requires associations to give owners not less than 30, nor more than 60 days notice, before any increased regular (i.e., “monthly”) assessment or a special assessment is due. That notice cannot be transmitted by e-mail or by posting on the association’s website – it must be sent by first class mail. Many associations notify owners that their monthly assessment has been increased (and what the new payment is) by including a notice or explanation in the “annual disclosure packet” that is mailed between 30 and 90 days before the beginning of the association’s new fiscal year. If an association follows that practice, it must also separately mail out notices of the new monthly assessment amount to the owners because giving notice via inclusion in an e-mailed annual budget package is not permitted by law. Failure to “snail mail” notices of increased assessment to owners who are receiving their budget packages by e-mail may give rise to challenges to the association’s ability to collect the increased assessment.

Owner’s Written Consent

In order to transmit association documents via e-mail or by posting on the association’s website, the association must first receive the owner’s written consent. That written consent must satisfy the requirements of Corporations Code section 20 and contain the following: (1) a clear written statement as to whether the owner also has the right to obtain a “hard copy” of the document(s) in addition to the electronic form, (2) identification of whether the consent applies only to a particular transmission or to specified categories of communications or all communications from the association, and (3) the procedures that the owner must use to withdraw his or her consent.

An owner, after signing the written consent, can return it to the association by (i) mail, (ii) personal delivery, and (iii) facsimile transmission. The signed, written consent can even be scanned and e-mailed to the association.

Posting Association Documents on Official Association Website

In lieu of sending association documents via e-mail, the documents can be distributed by the association by posting them on the association's "official website" provided (i) the owner has provided his or her written consent, and (ii) the association sends a separate notice to the owner that the documents have been posted and are available for viewing.

Recordkeeping

Associations must keep copies of the written consents returned by owners. Associations must also keep track of those owners who have consented to receipt of association documents via e-mail, as well as those who have changed their e-mail addresses and even revoked their consent to receive documents via e-mail. This information can be maintained on a separate schedule and should be updated regularly. The information can be stored (or "retained") electronically, but you should be able to retrieve and print it out.

Associations must maintain a record of what has been sent out electronically, when it was sent, and to whom. This can be accomplished by printing out a copy of the e-mail transmittal (or "e-mail blast") that shows the date, e-mail addresses of the owners/recipients, and identifies the attachment(s). The e-mail transmittal (and attachments) can be stored (or "retained") electronically, but the law requires that the documents must be capable of being retrieved, reviewed, and "rendered into clearly legible tangible form" (i.e., printed out). To be safe, print out and maintain hard copies of the transmittal and attachments.

Form of Owner's Written Consent

Attached to this article is a form of owner's written consent that can be customized to fit your particular association. The 2-page form has been formatted so that it will be double-sided. The front side is to be completed and signed by the owner, and "instructions and further information" are on the reverse.

The form provides an owner's consent to delivery, *by e-mail*, of all association documents that are capable, *under current law*, of being distributed electronically. The form does not give the owner the ability to pick and choose which documents he or she will get by e-mail – that would be overly burdensome for associations to manage. Also, the consent form is not designed to give consent to delivery of association documents via posting on the official website.

There will be situations where there is more than one record owner. All record owners are asked to complete and sign the form; however, if less than all of them do so, the association can presume that the person completing the form has the authority from the other owner(s) and transmit documents only to the e-mail address listed on the form (see the second paragraph on the reverse of the form).

We recommend that the owner also be given the ability to obtain a "hard copy" of the document(s) in addition to the electronic form – there may be situations where an owner's

computer is “down” or not working. Notice of this right is provided (see the third paragraph on the reverse of the form).

Owners are informed of the procedures for changing their e-mail address (see reverse of form under the heading entitled “Change of E-Mail Address”), and also told how to “revoke” their consent (see reverse of form under the heading entitled “Revocation by Owner”). The written consent will be deemed to be automatically terminated when the association becomes aware that the owner is no longer the record owner of a unit or lot in the development (see reverse of form under the heading entitled “Automatic Termination”).

