

RESOLUTION 12-01-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code Section 4935, to read as follows:

1 § 4935

2 (a) The board may adjourn to, or meet solely in, executive session to consider litigation,
3 matters relating to the formation of contracts with third parties, but not the approval of such
4 contracts which must be done in non-executive session, member discipline, personnel matters, or
5 to meet with a member, upon the member's request, regarding the member's payment of
6 assessments, as specified in Section 5665.

7 (b) The board shall adjourn to, or meet solely in, executive session to discuss member
8 discipline, if requested by the member who is the subject of the discussion. That member shall be
9 entitled to attend the executive session.

10 (c) The board shall adjourn to, or meet solely in, executive session to discuss a payment
11 plan pursuant to Section 5665.

12 (d) The board shall adjourn to, or meet solely in, executive session to decide whether to
13 foreclose on a lien pursuant to subdivision (b) of Section 5705.

14 (e) Any matter discussed in executive session shall be generally noted in the minutes of
15 the immediately following meeting that is open to the entire membership.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem (including Existing Law): This statute address what items can and must be addressed in executive session of common interest development (aka HOA) board of directors. Subdivision (a) allows (but does not require) board of directors to discuss matters relating to the formation of contracts with third parties. This statute has been interpreted to mean that board of directors can not only discuss but also approve those contracts in executive session, where homeowners are not allowed to attend. This results in contract approval being made in private without the knowledge of the members. Unfortunately, many HOAs have taken advantage of this loophole, to the detriment of its members. See: <https://www.davis-stirling.com/HOME/Contract-Formation#axzz1eLb9uUe9>. Although there is a need to openly and frankly discuss bids and contract terms in private, the actual approval of those contracts should be made in the open session in order to provide more transparency to the members as to how their money is being spent.

The Solution: This resolution would require HOA boards to approve any contracts in the open, general session of the board of directors' meetings where homeowners are allowed to be present. This creates more transparency and accountability. The resolution will still give the board of

directors the option to discuss bids and contract terms in executive session, protecting the privacy of competing bids and frank discussions about bid, vendors, pricing and contract terms.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known

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RESPONSIBLE FLOOR DELEGATE: Melissa L. Bustarde, Esq.

RESOLUTION 12-02-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that Civil Code Section 5105 be amended to read as follows:

1 § 5105

2 (a) An association shall adopt operating rules in accordance with the procedures
3 prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the
4 following:

5 (1) Ensure that if any candidate or member advocating a point of view is provided access
6 to association media, newsletters, or internet websites during a campaign, for purposes that are
7 reasonably related to that election, equal access shall be provided to all candidates and members
8 advocating a point of view, including those not endorsed by the board, for purposes that are
9 reasonably related to the election. The association shall not edit or redact any content from these
10 communications, but may include a statement specifying that the candidate or member, and not
11 the association, is responsible for that content.

12 (2) Ensure access to the common area meeting space, if any exists, during a campaign, at
13 no cost, to all candidates, including those who are not incumbents, and to all members
14 advocating a point of view, including those not endorsed by the board, for purposes reasonably
15 related to the election.

16 (3) Specify the qualifications for candidates for the board and any other elected position,
17 subject to subdivision (b), and procedures for the nomination of candidates, consistent with the
18 governing documents. A nomination or election procedure shall not be deemed reasonable if it
19 disallows any member from nominating themselves for election to the board.

20 (4) Specify the voting power of each membership, the authenticity, validity, and effect of
21 proxies, and the voting period for elections, including the times at which polls will open and
22 close, consistent with the governing documents.

23 (5) Specify a method of selecting one or three independent third parties as inspector or
24 inspectors of elections utilizing one of the following methods:

25 (A) Appointment of the inspector or inspectors by the board.

26 (B) Election of the inspector or inspectors by the members of the association.

27 (C) Any other method for selecting the inspector or inspectors.

28 (6) Allow the inspector or inspectors to appoint and oversee additional persons to verify
29 signatures and to count and tabulate votes as the inspector or inspectors deem appropriate,
30 provided that the persons are independent third parties.

31 (7) Require retention of, as association election materials, both a candidate registration
32 list and a voter list. The voter list shall include name, voting power, and either the physical
33 address of the voter's separate interest, the parcel number, or both. The mailing address for the
34 ballot shall be listed on the voter list if it differs from the physical address of the voter's separate
35 interest or if only the parcel number is used. The association shall permit members to verify the
36 accuracy of their individual information on both lists at least 30 days before the ballots are
37 distributed. The association or member shall report any errors or omissions to either list to the
38 inspector or inspectors who shall make the corrections within two business days.

39 (b) An association shall disqualify a person from a nomination as a candidate for not
40 being a member of the association at the time of the nomination.

41 (1) This subdivision does not restrict a developer from making a nomination of a
42 nonmember candidate consistent with the voting power of the developer as set forth in the
43 regulations of the Department of Real Estate and the association's governing documents.

44 (2) If title to a separate interest parcel is held by a legal entity that is not a natural person,
45 the governing authority of that legal entity shall have the power to appoint a natural person to be
46 a member for purposes of this article.

47 (c) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of
48 Section 5105 only, an association may disqualify a person from nomination as a candidate
49 pursuant to any of the following:

50 (1) Subject to paragraph (2) of subdivision (d), an association may require a nominee for
51 a board seat, and a director during their board tenure, to be current in the payment of regular and
52 special assessments, which are consumer debts subject to validation. If an association requires a
53 nominee to be current in the payment of regular and special assessments, it shall also require a
54 director to be current in the payment of regular and special assessments.

55 (2) An association may disqualify a person from nomination as a candidate if the person,
56 if elected, would be serving on the board at the same time as another person who holds a joint
57 ownership interest in the same separate interest parcel as the person and the other person is either
58 properly nominated for the current election or an incumbent director.

59 (3) An association may disqualify a nominee if that person has been a member of the
60 association for less than one year.

61 (4) An association may disqualify a nominee if that person discloses, or if the association
62 is aware or becomes aware of, a past criminal conviction that would, if the person was elected,
63 either prevent the association from purchasing the fidelity bond coverage required by Section
64 5806 or terminate the association's existing fidelity bond coverage.

65 (d) An association shall disqualify a person from serving on the board if the person, at the
66 time of being elected or appointed, the election or appointment would violate any term limit
67 qualification imposed by the association's bylaws or election operating rules.

68 (1) Term limits may be adopted and incorporated in the association's election operating
69 rules by the board under article 5 of Chapter 3 (beginning with Section 4340).

70 (2) Term limits may be incorporated in the association's election operating rules by
71 approval of the members under Corporations Code section 5034, after adoption by either the
72 board or by written petition signed by at least 5% of the members.

73 (3) In event of a conflict between any term limits provisions adopted by the board and
74 those adopted by the membership, the provisions adopted by the membership shall prevail and
75 no term limit provision approved by the membership shall be altered or changed except by
76 approval of the membership per Corporations Code section 5034.

77 (4) If a conflict arises between two term limit provisions appearing on the same ballot,
78 and both are approved, the provision having the greater number of affirmative votes shall prevail.

79 ~~(d)~~(e). An association may disqualify a person from nomination for nonpayment of
80 regular and special assessments, but may not disqualify a nominee for nonpayment of fines, fines
81 renamed as assessments, collection charges, late charges, or costs levied by a third party. The
82 person shall not be disqualified for failure to be current in payment of regular and special
83 assessments if either of the following circumstances is true:

84 (1) The person has paid the regular or special assessment under protest pursuant to
85 Section 5658.
86 (2) The person has entered into a payment plan pursuant to Section 5665.
87 ~~(e)~~(f) An association shall not disqualify a person from nomination if the person has not
88 been provided the opportunity to engage in internal dispute resolution pursuant to Article 2
89 (commencing with Section 5900) of Chapter 10.
90 ~~(f)~~(g) Notwithstanding any other law, the rules adopted pursuant to this section may
91 provide for the nomination of candidates from the floor of membership meetings or nomination
92 by any other manner. Those rules may permit write-in candidates for ballots.
93 ~~(g)~~(h) Notwithstanding any other law, the rules adopted pursuant to this section shall do
94 all of the following:
95 (1) Prohibit the denial of a ballot to a member for any reason other than not being a
96 member at the time when ballots are distributed.
97 (2) Prohibit the denial of a ballot to a person with general power of attorney for a
98 member.
99 (3) Require the ballot of a person with general power of attorney for a member to be
100 counted if returned in a timely manner.
101 (4) Require the inspector or inspectors of elections to deliver, or cause to be delivered, at
102 least 30 days before an election, to each member both of the following documents:
103 (A) The ballot or ballots.
104 (B) A copy of the election operating rules. Delivery of the election operating rules may
105 be accomplished by either of the following methods:
106 (i) Posting the election operating rules to an internet website and including the
107 corresponding internet website address on the ballot together with the phrase, in at least 12-point
108 font: "The rules governing this election may be found here:"
109 (ii) Individual delivery.
110 ~~(h)~~(i). Election operating rules adopted pursuant to this section shall not be amended less
111 than 90 days prior to an election.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: The elimination of term limits for HOA directors was an unintended consequence of SB 323. In the next legislative session, Senator Wieckowski, the author of SB 323, introduced SB 969, which would have allowed HOA's to re-install term limits. However, it is unlikely that SB 969 will be effective in re-establishing term limits among HOA's, given that due to SB 323, many HOA's have already removed term limits from their governing documents. Amending those documents to re-impose term limits is unlikely to occur because the required procedures for amending governing document requires support from the board, and board members are likely to be reticent about imposing term limits on themselves.

