

Second Supplement to Memorandum 2020-27

Emergency-Related Reforms: Common Interest Development Meetings

The Commission¹ has received four more comments on the proposed study of common interest development meetings during an emergency. They are attached in an Exhibit, as follows:

	<i>Exhibit p.</i>
• Nanette Johnston, Granite Bay (6/17/20).....	1
• Elaine Roberts Musser, Davis (6/25/20).....	3
• Adrian Adams, Adams Stirling (6/29/20).....	5
• Marjorie Murray, Center for California Homeowner Association Law (7/1/20).....	7

Ms. Roberts Musser, Mr. Adams, and Ms. Murray all refer to existing Civil Code Section 4090(b), which authorizes videoconference meetings in common interest developments (“CIDs”):

4090. “Board meeting” means either of the following:

(a) ...

(b) A teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this act. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend, and at least one director or a person designated by the board shall be present at that location. Participation by directors in a teleconference meeting constitutes presence at that meeting as long as all directors participating are able to hear one another, as well as members of the association speaking on matters before the board.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

That would likely be the provision that would need to be amended if the Commission were to proceed with this study.

The commenter's other points are summarized below:

- Ms. Johnston supports the proposed reform. She would like to make it applicable generally, rather than limiting it to emergencies. **The Commission should consider that possibility.**
- Ms. Johnston and Ms. Musser suggest that the law should require that telephone access be permitted in any teleconference meeting, to enable those without computers to participate. **The staff agrees.**² That is the Commission's practice and it has not been unduly difficult. The Commission's own experience also demonstrates the importance of allowing a telephone connection. In its first teleconference meeting, one member of the public had computer audio problems and was only able to address the Commission after reconnecting by telephone.
- Both Ms. Musser and Mr. Adams note that existing law requires that at least one physical location be held open for member attendance. **The Commission should consider the possibility of waiving that requirement in an emergency.** Without the Governor's waiver of a similar requirement in the Bagley-Keene Open Meeting Act, the Commission would not have been able to meet in May.
- Ms. Murray emphasizes the importance of requiring that CID boards provide clear participation instructions in meeting notices. **The Commission should take a close look at that issue.**
- Ms. Murry suggests that CIDs be required to record their teleconference meetings and make the recordings available to members after the meeting concludes (as the Commission does with its meetings). **That possibility is not clearly tied to addressing an emergency, but is worth considering on its merits.**

The staff appreciates the helpful input from the commenters.

Respectfully submitted,

Brian Hebert
Executive Director

2. See Memorandum 2020-27, p. 2 ("telephone participation should be required as an option, to avoid excluding those with limited access to computer connectivity").

NANETTE JOHNSTON, GRANITE BAY
(JUNE 17, 2020)

We like it and would like to see teleconference meetings w/ telephone connection for those w/o computers/internet to be able to be done ALL THE TIME, not just for emergency situations.

-Nanette Johnston
Granite Bay, CA

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June 25, 2020

CA Law Revision Commission
c/o UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616

Re: Memorandum 2020-27; Emergency Related Reforms: CID Meetings.

Dear Sirs,

I am an attorney in private practice and a strong consumer advocate, particularly in the area of homeowner association law. In reference to the CA Law Revision Commission's suggestion to promulgate legislation to allow homeowner association meetings via teleconferencing, I would note that CA Civil Code Section 4090 of Davis-Stirling already allows teleconferencing. It defines a board meeting as:

“A teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend, and at least one director or a person designated by the board shall be present at that location. Participation by directors in a teleconference meeting constitutes presence at that meeting as long as all directors participating are able to hear one another, as well as members of the association speaking on matters before the board. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this act.”

There are two problematic sections. First, low income folks and the elderly often do not have access to the internet or a computer, but almost everyone has access to a telephone. Therefore in my opinion CA Civil Code Section 4090 needs to be revised so that a board meeting is defined as:

*“A teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through **audio, or both audio and video**”.*

In other words CA Civil Code Section 4090 should not allow teleconferencing by video only.

Second, the Law Revision Commission is going to have to wrestle with the requirement:

“Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend, and at least one director or a person designated by the board shall be present at that location.”

