

Memorandum 2020-48

**Emergency-Related Reforms:
Common Interest Development Meetings
(Draft Tentative Recommendation)**

As part of its work on emergency-related reforms, the Commission¹ has been developing a proposal to facilitate the use of teleconference meetings in common interest developments (CIDs) during an emergency.

At its August meeting, the Commission made all but one of the decisions necessary to prepare a tentative recommendation on this topic. A staff draft of a tentative recommendation that implements those decisions is attached.

The still unresolved issue — the method of delivery to be used for notice of a meeting conducted under the proposed law — is discussed below.

After considering that issue, the Commission should decide whether to approve the attached draft as a tentative recommendation, with or without changes.

All statutory references in this memorandum are to the Civil Code.

METHOD OF DELIVERY OF MEETING NOTICE

The CID statute establishes two forms of notice delivery, individual delivery (Section 4040) and general delivery (Section 4045).

Individual delivery includes delivery by mail or email (with the express consent of the recipient). Permissible forms of general delivery include any the methods authorized for individual delivery, as well as certain less individualized methods (e.g., “[p]osting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement...”).²

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.

2. Section 4045(a)(3).

Under existing law, notice of a board meeting is to be given by general delivery.³ If the Commission makes no change to the existing rule, notice of a board meeting conducted entirely by teleconference would also be given by general delivery.

At the August meeting, the Commission discussed whether the law should be changed to disallow reliance on a physically posted notice for a meeting conducted under the proposed law. That possibility was based on two concerns:

- The practicability of requiring members to visit a common area notice board during an emergency.
- The difficulty that members would face in transcribing detailed Internet address information from a posted notice.

The Commission discussed the following alternative approaches to providing notice under the proposed law:

- Prohibit physical posting as a sole means of providing notice.
- Require individual delivery, rather than general delivery.
- Continue the rule providing for general delivery of notice, but provide an option for members to request individual delivery of the notices. That option would be highlighted in the association's annual policy statement.

Although the Commission did not make a final decision on the method of delivery, there was strong interest in the third possibility. It would provide individual delivery to those members who wish to receive it, while avoiding the undue cost of individual delivery of the notice to all members. The staff was directed to bring the issue back to the Commission for decision.

On reviewing existing law on this matter, the staff realized an important fact that the staff did not recall during the oral discussion at the August meeting — **the third option listed above is a description of already existing law.**

Section 4045, which provides rules for giving notice by general delivery, concludes with the following provision:

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to Section 4040. The option provided in this subdivision shall be described in the annual policy statement, prepared pursuant to Section 5310.

3. Section 4920(c).

Section 5310 requires that the association's annual policy statement include notice of the option to receive general notices by individual delivery:

(a) Within 30 to 90 days before the end of its fiscal year, the board shall distribute an annual policy statement that provides the members with information about association policies. The annual policy statement shall include all of the following information:

...

(4) Notice of a member's option to receive general notices by individual delivery, pursuant to subdivision (b) of Section 4045.

...

If the Commission is satisfied with that rule, existing law on the issue could be continued without change. That is the approach taken in the attached draft. In addition, the Comment to proposed Section 5450 would draw attention to those rules:

Paragraphs (b)(1) and (2) govern the required content of notice of a meeting conducted under this section. The method of delivery of a board meeting notice is governed by Section 4045 (general delivery). Under Section 4045(b) any member has the right to receive meeting notice by individual delivery under Section 4040, which can include delivery by electronic mail. That option must be noted in the common interest development's annual policy statement. See Section 5310(a)(4).

Alternatively, the Commission could revise the attached draft to require individual notice of all meetings conducted under the proposed law, thus:

(5) Notice of a meeting conducted under this section shall be delivered by individual delivery, pursuant to Section 4040.

That approach would achieve the highest degree of actual notice, but the delivery costs could be significant.

To aid the Commission in making a decision on this issue, Sections 4040, 4045, and 5310 are set out below:⁴

4040. (a) If a provision of this act requires that an association deliver a document by "individual delivery" or "individual notice," the document shall be delivered by one of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.

4. Those provisions were enacted on the Commission's recommendation. See *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010).

(2) Email, facsimile, or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. The consent may be revoked, in writing or by email, by the recipient.