An essential goal of SB 323, which came into effect on January 1, 2020, was to allow more open elections for homeowners in Common Interest Development Associations, commonly known as

“homeowner associations” (“HOA’s”). SB 323 eliminated *board* imposed qualifications against persons running for a director’s seat excepting only those qualifications provided for in the bill. By strictly controlling which sorts of qualifications could be imposed, SB 323 also eliminated any *term limit* provisions the HOA *members* might already have in their bylaws or election rules.

In an HOA, “term limits” typically means preventing someone from serving as a director more than X number of years before having to not run for re-election for a specified time, or that a person could only serve for some consecutive or commulative terms. Term limits benefit the membership by rotating the board and keeping elections open to challengers with new ideas and fresh enthusiasm. Eliminating term limits was an unintended consequence of SB 323 because term limits are typically imposed *by the membership*, while SB323’s goal was to eliminate arbitrary qualifications *imposed by incumbent directors* against challengers to their seats. Presently, Civil Code section 4340, et seq., only allows the HOA’s board to change election rules.

The Solution: This resolution would allow for term limits in HOA’s, including those adopted and approved by the members themselves.

This Resolution would reinstate any term limits provision that already appears in the association’s bylaws besides allowing term limits to be initiated and adopted by members.

Associations must be able to adopt term limitations to get more openness and transparency and get new people with new ideas involved with the HOA operations. The membership should also be allowed to adopt term limitations because Board members are typically unwilling to impose term limits upon themselves. This Resolution allows the members themselves, by direct action, to change their HOA’s election rules.

CURRENT OR PRIOR RELATED LEGISLATION:

Senate Bill 323 (2019-2020 Reg. Sess.) prohibited any director qualifications not explicitly allowed within the bill. While SB323 eliminated qualifications imposed by the incumbent directors to thwart challengers for their seats, it unintentionally also eliminated restrictions imposed by an association’s bylaws or election rules.

SB969 (2019-2020 Reg. Sess., rescinded due to the shortened 2020 Legislative Calendar) would have re-established term limits for HOA’s. However, unlike this Resolution, SB969 only allows term limits to be adopted by the HOA’s board and does not allow for term limits to be adopted and approved by the HOA’s membership. Since many board members likely would not impose term limits on themselves, the benefits of term limits wouldn’t be achieved by SB 969 in its present form.

IMPACT STATEMENT

This Resolution affects Civil Code Article 5, Chapter 3, Part 5 (beginning with section 4340). That Article only allows the HOA’s Board of Directors to initiate and adopt changes to the association’s election rules. This Resolution creates a narrow exception to that Article to allow members to initiate and adopt changes to their association’s election rules related to term limits.

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RESPONSIBLE FLOOR DELEGATE: Edward M. Teyssier

RESOLUTION 12-03-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that Civil Code sections 5105 & 5115 be amended to read as follows:

1 § 5105

2 (a) An association shall adopt operating rules in accordance with the procedures
3 prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the
4 following:

5 (1) Ensure that if any candidate or member advocating a point of view is provided access
6 to association media, newsletters, or internet websites during a campaign, for purposes that are
7 reasonably related to that election, equal access shall be provided to all candidates and members
8 advocating a point of view, including those not endorsed by the board, for purposes that are
9 reasonably related to the election. The association shall not edit or redact any content from these
10 communications, but may include a statement specifying that the candidate or member, and not
11 the association, is responsible for that content.

12 (2) Ensure access to the common area meeting space, if any exists, during a campaign, at
13 no cost, to all candidates, including those who are not incumbents, and to all members
14 advocating a point of view, including those not endorsed by the board, for purposes reasonably
15 related to the election.

16 (3) Specify the qualifications for candidates for the board and any other elected position,
17 subject to subdivision (b), and procedures for the nomination of candidates, consistent with the
18 governing documents. A nomination or election procedure shall not be deemed reasonable if it
19 disallows any member from nominating themselves for election to the board.

20 (4) Specify the voting power of each membership, the authenticity, validity, and effect of
21 proxies, and the voting period for elections, including the times at which polls will open and
22 close, consistent with the governing documents.

23 (5) Specify a method of selecting one or three independent third parties as inspector or
24 inspectors of elections utilizing one of the following methods:

25 (A) Appointment of the inspector or inspectors by the board.

26 (B) Election of the inspector or inspectors by the members of the association.

27 (C) Any other method for selecting the inspector or inspectors.

28 (6) Allow the inspector or inspectors to appoint and oversee additional persons to verify
29 signatures and to count and tabulate votes as the inspector or inspectors deem appropriate,
30 provided that the persons are independent third parties.

31 (7) Require retention of, as association election materials, both a candidate registration
32 list and a voter list. The voter list shall include name, voting power, and either the physical
33 address of the voter's separate interest, the parcel number, or both. The mailing address for the
34 ballot shall be listed on the voter list if it differs from the physical address of the voter's separate
35 interest or if only the parcel number is used. The association shall permit members to verify the
36 accuracy of their individual information on both lists until at least 30 days before the ballots are
37 distributed eight (8) days after the deadline for nominations. The association or member shall
38 report any errors or omissions to either list to the inspector or inspectors who shall make the
39 corrections within two business days.

40 (b) An association shall disqualify a person from a nomination as a candidate for not
41 being a member of the association at the time of the nomination.

42 (1) This subdivision does not restrict a developer from making a nomination of a
43 nonmember candidate consistent with the voting power of the developer as set forth in the
44 regulations of the Department of Real Estate and the association's governing documents.

45 (2) If title to a separate interest parcel is held by a legal entity that is not a natural person,
46 the governing authority of that legal entity shall have the power to appoint a natural person to be
47 a member for purposes of this article.

48 (c) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of
49 Section 5105 only, an association may disqualify a person from nomination as a candidate
50 pursuant to any of the following:

51 (1) Subject to paragraph (2) of subdivision (d), an association may require a nominee for
52 a board seat, and a director during their board tenure, to be current in the payment of regular and
53 special assessments, which are consumer debts subject to validation. If an association requires a
54 nominee to be current in the payment of regular and special assessments, it shall also require a
55 director to be current in the payment of regular and special assessments.

56 (2) An association may disqualify a person from nomination as a candidate if the person,
57 if elected, would be serving on the board at the same time as another person who holds a joint
58 ownership interest in the same separate interest parcel as the person and the other person is either
59 properly nominated for the current election or an incumbent director.

60 (3) An association may disqualify a nominee if that person has been a member of the
61 association for less than one year.

62 (4) An association may disqualify a nominee if that person discloses, or if the association
63 is aware or becomes aware of, a past criminal conviction that would, if the person was elected,
64 either prevent the association from purchasing the fidelity bond coverage required by Section
65 5806 or terminate the association's existing fidelity bond coverage.

66 (d) An association may disqualify a person from nomination for nonpayment of regular
67 and special assessments, but may not disqualify a nominee for nonpayment of fines, fines
68 renamed as assessments, collection charges, late charges, or costs levied by a third party. The
69 person shall not be disqualified for failure to be current in payment of regular and special
70 assessments if either of the following circumstances is true:

71 (1) The person has paid the regular or special assessment under protest pursuant to
72 Section 5658.

73 (2) The person has entered into a payment plan pursuant to Section 5665.

74 (e) An association shall not disqualify a person from nomination if the person has not
75 been provided the opportunity to engage in internal dispute resolution pursuant to Article 2
76 (commencing with Section 5900) of Chapter 10.

77 (f) Notwithstanding any other law, the rules adopted pursuant to this section may provide
78 for the nomination of candidates from the floor of membership meetings or nomination by any
79 other manner. Those rules may permit write-in candidates for ballots.

80 (g) Notwithstanding any other law, the rules adopted pursuant to this section shall do all
81 of the following:

82 (1) Prohibit the denial of a ballot to a member for any reason other than not being a
83 member at the time when ballots are distributed.

