

RESOLUTION 02-01-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 1993.02, to read as follows:

1 § 1993.02

2 (a) This chapter provides an optional procedure for the disposition of property that
3 remains on the premises after a tenancy of commercial real property has terminated and the
4 premises have been vacated by the tenant.

5 (b) This chapter does not apply if Section 1862.5, 2080.8, ~~or 2080.9~~, or Article 2
6 (commencing with Section 2081) of Chapter 4 of Title 6, apply. This chapter does not apply to
7 property that exists for the purpose of providing utility services and is owned by a public utility,
8 whether or not that property is actually in operation to provide those utility services.

9 (c) This chapter does not apply to a manufactured home, as defined in Section 18007 of
10 the Health and Safety Code, a mobilehome, as defined in Section 18008 of the Health and Safety
11 Code, or a commercial coach, as defined in Section 18001.8 of the Health and Safety Code,
12 including any attachments or contents, whether or not the manufactured home, mobilehome, or
13 commercial coach is subject to registration under the Health and Safety Code.

14 (d) This chapter does not apply to the disposition of animals subject to Chapter 7
15 (commencing with Section 17001) of Part 1 of Division 9 of the Food and Agricultural Code.

16 (e) This chapter does not apply to residential property or self-storage units.

17 (f) If the requirements of this chapter are not satisfied, nothing in this chapter affects the
18 rights and liabilities of the landlord, former tenant, or any other person.

(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 cross references to Civil Code Section 2080.9. That statute does not exist.

The Solution: Let’s delete the bad cross-reference and clean up the statute!

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT:

Melissa L. Bustarde, Esq., Branfman Mayfield Bustarde Reichenthal LLP, 2011 Palomar Airport Rd., Suite 306, Carlsbad, CA 92011, (858) 793-8090, melissa@bmb.com

RESPONSIBLE FLOOR DELEGATE: Melissa L. Bustarde

RESOLUTION 02-02-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code sections 5200 and 5205 to read as follows:

1 § 5200

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

3 (a) “Association records” means all of the following:

4 (1) Any financial document required to be provided to a member in Article 7

5 (commencing with Section 5300) or in Sections 5565 and 5810.

6 (2) Any financial document or statement required to be provided in Article 2

7 (commencing with Section 4525) of Chapter 4.

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

9 (A) Balance sheet.

10 (B) Income and expense statement.

11 (C) Budget comparison.

12 (D) General ledger. A “general ledger” is a report that shows all transactions that

13 occurred in an association account over a specified period of time.

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

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

17 (5) Written board approval of vendor or contractor proposals or invoices.

18 (6) State and federal tax returns.

19 (7) Reserve account balances and records of payments made from reserve accounts.

20 (8) Agendas and minutes of meetings of the members, the board, and any committees
21 appointed by the board pursuant to Section 7212 of the Corporations Code; excluding, however,
22 minutes and other information from executive sessions of the board as described in Article 2
23 (commencing with Section 4900).

24 (9) Membership lists, including name, property address, mailing address, email address,
25 as collected by the association in accordance with Section 4041 where applicable, but not
26 including information for members who have opted out pursuant to Section 5220.

27 (10) Check registers.

28 (11) The governing documents.

29 (12) An accounting prepared pursuant to subdivision (b) of Section 5520.

30 (13) An “enhanced association record” as defined in subdivision (b).

31 (14) “Association election materials” as defined in subdivision (c).

32 (b) “Enhanced association records” means invoices, receipts and canceled checks for
33 payments made by the association, purchase orders approved by the association, bank account
34 statements for bank accounts in which assessments are deposited or withdrawn, credit card
35 statements for credit cards issued in the name of the association, statements for services
36 rendered, and reimbursement requests submitted to the association.

37 (c) “Association election materials” ~~means~~ includes, but is not limited to, returned
38 ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom
39 ballots were to be sent and from whom received, proxies, and the candidate registration list.

40 Signed voter envelopes may be inspected but the signatures may not be copied. An association
41 shall maintain association election materials for one year after the date of the election.