The following sentence could be added:

“The requirement of a physical location so that members of the association may attend in person can be suspended in the case of a state or federal emergency”.

I think just a few tweaks to an already existing statute would be an easy way to allow for teleconferencing in an emergency. But whether you choose to do this or not, teleconferencing should not include video only.

Respectfully,



Elaine Roberts Musser

June 29, 2020

Via Email: bhebert@clrc.ca.gov

California Law Revision Commission
c/o UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616

Re: Common Interest Developments (Memorandum 2020-27)

Dear Commission Members:

Our firm represents thousands of homeowner associations throughout California. We recognize the difficulty associations have conducting business during emergencies. Pandemics, wildfires, earthquakes, floods and other emergencies can make it impossible for boards to satisfy the meeting requirements of Civil Code §4090(b), i.e., that a physical location be set aside where owners can attend and listen to or observe the board's meeting.

The current pandemic as demonstrated that technology has made it possible for all members to attend and participate in meetings via computer, tablet, cellphone or even conventional phones. Accordingly, we strongly support revising the Davis-Stirling Act to allow association members to participate in meetings via video and teleconferencing during emergencies.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Adrian Adams", written over a horizontal line.

Adrian J. Adams, Esq.
ADAMS | STIRLING
A Professional Law Corporation



July 1, 2020

California Law Revision Commission
Attn: Brian Hebert, Executive Secretary
UC Davis Law School, 400 Mrak Drive
Davis, California 95616 -- via email to bhebert@clrc.ca.gov

Re: CLRC Memo 20-27 on Emergency Measures: Common Interest Development Meetings

TO: The Members of the Commission:

California law already permits the boards of California common interest developments to meet by videoconference. Recognizing that boards may need – or choose – to meet by phone or video conference instead of in person only, the Legislature amended the Open Meeting Act in 2011 via SB563¹ to permit both phone and videoconference meetings. The law is not triggered by an emergency. Associations can use electronic conferencing routinely.²

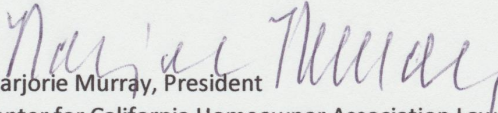
The caveat to this form of meeting is that clear arrangements be made for homeowner participation in the electronic meeting, meaning that homeowners must be given the technical data necessary to participate. To meet by phone or video, boards must of course also comply with the specific noticing requirements of the Common Interest Development Open Meeting Act.

As we see it, the chief benefit of electronic meetings is to encourage the participation of the membership in association governance. A chronic lament of boards is “homeowner apathy,” especially when it comes to recruiting members to take on committee assignments or to run for a board seat. Unfortunately, boards may unintentionally encourage “apathy” by holding board meetings at inconvenient times and locations.³ Boards could remove these obstacles to homeowner participation by using existing Civil Code §4090(b) that permits phone and video conferencing.

Though a statute already exists that permits videoconferencing – even under non-emergency circumstances – the current pandemic creates an opportunity to re-visit and to strengthen these Open Meeting Act provisions, e.g. boards should be required to record the proceedings and make them available to the membership, just as the Commission itself now stores its proceedings in the CLRC archive. Fortunately, there are now inexpensive ways to archive materials on YouTube and Facebook and Instagram, for example. Creating the archive makes it possible for those who can’t attend Commission meetings to re-visit them later via the archive.. We’d like to see association boards follow this example and also the intent of the Governor’s Executive Order N-29-20.

The Center for California Homeowner Association Law is a nonprofit whose mission is to protect the legal rights of homeowners living in California associations. To execute its mission, the Center initiates and monitors legislation impacting owners and monitors court rulings affecting homeowners. We look forward to working with the Commission on this issue.

Sincerely,


Marjorie Murray, President
Center for California Homeowner Association Law

¹ See Civil Code §4090(b).

² See SB563, Chapter 257 (2012 Statutes)

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB563

³ “Inconvenient times and locations” are a special concern for the thousands of HOAs in mountain areas.