84 (2) Prohibit the denial of a ballot to a person with general power of attorney for a
85 member.

86 (3) Require the ballot of a person with general power of attorney for a member to be
87 counted if returned in a timely manner.

88 (4) Require the association to deliver, or cause to be delivered in the manner and by the
89 deadline specified, all of the notices and documents required under Section 5115 (a).

90 ~~(4) (5) Require the association to cause the inspector or inspectors of elections to deliver,~~
91 ~~or cause to be delivered in the manner and by the deadline specified, by individual delivery, at~~
92 ~~least 30 days before an election, to each member all of the following notices and documents~~
93 required under Section 5115 (b).

94 (A) The ballot or ballots.

95 ~~(B) A copy of the election operating rules. Delivery of the election operating rules may~~
96 ~~be accomplished by either of the following methods:~~

97 ~~(i) Posting the election operating rules to an internet website and including the~~
98 ~~corresponding internet website address on the ballot together with the phrase, in at least 12-point~~
99 ~~font: "The rules governing this election may be found here:"~~

100 ~~(ii) Individual delivery.~~

101 ~~(h) Election Changes to the election operating rules adopted pursuant to this section shall~~
102 ~~not be amended adopted or become effective less than 90 days prior to an election.~~

103 § 5115

104 ~~(a) An association shall provide general notice of the procedure and deadline for~~
105 ~~submitting a nomination at At least 30 days before any deadline for submitting~~
106 ~~a nomination. nomination an association shall provide general notice of all of the~~
107 ~~following: Individual notice shall be delivered pursuant to Section 4040 if individual notice is~~
108 ~~requested by a member.~~

109 (1) The date, time, and location of the meeting at which ballots will be counted

110 (2) The date by which ballots will be distributed .

111 (3) A copy of the election operating rules. Delivery of the election operating rules may
112 be accomplished by either of the following methods:

113 (A) Posting the election operating rules to an Internet website and including in the notice
114 the corresponding website address in the notice with the phrase, in at least 12-point font: "The
115 rules governing this election may be found here:"

116 (B) Individual delivery.

117 (4) The procedure and deadline for submitting a nomination.

118 (5) A list of candidate qualifications along with a statement, in accordance with Civil
119 Code Section 5105 (e), noticing that any potential candidate's right to participate in IDR with the
120 association, if the potential candidate is subject to disqualification.

121 (6) The procedure and deadline for members to verify the accuracy of their individual
122 information on both the voter list and list of candidates. The deadline to verify such information
123 shall be not earlier than the deadline stated in Section 5105(a)(7).

124 (7) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040
125 if individual notice is requested by a member.

126 ~~(b) An association shall provide general notice cause the inspector or inspectors of~~
127 ~~election to deliver or mail by first-class mail to all of the voters on the voter list notice of all of~~
128 ~~the following at least 30 days before the ballots are distributed prior to the deadline for voting:~~

129 ~~(1) The date and time by which, and the physical address where, ballots are to be returned~~
130 ~~by mail or handed to the inspector or inspectors of elections.~~

131 ~~(2) The date, time, and location of the meeting at which ballots will be counted.~~

132 ~~(3) The list of all candidates' names that will appear on the ballot.~~
133 ~~(4) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040~~
134 ~~if individual notice is requested by a member.~~

135 ~~(e) (3) The ballots and two preaddressed envelopes with instructions on how to return~~
136 ~~ballots, shall be mailed by first class mail or delivered by the association to every member not~~
137 ~~less than 30 days prior to the deadline for voting.~~ In order to preserve confidentiality, a voter
138 may not be identified by name, address, or lot, parcel, or unit number on the ballot. The
139 association shall use as a model those procedures used by California counties for ensuring
140 confidentiality of vote by mail ballots, including all of the following:

141 ~~(1) (A)~~ (A) The ballot itself is not signed by the voter, but is inserted into an envelope that is
142 sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand
143 corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name,
144 and indicate the address or separate interest identifier that entitles the voter to vote.

145 ~~(2) (B)~~ (B) The second envelope is addressed to the inspector or inspectors of elections, who
146 will be tallying the votes. The envelope may be mailed or delivered by hand to a location
147 specified by the inspector or inspectors of elections. The member may request a receipt for
148 delivery.

149 ~~(d) (c)~~ (c) A quorum shall be required only if so stated in the governing documents or
150 other provisions of law. If a quorum is required by the governing documents, each ballot
151 received by the inspector of elections shall be treated as a member present at a meeting for
152 purposes of establishing a quorum.

153 ~~(e) (d)~~ (d) An association shall allow for cumulative voting using the secret ballot
154 procedures provided in this section, if cumulative voting is provided for in the governing
155 documents.

156 ~~(f) (e)~~ (e) Except for the meeting to count the votes required in subdivision (a) of Section
157 5120, an election may be conducted entirely by mail unless otherwise specified in the governing
158 documents.

159 ~~(g) (f)~~ (f) In an election to approve an amendment of the governing documents, the text of
160 the proposed amendment shall be delivered to the members with the ballot.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): SB 323, which became effective on January 1, 2020, unnecessarily extended the time required for conducting elections in Common Interest Developments, commonly known as "homeowner associations" ("HOA's). Before SB 323, elections typically took about 60 days from the announcement date to tallying the votes. Presently, because of the extra steps required by SB 323 and the statutorily specified time of 30 days for each step, elections take up to 105 days, and even longer sometimes. This is too long! Not every step takes 30 days! The verification of the voters' and candidates' lists only needs to be about eight (8) days, saving about three (3) weeks.

Also, some steps required by SB 323 seem out of their logical order. For example, it is strange that under SB 323, the distribution of the rules for the election doesn't happen until the ballots are already being distributed and which is *after* the candidates have announced. Logically, the rules should be distributed when the election is first called and *before* anyone has become a candidate.

There needs to be clarification regarding whether the Inspector or the Association must distribute the ballots, and what other election materials are to be sent with those ballots.

The Solution: The statutes can, and should, be amended to reduce the time for conducting the HOA elections from about 105 days to about 70 days and eliminating no steps that would reduce the accountability and transparency of the election processes. This can and should be done by combining steps and allowing for reducing costs by combining mailings. This time reduction is possible by also reducing the time allowed for members and candidates to check and correct their information on the lists held by the Inspector from 30 days to just eight(8) days, which is adequate.

IMPACT STATEMENT

This Resolution would not have any impact on any other statutes.

CURRENT OR PRIOR RELATED LEGISLATION

Senate Bill SB 323 (2019-2020) Reg. Sess., which prescribes about 30 days for every step in the HOA election process.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 12-04-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that Civil Code section 4365 be amended to read as follows:

1 §4365

2 (a) Members of an association owning 5 percent or more of the separate interests may
3 call a ~~special vote~~ referendum ~~of~~ by the members to ~~reverse~~ require membership approval
4 of a any rule change.

5 (b) A ~~special vote~~ referendum ~~of~~ by the members may be called by delivering a ~~written~~
6 request signed petition to the ~~association~~ association's inspector of elections who shall verify,
7 but keep private, the identifying information of the separate interests. Not less than 35 days nor
8 more than 90 days after receipt of a proper request, the association shall hold a vote of the
9 members on whether to affirm or reject the rule ~~change~~, pursuant to Article 4 (commencing with
10 Section 5100) of Chapter 6. The vote of the members required by this section may be
11 consolidated within a regularly scheduled election. ~~The written request may not be delivered~~
12 ~~more than 30 days after the association gives general notice of the rule change, pursuant to~~
13 ~~Section 4045.~~

14 (c) If the written request is delivered not more than 30 days after the association gives
15 general notice of the rule change as required under Section 4360(c), then the adoption and
16 enforcement of the rule change shall be suspended until after the results of the vote on the
17 referendum.

18 ~~(e)~~(d) For the purposes of Section 5225 of this code and Section 8330 of the
19 Corporations Code, collection of signatures to call a ~~special~~ referendum vote under this section is
20 a purpose reasonably related to the interests of the members of the association. A member
21 request to copy or inspect the membership list solely for that purpose may not be denied on the
22 grounds that the purpose is not reasonably related to the member's interests as a member.

23 ~~(d)~~ (e) The rule ~~change may be reversed by~~ shall be deemed rejected unless the
24 referendum receives the affirmative vote of a majority of a quorum of the members, pursuant to
25 Section 4070, or if the declaration or bylaws require a greater percentage, by the affirmative vote
26 of the percentage required.

27 ~~(e)~~ (f) Unless otherwise provided in the declaration or bylaws, for the purposes of this
28 section, a member may cast one vote per separate interest owned.