Conclusion

Thankfully, the laws governing California homeowners associations are slowly starting to catch up with advances in communications technology. This is evidenced by new Civil Code section 1350.7 to permit HOAs to distribute “annual disclosure packages” and other specified documents to owners via electronic mail, facsimile or other electronic means, with the owner’s written consent. Understanding and adhering to the requirements imposed by law will enable associations to save time and money (and help the environment) by e-mailing those documents as opposed to photocopying and mailing them out.

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[INSERT NAME, ADDRESS, ETC. OF ASSOCIATION]

REQUEST FOR DELIVERY OF ASSOCIATION DOCUMENTS BY E-MAIL

The undersigned hereby certify/certifies that he/she/they is/are the record owner(s) (if one, or more than one, collectively the "Owner") of the unit/lot identified below located within the _____ [condominium project/planned development]. Owner hereby requests that whenever _____ Association ("Association") distributes any of the following Association documents (collectively, "Association Documents") to the Association's membership, the Association will send them via electronic transmission to the e-mail address(es) listed below in lieu of personal or mail delivery to Owner's physical address:

- Assessment and Reserve Funding Disclosure Summary (form)
- Pro Forma Operating Budget or Pro Forma Operating Budget Summary
- Assessment Collection Policy
- Notice/Assessments and Foreclosure (form)
- Insurance Coverage Summary
- Board Minutes Access
- Alternative Dispute Resolution (ADR) Rights (summary)
- Internal Dispute Resolution (IDR) Rights (summary)
- Architectural Changes Notice
- Secondary Address Notification Request
- Monetary Penalties Schedule
- Reserve Funding Plan
- Review of Financial Statement
- Annual Update of Reserve Study
- Disclosure Documents Index

Date: _____
name of owner _____ unit/lot address _____
signature _____ e-mail address _____

Date: _____
name of owner _____ unit/lot address _____
signature _____ e-mail address _____

PLEASE SEE THE INSTRUCTIONS AND FURTHER INFORMATION INCLUDED ON THE REVERSE. THOSE INSTRUCTIONS AND FURTHER INFORMATION ARE SPECIFICALLY INCORPORATED INTO THIS REQUEST BY THIS REFERENCE.

INSTRUCTIONS AND FURTHER INFORMATION:

- Where there is more than one record Owner, each Owner should complete and sign this Request.
- If fewer than all record owners complete this Request, the Association will deem that to mean that the owner(s) submitting this request has/have the consent of all other record owners that the Association Documents shall be delivered to the e-mail address(es) indicated above in lieu of personal or mail delivery, unless the Association is notified to the contrary in writing.
- Upon written request to the Association, Owner shall have the right to “hard copies” of any Association Documents that are delivered via-email.
- This request shall be forwarded to _____ Association [*insert Association’s name*] in one of the following manners: (i) by mail or personal delivery to _____ Association at [*insert Association’s mailing address*], (ii) by facsimile transmission to [*insert Association’s fax number*], or (iii) as an attachment to an e-mail transmitted to [*insert Association’s e-mail address*].
- **CHANGE OF E-MAIL ADDRESS:** Owner is responsible for notifying the Association of any change in e-mail address(es). Owner may change the e-mail address(es) for delivery of Association Documents by sending a written notice of change of address, signed by the Owner, to the Association. Such notice shall also identify the unit/lot address, and be forwarded to the Association in one of the following manners: (i) by mail or personal delivery to _____ Association at [*insert Association’s mailing address*], (ii) by facsimile transmission to [*insert fax number*], or (iii) as an attachment to an e-mail transmitted to [*insert Association’s e-mail address*].
- **REVOCAION BY OWNER:** Owner has the right to revoke this request and receive “hard copies” of the Association Documents via personal or mail delivery by sending a written revocation, signed by the Owner, to the Association. Such revocation shall also identify the unit/lot address, and be forwarded to the Association in one of the following manners: (i) by mail or personal delivery to _____ Association at [*insert Association’s mailing address*], (ii) by facsimile transmission to [*insert Association’s fax number*], or (iii) as an attachment to an e-mail transmitted to [*insert Association’s e-mail address*].
- **AUTOMATIC TERMINATION:** This request will automatically terminate and Association Documents will cease to be transmitted to the e-mail address(es) listed above upon receipt by the Association of information from any source deemed reputable by the Association that Owner is no longer the record owner of the unit/lot identified above.