(b) Upon receipt of a request by a member, pursuant to Section 5260, identifying a secondary address for delivery of notices of the following types, the association shall deliver an additional copy of those notices to the secondary address identified in the request:

(1) The documents to be delivered to the member pursuant to Article 7 (commencing with Section 5300) of Chapter 6.

(2) The documents to be delivered to the member pursuant to Article 2 (commencing with Section 5650) of Chapter 8, and Section 5710.

(c) For the purposes of this section, an unrecorded provision of the governing documents providing for a particular method of delivery does not constitute agreement by a member to that method of delivery.

4045. (a) If a provision of this act requires “general delivery” or “general notice,” the document shall be provided by one or more of the following methods:

(1) Any method provided for delivery of an individual notice pursuant to Section 4040.

(2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.

(3) Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to Section 5310.

(4) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to Section 4040. The option provided in this subdivision shall be described in the annual policy statement, prepared pursuant to Section 5310.

5310. (a) Within 30 to 90 days before the end of its fiscal year, the board shall distribute an annual policy statement that provides the members with information about association policies. The annual policy statement shall include all of the following information:

(1) The name and address of the person designated to receive official communications to the association, pursuant to Section 4035.

(2) A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses, pursuant to subdivision (b) of Section 4040.

(3) The location, if any, designated for posting of a general notice, pursuant to paragraph (3) of subdivision (a) of Section 4045.

(4) Notice of a member's option to receive general notices by individual delivery, pursuant to subdivision (b) of Section 4045.

(5) Notice of a member's right to receive copies of meeting minutes, pursuant to subdivision (b) of Section 4950.

(6) The statement of assessment collection policies required by Section 5730.

(7) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.

(8) A statement describing the association's discipline policy, if any, including any schedule of penalties for violations of the governing documents pursuant to Section 5850.

(9) A summary of dispute resolution procedures, pursuant to Sections 5920 and 5965.

(10) A summary of any requirements for association approval of a physical change to property, pursuant to Section 4765.

(11) The mailing address for overnight payment of assessments, pursuant to Section 5655.

(12) Any other information that is required by law or the governing documents or that the board determines to be appropriate for inclusion.

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

How would the Commission like to address this issue?

APPROVAL OF TENTATIVE RECOMMENDATION

The Commission now needs to decide whether to approve the attached draft as a tentative recommendation, with or without changes.

Respectfully submitted,

Brian Hebert
Executive Director

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Emergency-Related Reforms: Common Interest Development Meetings

September 2020

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN NOVEMBER 1, 2020.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

Existing law provides that a common interest development can only conduct a meeting by teleconference if at least one physical location is held open for participation by the owners of separate interests.

The Commission recommends that this requirement be waived during a declared emergency, provided that certain procedural safeguards are met.

This recommendation was prepared pursuant to Resolution Chapter 158 of the Statutes of 2018.

1 EMERGENCY-RELATED REFORMS:
2 COMMON INTEREST DEVELOPMENT
3 MEETINGS

4 A common interest development (“CID”) is a housing¹ development
5 characterized by (1) separate ownership of dwelling space (or a right of exclusive
6 occupancy) coupled with an undivided interest in common property, (2)
7 covenants, conditions, and restrictions that limit use of both the common area and
8 separate ownership interests, and (3) management of common property and
9 enforcement of restrictions by a community association. CIDs include
10 condominiums, community apartment projects, housing cooperatives, and planned
11 unit developments.²

12 Existing law generally requires that meetings of the board of directors of a
13 CID’s managing association be open to the membership of the association. These
14 requirements are similar in spirit to the open meeting laws that govern state and
15 local government entities.³

16 Existing law allows a CID board to meet by teleconference, but only if there is
17 at least one physical location held open for attendance by members and at least
18 one director attends at that location.⁴

19 A similar requirement exists for state and local agencies.⁵

20 As a result of the COVID-19 pandemic, it became unsafe for groups of people to
21 congregate. “Stay at home” orders were issued, both locally and statewide. The
22 requirement that one location be held open to the public made it impracticable for
23 public bodies to use teleconferencing to conduct open meetings. This was a
24 serious problem, because teleconferencing was the only means of conducting
25 meetings safely during the public health emergency.