29 ~~(f)~~ (g) A rule ~~change reversed~~ rejected under this section may not be readopted for one
30 year after the date of the vote ~~reversing~~ on the rule ~~change~~. Nothing in this section precludes the
31 board from adopting a different rule on the same subject as the rule ~~change~~ that has
32 been ~~reversed~~ rejected.

33 ~~(g)~~ (h) As soon as possible after the close of voting, but not more than 15 days after the
34 close of voting, the board shall provide general notice pursuant to Section 4045 of the results of
35 the member vote.

36 ~~(j)~~ (i) This section does not apply to an emergency rule change made by the board under
37 subdivision (d) of Section 4360.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Homeowners living in a common interest development have little control over the rules made by their board of directors. Like they already do with state and local governments, a citizen living in HOA's should have more influence over the rules that direct their daily lives.

HOA's have long been described as "quasi-governmental agencies:

"Indeed, the homeowners associations function almost as a second municipal government, regulating many aspects of [the homeowners'] daily lives. [U]pon analysis of the association's functions, one clearly sees the association as a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government. (*Villa Milano Homeowners Ass'n v. Il Davorge* (2000) 84 Cal. App.4th 819, 836; internal cites and quotation marks omitted).

Nevertheless, given the tremendous power that HOA's have over their citizens' daily lives, it is inexplicable those citizens cannot repudiate operating rules for their own HOA, even though they can initiate and vote on legislation at both the state and local levels. Instead, they must live under whatever rules their board of directors decides for them!

Even former Governor Jerry Brown was unaware that HOA's are more like dictatorships than democracies. In his letter rejecting SB 1265 (a bill that would make HOA elections more open and transparent), he wrote, "If changes to an [HOA] election process are needed, they should be resolved *by the members of that community.*" (Ltr to Senate dtd. 9/30/2018, re: SB 1265. Italics added for emphasis.) Hence, even the Governor was unaware that the law doesn't give the HOA community members the power to change their own operating rules even though he felt they already had and should have that power.

The Solution: This Resolution:

- (a) Allows the members of a homeowners association to eliminate those rules with which they disagree.
- (b) Provides practical limitations over the power of the members: For example, that any referendum can only be called by written petition signed by not less than 5% of the members. Approval must be by a majority of a quorum of the members voting on the initiative. It provides no means of allowing the membership to create or propose any rules, but only to either accept or reject those rules already adopted by the board. The membership cannot hold a referendum on any rules deemed by the board to be an emergency measure.
- (c) Ensures that petition signers for HOA initiatives have a similar guarantee of privacy afforded signers of petitions for state and local initiatives. (See, Elec. C. §18650.)

IMPACT STATEMENT

This Resolution does not any impact on any other statutes.

CURRENT OR PRIOR RELATED LEGISLATION

No related legislation.

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RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 12-05-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that Civil Code Section 5135 be amended, to read as follows:

1 §5135

2 (a) Association funds shall not be used for campaign purposes in connection with any
3 association ~~board~~ election. Funds of the association or access to association media, newsletters,
4 or internet websites shall not be used for campaign purposes in connection with
5 any ~~other~~ association election except to the extent necessary to comply with duties of the
6 association imposed by law.

7 (b) For the purposes of this section, “campaign purposes” includes, but is not limited to,
8 the following:

9 (1) ~~Expressly advocating~~ Any communication advocating for the election or defeat of any
10 candidate or for the approval or defeat of any issue that is on the association election ballot.

11 (2) Including the photograph or prominently featuring the name of any candidate or
12 promoting a position on an issue, on a communication from the association or its board,
13 excepting the ballot, ballot materials, or a communication that is legally required, within ~~30~~ 60
14 days of an election before the ballots are distributed and extending at least until the time the
15 ballots are counted. This is not a campaign purpose if the communication is one for which
16 subdivision (a) of Section 5105 requires that equal access be provided to another candidate or
17 advocate.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law: Board members of homeowner associations have used their position and control over their association’s money and media to advocate for their re-election or promote election issues while denying equal access to other members of the association with divergent views.

It would seem that Civil Code section 5135 was written to make sure that no one side can monopolize the association’s funds or media. However, unscrupulous HOA boards have used any opening in that language to thwart that intent.

For example, that section’s prohibition against “expressly” advocating doesn’t prevent directors on the board from promoting themselves by using association media and email lists to send, at homeowner expense and just before the election, letters and emails that give fawning praise to the board’s “hard work and accomplishment’s during the past year.” Even though such a communication doesn’t “expressly” state, “Re-elect the Board!” the conscious reader would nevertheless recognize it as subtle campaign advocacy that should be prohibited unless the

opposition is given equal access. The legislature probably did not anticipate that the directors on an HOA board would be so devious. However, a judge's hand is constrained by the exact words of the statute.

Also, the phrase "within 30 days of an election" is ambiguous since "an election" can mean the date that the ballots are counted, or it could mean the entire election campaign process, such as the time starting when candidates first announce their candidacy. For example, the court in one case, *Wittenburg v Beachwalk Homeowners Association* (2013) 217 Cal.App.4th 654, held that a period of about 18 months and three elections was one election campaign for the purpose of enforcing members' rights. In any event, if the right to equal access is to be meaningful, it must at least include the time when either side might be campaigning for the hearts and minds of the voters.

Also, section 5135 does not adequately cover elections dealing with issues, and not just candidates. To ensure fairness to all sides, there isn't any reason to distinguish board elections from any other type of election.

The Solution: This resolution solves all the above-identified problems with Civil Code section 5135 because it:

- a. Applies fairness and equal time to any manner of election, whether for a board seat or any other election.
- b. Amends subsection (b)(1) to prohibit one-sided campaign advocacy even if that advocacy doesn't explicitly instruct the reader how to vote.
- c. Specifies a readily determinable period—that the time includes but is not limited to 60 days before the ballots are distributed and until the ballots are counted.

IMPACT STATEMENT

This Resolution would not have any impact on any other statutes.

CURRENT OR PRIOR RELATED LEGISLATION

No related legislation.

AUTHOR AND/OR PERMANENT CONTACT:

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RESOLUTION 12-06-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that Civil Code Section 5120 be amended, to read as follows:

1 § 5120

2 (a) All votes shall be counted and tabulated by the inspector or inspectors of elections, or
3 the designee of the inspector of elections, in public at a properly noticed open meeting of the
4 board or members. Any candidate or other member of the association may witness the counting
5 and tabulation of the votes. No person, including a member of the association or an employee of
6 the management company, shall open either the first or second ballot envelope or otherwise
7 review any ballot prior to the time and place at which the ballots are counted and tabulated. The
8 inspector of elections, or the designee of the inspector of elections, may verify the member's
9 information and signature on the outer envelope prior to the meeting at which ballots are
10 tabulated. Once a secret ballot is received by the inspector of elections, it shall be irrevocable.

11 (b) The tabulated results of the election shall be promptly reported to the board and shall
12 be recorded in the minutes of the next meeting of the board and shall be available for review by
13 members of the association. Within 15 days of the election, the board shall give general notice
14 pursuant to Section 4045 of the tabulated results of the election.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law: A lack of specificity in the Davis-Stirling Act allows an easy way for a corrupt board member or inspector of elections to alter the outcome of an election improperly. This resolution would explicitly prohibit the opening of either the inner or outer ballot envelopes except by the inspector of elections and at the meeting held for publicly opening and counting the ballots.

The procedures for elections in Common Interest Developments, more commonly known as homeowner associations, or "HOA's," are found in that part of the Civil Code known as the Davis-Stirling Act at sections 5100-5145. Those sections allow that except for the meeting at which the ballots are opened and tallied, elections may be conducted entirely by mail, provided specific procedures are followed.

Existing law requires that to ensure voter secrecy while simultaneously confirming who has and who hasn't voted, a two envelope process be used, and preventing someone from casting multiple ballots. The ballot is sealed inside a first envelope that does not identify the voter. It is sealed inside a second envelope with the voter's name, address, and signature and is sent to the inspector of elections. Upon receipt, the inspector verifies the name and signature on the outer envelope and checks off that name on the list of allowed voters signifying that that voter has cast

his or her ballot. There is nothing further the inspector need do at that time. Indeed, section 5120 states, “No person...shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.” (See, § 5120 (a).)

There is, however, an ambiguity because the phrase “open or otherwise review any ballot” could be considered to mean to the prohibition against “opening” only applies to the unmarked inner envelope, i.e., the envelope containing the ballot, and doesn’t prohibit the opening of the outer envelope. However, allowing the opening of envelopes before the public meeting for that purpose would allow an unscrupulous person from secretly replacing valid ballot envelopes with counterfeit ballot envelopes—‘stuffing the ballot box.’

The Solution: Explicitly prohibit the opening of any ballots until and unless it is done at the public meeting held for the purpose of opening and counting the ballots.