42
43 § 5205

44 (a) The association shall make available association records for the time periods and
45 within the timeframes provided in Section 5210 for inspection and copying by a member of the
46 association, or the member's designated representative.

47 (b) A member of the association may designate another person to inspect and copy the
48 specified association records on the member's behalf. The member shall make this designation in
49 writing.

50 (c) The association shall make the specified association records available for inspection
51 and copying in the association's business office within the common interest development.

52 (d) If the association does not have a business office within the development, the
53 association shall make the specified association records available for inspection and copying at a
54 place agreed to by the requesting member and the association.

55 (e) If the association and the requesting member cannot agree upon a place for inspection
56 and copying pursuant to subdivision (d) or if the requesting member submits a written request
57 directly to the association for copies of specifically identified records, the association may satisfy
58 the requirement to make the association records available for inspection and copying by
59 delivering copies of the specifically identified records to the member by individual delivery
60 pursuant to Section 4040 within the timeframes set forth in subdivision (b) of Section 5210.

61 (f) The association may bill the requesting member for the direct and actual cost of
62 copying and mailing requested documents. The association shall inform the member of the
63 amount of the copying and mailing costs, and the member shall agree to pay those costs, before
64 copying and sending the requested documents.

65 (g) In addition to the direct and actual costs of copying and mailing, the association may
66 bill the requesting member an amount not in excess of ten dollars (\$10) per hour, and not to
67 exceed two hundred dollars (\$200) total per written request, for the time actually and reasonably
68 involved in redacting an enhanced association record. If the enhanced association record includes
69 a reimbursement request, the person submitting the reimbursement request shall be solely
70 responsible for removing all personal identification information from the request. The
71 association shall inform the member of the estimated costs, and the member shall agree to pay
72 those costs, before retrieving the requested documents.

73 (h) Requesting parties shall have the option of receiving specifically identified records by
74 electronic transmission or machine-readable storage media as long as those records can be
75 transmitted in a redacted format that does not allow the records to be altered. The cost of
76 duplication shall be limited to the direct cost of producing the copy of a record in that electronic
77 format. The association may deliver specifically identified records by electronic transmission or
78 machine-readable storage media as long as those records can be transmitted in a redacted format
79 that prevents the records from being altered.

80 (i) For the purposes of this section, "association" shall equally refer to any and all
81 association election materials within the possession of the Inspector(s) of Election.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: When Civil Code sections 5200 and 5205 were modified recently, there was left an ambiguity in what constitutes “Association election materials,” as well as who was responsible for the production of that material. The names of who voted was supposed to be made available. This transparency was to ensure that challengers to the election process could readily determine whether the election was conducted properly.

But since the election is conducted by an inspector, who is typically a third party contractor, those contractors typically refuse to allow for any inspection of those documents under the ruse that these open election provisions only apply to the association and not to them.

The Solution: Change the code to make it plain that the election materials are to be produced regardless of who possess those documents. This change should be eligible for an omnibus bill.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Much prior legislation on a substantive change, no prior legislation specifically to make the statutes simpler.

AUTHOR AND/OR PERMANENT CONTACT:

Edward M. Teyssier, Esq., 3200 Highland Ave. Ste. 300, National City, CA 91950, (619) 474-7500, edwardtlp@sbcglobal.net

RESPONSIBLE FLOOR DELEGATE: Edward Teyssier

RESOLUTION 02-03-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4360, to read as follows:

1 § 4360

2 (a) The board shall provide ~~general~~individual notice pursuant to Section ~~4045~~ 4040 of a
3 proposed rule change at least 28 days before making the rule change. The notice shall include the
4 text of the proposed rule change and a description of the purpose and effect of the proposed rule
5 change. An association’s pre-decision Notice notice is not required under this subdivision if the
6 board determines that an immediate rule change is necessary to address an imminent threat to
7 public health or safety or imminent risk of substantial economic loss to the association.