26 The same problem exists for CIDs. If association boards are to conduct meetings
27 safely, they may need to use teleconferencing to do so. But existing law makes
28 that impracticable, by requiring that a teleconference meeting be anchored by a
29 physical location that is open to attendance by members, with at least one
30 association official present at that location. Recent experience shows that
31 emergency conditions can persist for many months. It would not be feasible for a
32 CID board to be unable to meet for such a long period of time. This may be

1. Although most CIDs are residential, a CID may also include commercial units. An entirely nonresidential CID is exempt from many of the laws that govern residential CIDs. See Civ. Code § 1373.

2. See Civ. Code § 1351.

3. See Gov’t Code §§ 54950-54963 (Ralph M. Brown Act); 11120-11132 (Bagley-Keene Open Meeting Act).

4. See Civ. Code § 4090(b).

5. See Gov’t Code §§ 54953(b)(3), 11123(b)(1)(C).

1 especially true in a time of emergency. The board may need to make unusually
2 critical and time-sensitive decisions.

3 To address that problem for state and local government meetings, Governor
4 Newsom issued an executive order that waived the requirement that a physical
5 location be held open to the public when conducting a state or local government
6 meeting by teleconference.⁶

7 The Commission recommends a statutory reform to codify the same policy for
8 CIDs. The requirement that a CID board meeting conducted by teleconference
9 have a physical location that is open to members would be waived during a
10 declared emergency.

11 The application of that waiver would not be limited to infectious disease
12 emergencies. There may be other kinds of emergencies, like wildfires, that would
13 make it unsafe or otherwise impracticable for an association to meet in a physical
14 location.

15 In addition, the waiver would only apply if certain procedural safeguards are
16 satisfied:

- 17 • Notice of the meeting must include detailed instructions on how to
18 participate in the teleconference.
- 19 • The notice must include contact information for a person designated to
20 provide technical assistance with the teleconference process, both before
21 and during the meeting.
- 22 • A vote of the directors must be conducted by roll call.
- 23 • Members must be allowed to participate by telephone.

24 **The Commission invites public comment on this tentative recommendation.**

6. See Executive Order N-29-20.

PROPOSED LEGISLATION

1 **Civ. Code § 5450 (added). Emergency teleconference meeting**

2 SECTION 1. Article 11 (commencing with Section 5450) is added to Chapter 6
3 of Part 5 of Division 4 of the Civil Code, to read:

4 Article 11. Emergency Powers and Procedures

5 5450. (a) This section only applies to a common interest development that is in
6 an area affected by one or more of the following conditions:

7 (1) A state of disaster or emergency declared by the federal government.

8 (2) A state of emergency proclaimed by the Governor under Section 8625 of the
9 Government Code.

10 (3) A local emergency proclaimed by a local governing body or official under
11 Section 8630 of the Government Code.

12 (b) Notwithstanding subdivision (b) of Section 4090, any other law, or the
13 association's governing documents, a board meeting or meeting of the members
14 may be conducted entirely by teleconference, without any physical location being
15 held open for the attendance of any director or member, if all of the following
16 conditions are satisfied:

17 (1) The meeting notice provides clear technical instructions on how to
18 participate by teleconference.

19 (2) The meeting notice provides the telephone number and electronic mail
20 address of a person who can provide technical assistance with the teleconference
21 process, both before and during the meeting.

22 (3) Every director and member has the same ability to participate in the meeting
23 that would exist if the meeting were held in person.

24 (4) Any vote of the directors shall be conducted by a roll call vote.

25 (5) Any person who is entitled to participate in the meeting shall be given the
26 option of participating by telephone.

27 **Comment.** Section 5450 is new.

28 Subdivision (a) governs the application of the section. See also 42 U.S.C. §§ 247d (federal
29 public health emergency), 5120-5208 (federal disaster relief).

30 Subdivision (b) authorizes meetings to be conducted entirely by teleconference, if certain
31 conditions are met.

32 Paragraphs (b)(1) and (2) govern the required content of notice of a meeting conducted under
33 this section. The method of delivery of a board meeting notice is governed by Section 4045
34 (general delivery). Under Section 4045(b) any member has the right to receive meeting notice by
35 individual delivery under Section 4040, which can include delivery by electronic mail. That
36 option must be noted in the common interest development's annual policy statement. See Section
37 5310(a)(4).

38 Paragraph (b)(4) is similar to Government Code Section 11123(b)(1)(D).