The purpose of requiring that the opening and tallying of the ballot be held at a public meeting is to ensure the membership that the ballot envelopes are being opened are the ones delivered in the second envelopes mailed by the members. When the interested members can see for themselves that the counting process starts with sealed envelopes only, they have some confidence valid ballot envelopes haven’t been surreptitiously swapped out with phony ones.

IMPACT STATEMENT

This Resolution would not have any impact on any other statutes.

CURRENT OR PRIOR RELATED LEGISLATION

No related legislation.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 12-07-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that Civil Code Section 5145 be amended, to read as follows:

1 § 5145

2 (a) A member of an association may bring a civil action for declaratory or equitable relief
3 for a violation of this article by the association, including, but not limited to, injunctive relief,
4 restitution, or a combination thereof, within one year of the date that ~~the inspector or inspectors~~
5 ~~of elections notifies~~ the board and notifies the membership of the election results or the cause of
6 action accrues, whichever is later. If a member establishes, by a preponderance of the evidence,
7 that the election procedures of this article, or the adoption of and adherence to rules provided by
8 Article 5 (commencing with Section 4340) of Chapter 3, were not followed, a court shall void
9 any results of the election unless the association establishes, by a preponderance of the evidence,
10 that the association’s noncompliance with this article or the election operating rules did not affect
11 the results of the election. The findings of the court shall be stated in writing as part of the
12 record.

13 (b) A member who prevails in a civil action to enforce the member’s rights pursuant to
14 this article shall be entitled to reasonable attorney’s fees and court costs, and the court may
15 impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each
16 identical violation shall be subject to only one penalty if the violation affects each member of the
17 association equally. A prevailing association shall not recover any costs, unless the court finds
18 the action to be frivolous, unreasonable, or without foundation. If a member prevails in a civil
19 action brought in small claims court, the member shall be awarded court costs and reasonable
20 attorney’s fees incurred for consulting an attorney in connection with this civil action.

21 (c) A cause of action under subdivision (a) may be brought in either the superior court or,
22 if the amount of the demand does not exceed the jurisdictional amount of the small claims court,
23 in small claims court.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Among the many positive changes made by Senate Bill SB 323, which became effective on January 1, 2020, it also inadvertently changed the statute of limitation under Civil Code § 5145, extending that time to infinity, under most circumstances. There is an apparent error in the language of section 5145 that needs a simple fix.

Under existing law, the SOL for enforcement actions under section 5145 starts when the *Inspector* notifies both the Board *and membership* of the election results, whichever is later. However, that means the SOL never runs because notifying *the membership* isn’t part of the Inspector’s duties! Instead, notifying the membership is the board’s duty. The language of

section 5145 does not presently recognize that the duty to notify the membership is the board's duty, not the inspector's.

The portion of section 5145 establishing its statute of limitations provision implicitly and falsely assumes that the inspector gives notice to both the board *and the rest of the membership*. That portion states:

“...within one year of the date that the inspector or inspectors of elections notifies the board *and membership* of the election results or the cause of action accrues, whichever is later.” (Excerpted from Civ. C. §5145(a), italics added for emphasis.)

That assumption is false because, under existing law, only the board is responsible for giving notice to the membership. Civil Code section 5120 (b) specifies that “[w]ithin 15 days of the election, the board shall give general notice pursuant to Section 4045 of the tabulated results of the election.” (See, Civ. C. §5120(b).) Outside of this assumption, there is no mention in the code that the inspector is tasked with giving the membership notice of the election results. Given that the board is already tasked with notifying the membership of the election results, it would be absurd, and an unnecessary and expensive duplication of effort, to require the inspector to give the same notice to the same membership.

A fundamental goal for having a statute of limitations is to promote justice. Here, justice would not be served if the statute could, even theoretically, be extended to infinity if the inspector never gives notice to the membership, because that task wasn't among her duties, and when the board gave the prospective plaintiff(s) adequate notice.

The Solution: The statute of limitations under Section 5145 should be amended to specify it begins when *the Board* notifies the membership of the election results.

IMPACT STATEMENT

This Resolution does not impact on any other statute.

CURRENT OR PRIOR RELATED LEGISLATION

Senate Bill SB 323 (2019-2020) Reg. Sess., which changed the wording of section 5145 to include language that the statute of limitations runs when the inspector gives notice to both the board and membership.

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RESOLUTION 12-08-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that Civil Code Sections 4920 and 5200 be amended, to read as follows:

1 § 4920

2 (a) Except as provided in subdivision (b), the association shall give notice of the time and
3 place of a board meeting at least four days before the meeting.

4 (b) (1) If a board meeting is an emergency meeting held pursuant to Section 4923, the
5 association is not required to give notice of the time and place of the meeting.

6 (2) If a nonemergency board meeting is held solely in executive session, the association
7 shall give notice of the time and place of the meeting at least two days prior to the meeting.

8 (3) If the association's governing documents require a longer period of notice than is
9 required by this section, the association shall comply with the period stated in its governing
10 documents. For the purposes of this paragraph, a governing document provision does not apply
11 to a notice of an emergency meeting or a meeting held solely in executive session unless it
12 specifically states that it applies to those types of meetings.

13 (c) Notice of a board meeting shall be given by general delivery pursuant to Section
14 4045.

15 (d) Notice of a board meeting shall contain the agenda for the meeting, with instructions
16 on how a member may get a copy of the agenda packet for the open session portion of the
17 meeting.

18 (e) Any member may request in writing that a copy of the documents constituting the
19 agenda packet of the board meeting be mailed either by postal mail or electronically to that
20 member. Upon receipt of the written request, the association shall cause the requested materials
21 to be mailed when the agenda is posted or distributed to all or a majority of all legislative body
22 members, whichever occurs first. The association may not charge more than the actual costs of
23 copying and mailing the documentation.

24 § 5200

25 For the purposes of this article, the following definitions shall apply:

26 (a) "Association records" means all of the following:

27 (1) Any financial document required to be provided to a member in Article 7
28 (commencing with Section 5300) or in Sections 5565 and 5810.

29 (2) Any financial document or statement required to be provided in Article 2
30 (commencing with Section 4525) of Chapter 4.

31 (3) Interim financial statements, periodic or as compiled, containing any of the following:

32 (A) Balance sheet.

33 (B) Income and expense statement.

34 (C) Budget comparison.

35 (D) General ledger. A "general ledger" is a report that shows all transactions that
36 occurred in an association account over a specified period of time.

37 The records described in this paragraph shall be prepared in accordance with an accrual or
38 modified accrual basis of accounting.

39 (4) Executed contracts not otherwise privileged under law.

- 40 (5) Written board approval of vendor or contractor proposals or invoices.
41 (6) State and federal tax returns.
42 (7) Reserve account balances and records of payments made from reserve accounts.
43 (8) Agendas and minutes and all the documents constituting the agenda packet, of
44 meetings of the members, the board, and any committees appointed by the board pursuant to
45 Section 7212 of the Corporations Code; excluding, however, minutes and other information from
46 executive sessions of the board as described in Article 2 (commencing with Section 4900).
47 (9) Membership lists, including name, property address, mailing address, and email
48 address, but not including information for members who have opted out pursuant to Section
49 5220.
50 (10) Check registers.
51 (11) The governing documents.
52 (12) An accounting prepared pursuant to subdivision (b) of Section 5520.
53 (13) An “enhanced association record” as defined in subdivision (b).
54 (14) “Association election materials” as defined in subdivision (c).
55 (b) “Enhanced association records” means invoices, receipts and canceled checks for
56 payments made by the association, purchase orders approved by the association, credit card
57 statements for credit cards issued in the name of the association, statements for services
58 rendered, and reimbursement requests submitted to the association.
59 (c) “Association election materials” means returned ballots, signed voter envelopes, the
60 voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the
61 candidate registration list. Signed voter envelopes may be inspected but may not be copied.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Homeowner association board meetings are governed by the Open Meeting Act like governmental agency meetings are by the Brown Act. Homeowner Board meetings are supposed to be open to the membership like meetings governed by the Brown Act are supposed to be open to the public. However, unlike the Brown Act, the Open Meeting Act does not provide that the membership may view the agenda packet of all the documents provided to the board. Hence, members attending board meetings cannot discern what the board is talking about when the board refers to documents which aren’t made available to the members. The Open Meeting Act’s purpose is thwarted when the board meeting is conducted by reference to documents that the members cannot access.

Even after the meeting is over, the membership cannot expect to get copies of what the board considered because the documents in the agenda packet are not on the list of the documents in Civil Code section 5200.

The Solution: This resolution requires the association to make the agenda packets for association meetings available to the membership like Gov. C §54954.1 makes those packets available to the

public. Include the documents constituting the agenda packets for the association's meeting in the list of documents available to the membership under Civil Code section 5200.

IMPACT STATEMENT

This Resolution would not have any impact on any other statutes.

CURRENT OR PRIOR RELATED LEGISLATION

No related legislation.

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RESOLUTION 12-09-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that Civil Code sections 4340, 4350, 4355, 4360, 4365, & 4370 be amended, and 4375 added, to read as follows:

1 §4340

2 For the purposes of this article:

3 (a) “Operating rule” means a regulation adopted by the board or the members that applies
4 generally to the management and operation of the common interest development or the conduct
5 of the business and affairs of the association.

6 (b) “Rule change” means the adoption, amendment, or repeal of an operating rule ~~by the~~
7 ~~board.~~

8 §4350

9 An operating rule adopted by either the board or by the membership is valid and
10 enforceable only if all of the following requirements are satisfied:

11 (a) The rule is in writing.

12 (b) The rule, if adopted by the board, is within the authority of the board conferred by law
13 or by the declaration, articles of incorporation or association, or bylaws of the association.

14 (c) The rule is not in conflict with governing law and the declaration, articles of
15 incorporation or association, or bylaws of the association.

16 (d) The rule is adopted, amended, or repealed in good faith and in substantial compliance
17 with the requirements of this article.

18 (e) The rule is reasonable.

19 §4355

20 (a) Sections 4360 and 4365 only apply to an operating rule adopted by the board and that
21 relates to one or more of the following subjects:

22 (1) Use of the common area or of an exclusive use common area.

23 (2) Use of a separate interest, including any aesthetic or architectural standards that
24 govern alteration of a separate interest.

25 (3) Member discipline, including any schedule of monetary penalties for violation of the
26 governing documents and any procedure for the imposition of penalties.

27 (4) Any standards for delinquent assessment payment plans.

28 (5) Any procedures adopted by the association for resolution of disputes.

29 (6) Any procedures for reviewing and approving or disapproving a proposed physical
30 change to a member’s separate interest or to the common area.

31 (7) Procedures for elections.

32 (b) Sections 4360 and 4365 do not apply to the following actions by the board:

33 (1) A decision regarding maintenance of the common area.

34 (2) A decision on a specific matter that is not intended to apply generally.

35 (3) A decision setting the amount of a regular or special assessment.

36 (4) A rule change that is required by law, if the board has no discretion as to the
37 substantive effect of the rule change.

38 (5) Issuance of a document that merely repeats existing law or the governing documents.

39 §4360

40 (a) The board shall provide general notice pursuant to Section 4045 of a board proposed
41 rule change at least 28 days before making the rule change. The notice shall include the text of
42 the proposed rule change and a description of the purpose and effect of the proposed rule change.
43 Notice is not required under this subdivision if the board determines that an immediate rule
44 change is necessary to address an imminent threat to public health or safety or imminent risk of
45 substantial economic loss to the association.

46 (b) A decision on a proposed rule change shall be made at a board meeting, after
47 consideration of any comments made by association members.

48 (c) As soon as possible after making a rule change, but not more than 15 days after
49 making the rule change, the board shall deliver general notice pursuant to Section 4045 of the
50 rule change. The notice shall include the text of the rule change, a description of the purpose and
51 effect of the rule change and, if the rule change was an emergency rule change made under
52 subdivision (d), the notice shall include the text of the rule change, a description of the purpose
53 and effect of the rule change, and the date that the rule change expires.

54 (d) If the board determines that an immediate rule change is required to address an
55 imminent threat to public health or safety, or an imminent risk of substantial economic loss to the
56 association, it may make an emergency rule change, and no notice is required, as specified in
57 subdivision (a). An emergency rule change is effective for 120 days, unless the rule change
58 provides for a shorter effective period. A rule change made under this subdivision may not be
59 readopted under this subdivision.

60 §4365

61 (a) Members of an association owning 5 percent or more of the separate interests may
62 call a special vote of the members to reverse a rule change by the board.

63 (b) A special vote of the members may be called by delivering a written request to the
64 association. Not less than 35 days nor more than 90 days after receipt of a proper request, the
65 association shall hold a vote of the members on whether to reverse the rule change, pursuant to
66 Article 4 (commencing with Section 5100) of Chapter 6. The written request may not be
67 delivered more than 30 days after the association gives general notice of the rule change,
68 pursuant to Section 4045.

69 (c) For the purposes of Section 5225 of this code and Section 8330 of the Corporations
70 Code, collection of signatures to call a special vote under this section is a purpose reasonably
71 related to the interests of the members of the association. A member request to copy or inspect
72 the membership list solely for that purpose may not be denied on the grounds that the purpose is
73 not reasonably related to the member's interests as a member.

74 (d) The rule change may be reversed by the affirmative vote of a majority of a quorum of
75 the members, pursuant to Section 4070, or if the declaration or bylaws require a greater
76 percentage, by the affirmative vote of the percentage required.

77 (e) Unless otherwise provided in the declaration or bylaws, for the purposes of this
78 section, a member may cast one vote per separate interest owned.

79 (f) A rule change reversed under this section may not be readopted for one year after the
80 date of the vote reversing the rule change. Nothing in this section precludes the board from
81 adopting a different rule on the same subject as the rule change that has been reversed.

82 (g) As soon as possible after the close of voting, but not more than 15 days after the close
83 of voting, the board shall provide general notice pursuant to Section 4045 of the results of the
84 member vote.

85 (j) This section does not apply to an emergency rule change made by the board under
86 subdivision (d) of Section 4360.

87 § 4370

88 (a) This article applies to a rule change commenced on or after January 1, 2004.

89 (b) Nothing in this article affects the validity of a rule change commenced before January
90 1, 2004.

91 (c) For the purposes of this section, a rule change by the board is commenced when the
92 board takes its first official action leading to adoption of the rule change.

93 § 4375

94 Members of an association owning five percent or more of the separate interests may, by
95 written petition, call for a vote of the members to adopt a rule change.

96 (a) The rule change may be for any lawful purpose as described in section 4350(c), but
97 not for any purpose listed in section 4355(b).

98 (b) The rule change embracing more than one subject may not be proposed or have any
99 effect. A proposed rule change does not violate this single-subject requirement if, despite its
100 varied collateral effects, all of its parts are reasonably germane to each other, and to the general
101 purpose or objective of the proposal.

102 (c) The signatures on the petition may be presented in sections, provided that each section
103 includes the text of the call of the question to be voted on.

104 (d) Each section of the signed petition shall be presented to the inspector of elections, who
105 shall verify the signatures on the petition within two business days of delivery. Any signature on
106 the petition shall be kept confidential and, once presented, becomes irrevocable.

107 (e) For Section 5225 of this Code and Section 8330 of the Corporations Code, collection
108 of signatures to call for a vote on a rule change under this section is a purpose reasonably related
109 to the interests of the association members. A member request to copy or inspect the membership
110 list solely for that purpose may not be denied because the purpose is not reasonably related to the
111 member's interests as a member.

112 (f) Unless otherwise provided in the declaration or bylaws, for this section, a member may
113 cast one vote per separate interest owned.

114 (g) The election required by this section shall be consolidated with a regularly scheduled
115 general election for board members.

116 (h) The rule shall be adopted by the affirmative vote of a majority of a quorum of the
117 members, under Section 4070.

118 (i) Soon after the close of voting, but not over 15 days after the close of voting, the board
119 shall provide general notice under Section 4045 of the results of the member vote.

120 (j) A rule change adopted under this section may not be modified by the board, nor may
121 the board adopt a rule change in conflict with a membership adopted rule change without another
122 vote by the members approving any such changes.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Unlike at our state and municipal governmental agencies, there isn't any legal framework for homeowners living in homeowner associations ("HOA's") to initiate and vote on their association's operating rules. Homeowners can only "reverse" rules recently adopted by the board. Like they already do with state and local governments, a citizen living in HOA's should have more influence over the rules that direct their daily lives.

HOA's have long been described as "quasi-governmental agencies:

"Indeed, the homeowners associations function almost as a second municipal government, regulating many aspects of [the homeowners'] daily lives. [U]pon analysis of the association's functions, one clearly sees the association as a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government. (*Villa Milano Homeowners Ass'n v. Il Davorge* (2000) 84 Cal. App.4th 819, 836; internal cites and quotation marks omitted).

Nevertheless, given the tremendous power that HOA's have over their citizens' daily lives, it is inexplicable those citizens cannot initiate or adopt their own operating rules for their own HOA, even though they can initiate and vote on legislation at both the state and local levels. Instead, they must live under whatever rules their board of directors decides for them!

Even former Governor Jerry Brown was unaware that HOA's are more like dictatorships than democracies. In his letter rejecting SB 1265 (a bill that would make HOA elections more open and transparent), he wrote, "If changes to an [HOA] election process are needed, they should be resolved *by the members of that community.*" (Ltr to Senate dtd. 9/30/2018, re: SB 1265. Italics added for emphasis.) Hence, even the Governor was unaware that the law doesn't give the HOA community members the power to change their own operating rules even though he felt they already had and should have that power.

The Solution: This resolution allows homeowners to initiate and create operating rules for their association. Specifically:

- a. Modify the Code to reflect that members, not just the board, may initiate and adopt rules.
- b. Create a new section of the Code here, section 4375, -to provide the structure (petitioning requirements, verification of signatures, voting rights, scheduling of elections, etc.), to allow the members this level of direct democracy.
- c. Provide practical limitations: For example, that initiatives must be by written petition signed by not less than 5% of the members. Adoption must be by a majority of a quorum of the members voting on the initiative. Also, restrict member initiatives to those subjects not under the ministerial duty of the board.

IMPACT STATEMENT

This Resolution does not any impact on any other statues.

CURRENT OR PRIOR RELATED LEGISLATION

No related legislation.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Edward M Teyssier

RESOLUTION 12-10-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that Civil Code section 4515 be amended to read as follows:

1 § 4515

2 (a) It is the intent of the Legislature to ensure that members and residents of common
3 interest developments have the ability to exercise their rights under law to peacefully assemble
4 and freely communicate with one another and with others with respect to common interest
5 development living or for social, political, or educational purposes.

6 (b) The governing documents, including bylaws and operating rules, shall not prohibit a
7 member or resident of a common interest development from doing any of the following:

8 (1) Peacefully assembling or meeting with members, residents, and their invitees or
9 guests during reasonable hours and in a reasonable manner for purposes relating to common
10 interest development living, association elections, legislation, election to public office, or the
11 initiative, referendum, or recall processes.

12 (2) Inviting public officials, candidates for public office, or representatives of homeowner
13 organizations to meet with members, residents, and their invitees or guests and speak on matters
14 of public interest.

15 (3) Using the common area, including the community or recreation hall or clubhouse, or,
16 with the consent of the member, the area of a separate interest, for an assembly or meeting
17 described in paragraph (1) or (2) when that facility or separate interest is not otherwise in use.

18 (4) (i) Canvassing and petitioning the members, the association board, and residents for
19 the activities described in paragraphs (1) and (2) at reasonable hours and in a reasonable manner.

20 (ii) No one shall knowingly or willfully permit the list of signatures on a petition to be
21 used for any purpose other than qualification of the question for the ballot. Violation of this
22 subsection is a misdemeanor.

23 (5) Distributing or circulating, without prior permission, information about common
24 interest development living, association elections, legislation, election to public office, or the
25 initiative, referendum, or recall processes, or other issues of concern to members and residents at
26 reasonable hours and in a reasonable manner.

27 (c) A member or resident of a common interest development shall not be required to pay
28 a fee, make a deposit, obtain liability insurance, or pay the premium or deductible on the
29 association's insurance policy, in order to use a common area for the activities described in
30 paragraphs (1), (2), and (3) of subdivision (b).

31 (d) A member or resident of a common interest development who is prevented by the
32 association or its agents from engaging in any of the activities described in this section may bring
33 a civil or small claims court action to enjoin the enforcement of a governing document, including
34 a bylaw and operating rule, that violates this section. The court may assess a civil penalty of not
35 more than five hundred dollars (\$500) for each violation.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Unlike at our federal, state, and municipal governmental agencies, there isn't any protection of privacy for homeowners living in a homeowners association who sign a petition calling for a vote on some association issue.

If, for example, a petition is circulated in a homeowner association calling for a vote to recall a member of the association's board of directors, then it is likely that that board member would get the list of signers and then call or confront each signer and probably 'request' that they 'reconsider' their support for that petition.

If the Governor were to seek retribution against anyone who signed a recall petition, then that would be considered outrageous misconduct! It would be considered intimidation and a violation of the right of petitioning of those people who had signed. That's why Elections Code Section 18650 prohibits allowing anyone to view those recall petitions except only to validate the signatures.

But the First Amendment's protection for citizens to petition their government for redress of grievances doesn't apply to homeowners living in an association. Nor does Section 18650 of the Elections Code, the statute that protects the privacy of signers of state and local petitions, apply to homeowners to keep them free from intimidation and retribution from their board of directors.

This Resolution provides the same protection of privacy and freedom from intimidation that a homeowner has when signing a petition for her association, that she already has under Elections Code § 18650 when signing a petition dealing with state or municipal petition issue.

The Solution: This Resolution ensures that petition signers for HOA initiatives have a similar guarantee of privacy afforded signers of petitions for state and local initiatives. (See, Elec. C. §18650.)

IMPACT STATEMENT

This Resolution does not any impact on any other statutes.

CURRENT OR PRIOR RELATED LEGISLATION

No related legislation.

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RESOLUTION 12-11-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5120, to read as follows:

1 § 5120

2 (a) All votes shall be counted and tabulated by the inspector or inspectors of elections, or
3 the designee of the inspector of elections, in public at a properly noticed open meeting of the
4 board or members. The type of meeting shall be consistent with the governing documents. Any
5 candidate or other member of the association may witness the counting and tabulation of the
6 votes. No person, including a member of the association or an employee of the management
7 company, shall open or otherwise review any ballot prior to the time and place at which the
8 ballots are counted and tabulated. The inspector of elections, or the designee of the inspector of
9 elections, may verify the member’s information and signature on the outer envelope prior to the
10 meeting at which ballots are tabulated. Once a secret ballot is received by the inspector of
11 elections, it shall be irrevocable.

12 (b) The tabulated results of the election shall be promptly reported to the board and shall
13 be recorded in the minutes of the next meeting of the board and shall be available for review by
14 members of the association. Within 15 days of the election, the board shall give general notice
15 pursuant to Section 4045 of the tabulated results of the election.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: The San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): The California Legislature has estimated that dwellings within HOAs account for approximately a quarter of the state’s overall housing stock. As a result, the laws governing HOAs have a large impact on the population. See Sept. 9, 2019 Bill Analysis for SB 323 (Reg. Sess. 2019-2020). The Davis-Stirling Act sets out two types of meetings. They are “Board meeting” and “Member meeting.” Civil Code sections 4900-4955 and 5000. Because section 5120 states that the votes shall be counted and tabulated during either a board meeting or a member meeting, there is ambiguity. Because the section provides two options, HOA Boards may believe that they must follow the statutory language instead of the requirements in the HOA governing documents. See section 4205, which sets out the various document hierarchies.

The Solution: By requiring the type of meeting to be consistent with the requirements in the HOA’s governing documents, the ambiguity will be eliminated. As another example, section 5105(a)(4), within the same article, also requires certain information to be “consistent with the governing documents.”

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code section 4920 was Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805).

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RESOLUTION 12-12-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code sections 4935 and 5855, to read as follows:

1 § 4935

2 (a) The board may adjourn to, or meet solely in, executive session to consider litigation,
3 matters relating to the formation of contracts with third parties, member discipline, personnel
4 matters, or to meet with a member, ~~upon the member's request~~, regarding the member's payment
5 of assessments, as specified in Section 5665.

6 (b) The board shall adjourn to, or meet solely in, executive session to discuss member
7 discipline, ~~if requested by the member who is the subject of the discussion. That~~ The board shall
8 invite each affected member shall be entitled to attend the executive session. If the affected
9 member requests that the hearing to be held during open session, the board shall invite the
10 member to attend the open session, to conform to the procedures of this article.

11 (c) The board shall adjourn to, or meet solely in, executive session to discuss a payment
12 plan pursuant to Section 5665. The board shall invite each affected member to attend the
13 executive session. If the affected member requests that the hearing to be held during open
14 session, the board shall invite the member to attend the open session, to conform to the
15 procedures of this article.

16 (d) The board shall adjourn to, or meet solely in, executive session to decide whether to
17 foreclose on a lien pursuant to subdivision (b) of Section 5705.

18 (e) Any matter discussed in executive session shall be generally noted in the minutes of
19 the immediately following meeting that is open to the entire membership.

20 § 5855

21 (a) When the board is to meet to consider or impose discipline upon a member, or to
22 impose a monetary charge as a means of reimbursing the association for costs incurred by the
23 association in the repair of damage to common area and facilities caused by a member or the
24 member's guest or tenant, the board shall notify the member in writing, by either personal
25 delivery or individual delivery pursuant to Section 4040, at least 10 days prior to the
26 meeting. The disciplinary hearing shall be conducted during executive session, unless the
27 member requests a hearing during open session.

28 (b) The notification shall contain, at a minimum, the date, time, and place of the meeting,
29 the nature of the alleged violation for which a member may be disciplined or the nature of the
30 damage to the common area and facilities for which a monetary charge may be imposed, and a
31 statement that the member has a right to attend and may address the board at the meeting. The
32 board shall ~~meet in executive session if requested by the member~~ invite each affected member to
33 attend the executive session, consistent with the requirements of Section 4935. If the member
34 requests that the hearing be held during open session, the board shall invite the member to attend
35 the open session, consistent with the requirements of Article 2 (commencing with Section 4900)
36 of Chapter 6.

37 (c) If the board imposes discipline on a member or imposes a monetary charge on the
38 member for damage to the common area and facilities, the board shall provide the member a

39 written notification of the decision, by either personal delivery or individual delivery pursuant to
40 Section 4040, within 15 days following the action.

41 (d) A disciplinary action or the imposition of a monetary charge for damage to the
42 common area shall not be effective against a member unless the board fulfills the requirements
43 of this section.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: The San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): (Note: In section 4935, the term “executive session” means “closed session.”) When the Board intends to discuss member discipline or discuss a member’s plan for the payment of assessments, these are “confrontational” hearings. Consequently, the members have the right to confront the Board to defend their interests by attending such hearings. As a result, it is not proper for the member to have the burden to “request to appear” to protect the member’s interests. In addition, the Board should not have the option of holding such hearings without having invited the affected member to attend. Further, section 4935(b) and section 5855 currently allow the Board to hold member discipline hearings either during executive or open sessions. Holding disciplinary hearings during an open session is harmful because the affected members would then be subjected to public ridicule. In addition, the Board’s open session discussions are recorded in the meeting minutes – which all of the members can request copies of.

The Solution: Because Board discussions about member discipline or member payment plans are confrontational hearings, then the members should always have the right to attend. This resolution protects member rights by requiring HOA Boards to conduct discussions about member violations and member payment plans during executive session and by requiring the Board to invite the affected members to attend. This resolution also ensures the privacy of the affected members by defaulting to always requiring HOA Boards to always hold such hearings during executive session, unless the member requests a hearing during open session. Note: the Section 4935(b)&(c) references to “this article” refer to Civil Code Division 4, Part 5 (the “Davis-Stirling Act”), Chapter 6, Article 2, for “Board Meeting.”

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 12-13-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4920 and to add section 4940, to read as follows:

1 § 4920

2 (a) Except as provided in subdivision (b), the association shall give notice of the time and
3 place of a board meeting at least four days before the meeting.

4 (b) (1) If a board meeting is an emergency meeting held pursuant to Section 4923, the
5 association is not required to give notice of the time and place of the meeting.

6 (2) If a nonemergency board meeting is held solely in executive session, the association
7 shall give notice of the time and place of the meeting at least two days prior to the meeting.

8 (3) If the association’s governing documents require a longer period of notice than is
9 required by this section, the association shall comply with the period stated in its governing
10 documents. For the purposes of this paragraph, a governing document provision does not apply
11 to a notice of an emergency meeting or a meeting held solely in executive session unless it
12 specifically states that it applies to those types of meetings.

13 (c) Notice of a board meeting shall be given by general delivery pursuant to Section
14 4045.

15 (d) Notice of a board meeting shall contain the agenda for the meeting. The agenda shall
16 contain a brief general description of each item of business to be transacted or discussed at the
17 meeting, including items to be discussed in executive session. A brief general description of an
18 item generally need not exceed 20 words.

19 § 4940

20 (a) For purposes of describing executive session items pursuant to Section 4920, the
21 agenda may describe executive sessions as provided below. No Common Interest Development
22 Association shall be in violation of Section 4920 if the executive session items were described in
23 substantial compliance with this section. Substantial compliance is satisfied by including the
24 information provided below, irrespective of its format.

25 (b) With respect to an executive session held pursuant to Section 4935, the following
26 descriptions shall be used: CONSIDER LITIGATION, CONSIDER MATTERS RELATING TO
27 THE FORMATION OF CONTRACTS WITH THIRD PARTIES, CONSIDER MEMBER
28 DISCIPLINE, CONSIDER PERSONNEL MATTERS, or MEET WITH A MEMBER
29 REGARDING THE MEMBER’S PAYMENT OF ASSESSMENTS.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Homeowner association (HOA) Board meetings are controlled by the “Common Interest Development Open Meeting Act” in Civil Code sections 4900-4955. The Act requires that an agenda be included with each meeting notice – and there

are no minimum standards for the information to be included in each agenda. This creates a problem for the members because it is likely that the Board will not provide enough information about the issues to be discussed during the meetings. Civil Code section 4935 includes a few limited exceptions to the Act, for issues that an HOA Board is allowed to discuss during closed “executive” session. (Note: The Brown Act uses the term “closed session,” whereas section Civil Code section 4935 uses the term “executive session.” As such, this resolution uses the term “executive session” to amend section 4920 and to add section 4940.) If a Board meeting agenda reveals too much information about what an HOA Board plans to discuss during an executive session, the Board could expose the association to litigation. And this is probably the reason why there currently are no specific agenda requirements for HOA Board meetings.

The Solution: The “Brown Act,” which controls all county, city, and other local public agency meetings, sets out minimum standards for the meetings. Government Code sections 54950-54963. This resolution essentially inserts the Brown Act standards for “open meeting” agendas into Civil Code section 4920, for HOAs. In addition, to protect HOAs from liability about the agenda descriptions for executive sessions, this resolution proposes copying the language from Government Code section 54954.5, which is within the Brown Act, into a new Civil Code section 4940, for HOAs. The goals of the proposals in the resolution are to ensure that HOA members will be better informed about the topics of Board discussions and decisions in advance, for both open sessions and executive sessions, while also preventing HOA Boards from sharing sensitive information.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Section 4920: Amended by Stats. 2013, Ch. 183, Sec. 17. (SB 745) Effective January 1, 2014.

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RESOLUTION 12-14-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5135, to read as follows:

1 § 5135

2 (a) Association funds shall not be used for campaign purposes in connection with any
3 association board election. Funds of the association shall not be used for campaign purposes in
4 connection with any other association election except to the extent necessary to comply with
5 duties of the association imposed by law.

6 (b) For the purposes of this section, “campaign purposes” includes, but is not limited to,
7 the following:

8 (1) Expressly advocating the election or defeat of any candidate that is on the association
9 election ballot.

10 (2) Including the photograph or prominently featuring the name of any candidate on a
11 communication from the association or its board, excepting the ballot, ballot materials, or a
12 communication that is legally required, within ~~30 days of an~~ the election period. This is not a
13 campaign purpose if the communication is one for which subdivision (a) of Section 5105
14 requires that equal access be provided to another candidate or advocate.

15 (c) For the purposes of this section:

16 1) The “election period” for board elections begins when the association provides the
17 notice for submitting nominations, pursuant to Section 5115(a).

18 2) The “election period” for all other association elections begins when the association
19 provides the notice for the election, pursuant to Section 5115(b).

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): The meaning of Section 5135 is vague because it does not establish when the periods for “board elections” and “other association elections” begin.

The Solution: To provide clarity and certainty, this resolution would define the beginning of “board elections” as the date of the notice for submitting nominations, and it would define the beginning of “other association elections” as the date of the notice for the election. In addition, if the “election period” is clearly defined, then (b)(2) should simply apply to that period – and the “30 day” requirement should be deleted.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 12-15-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4035, to read as follows:

1 § 4035

2 (a) If a provision of this act requires that a document be delivered to an association, the
3 document shall be delivered to the person designated in the annual policy statement, prepared
4 pursuant to Section 5310, to receive documents on behalf of the association. If no person has
5 been designated to receive documents, the document shall be delivered to the president or
6 secretary of the association.

7 (b) A document delivered pursuant to this section may be delivered by any of the
8 following methods:

9 (1) By email, facsimile, or other electronic means, if available to the association ~~has~~
10 ~~assented to that method of delivery.~~

11 (2) By personal delivery, if the association has assented to that method of delivery. If the
12 association accepts a document by personal delivery it shall provide a written receipt
13 acknowledging delivery of the document.

14 (3) By first-class mail, postage prepaid, registered or certified mail, express mail, or
15 overnight delivery by an express service center.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Homeowner association (“HOA”) members should not be required to ask for “permission” each time they want to send an email (or a fax or use some other electronic means) to ask a question or submit comments to the HOA Board. Forcing the members to submit their communications to the Board by snail mail (USPS mail) and to wait for the Board’s response by snail mail is simply not warranted (in the year 2021), and it will cause needless delays.

The Solution: This resolution would require all HOAs to accept email, facsimile, or other electronic communications all the time, if they have the ability to do so.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known

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