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

10 (c) As soon as possible after making a rule change, but not more than 15 days after
11 making the rule change, the board shall deliver ~~general~~individual notice pursuant to Section
12 ~~4045~~ 4040 of the rule change. ~~If the rule change was an emergency rule change made under~~
13 ~~subdivision (d), the notice shall include the text of the rule change, a description of the purpose~~
14 ~~and effect of the rule change, and the date that the rule change expires.~~

15 (d) If the board determines that an immediate rule change is required to address an
16 imminent threat to public health or safety, or an imminent risk of substantial economic loss to the
17 association, it may make an emergency rule change, and no association pre-decision notice is
18 required, as specified in subdivision (a). An emergency rule change is effective for 120 days,
19 unless the rule change provides for a shorter effective period. A rule change made under this
20 subdivision may not be readopted under this subdivision.

21 (e) If an emergency rule change is made under subdivision (d), the individual notice
22 about the rule change shall include the text of the rule change, a description of the purpose and
23 effect of the rule change, and the date when the rule change will expire.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: “Operating Rules” are a type of HOA “governing document.” (See Civil Code sections 4340-4370 for “Operating Rules.”) When an HOA Board proposes a (non-emergency) “rule change” to a set of Operating Rules, it is required to provide notice to the members, which must include a text of the proposed change and an explanation about why the change is necessary. (See Civil Code section 4340(b).) In addition, Section 4360 requires the HOA to provide notice to the Members by “General Notice.” (See Civil Code Sections X and 4045 (which sets out the options for General Delivery.))_ Please note that the term “General Notice” only refers to the method or methods that are used to deliver the notice to the Members, and the term does not refer to the contents of the notice itself. For HOAs, the higher level of notice is

“Individual Notice,” and the lower level of notice is “General Notice.” For example, where “General Notice” is required, an HOA Board is only required to use "one" method of providing notice from the options of sending an email to the members who have consented to receive email notices, posting the printed document in a prominent location that is accessible to all members, inclusion in an HOA’s television programming, posting on the HOA’s website, or a “mailing.” Unfortunately, when only one method of notice is required, an HOA Board is able take stealthy actions, with few of the Members’ being aware about the Board’s actions. In addition, there is a problem with “statutory construction” within Civil Code section 4360 because the requirements for “non-emergency” and “emergency” rule changes are comingled.

The Solution: For non-emergency proposed rule changes to HOA Operating Rules, this Resolution would require HOA Boards to provide “Individual Notice” to every Member. The higher standard of “Individual Notice” is necessary because Operating Rules are a type of “governing document” – and HOA Members have the right to know what is going on. In addition, “Individual Notice” would provide that all HOA members would notified at the same time about the Board’s non-emergency proposed changes to any Operating Rules. In addition, for all non-emergency and emergency Operating Rule changes that have been approved by HOA Boards, this Resolution would require that the post-rule-change notices also be provided by “Individual Notice.” Furthermore, the Resolution resolves the statutory construction issue by separating all of the requirements for “non-emergency” rule changes in subparts (a)-(c) and all of the requirements for “emergency” rule changes in subparts (d)&(e).

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code Section 4360 was amended by Stats. 2018, Ch. 836, Sec. 2. (SB 261) Effective January 1, 2019. See also Civil Code section 4340, which defines the terms “Operating rule” and “Rule change.”

AUTHOR AND/OR PERMANENT CONTACT:

Catherine Rucker, 415-246-6647, catherinerucker@me.com, California State Bar No. 309559

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-04-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4045, to read as follows:

1 § 4045

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

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

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

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

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

12 (5) If the association maintains an internet website for the purpose of distributing
13 information on association business to its members, by posting the notice on the association’s
14 internet website in a prominent location that is accessible to all members if designated as a
15 location for posting general notices in the annual policy statement prepared pursuant to Section
16 5310.

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

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: When Homeowner Associations (HOAs) provide notices to the Members about non-emergency Board meetings or proposed “rule changes” (to the “Operating Rules”) they are not required to provide “Individual Notice.” Instead, they are allowed to provide a lower level of notice, known as “General Notice.” See Civil Code Section 4045, which sets out the requirements for General Notice. For example, General Notice only requires “one” method for delivery. Due to this minimal requirement, if HOA Boards want to take action and change the rules with the least amount of Members knowing about what the Board is doing, the Boards will choose just one delivery method, and they will choose the method that will attract the least attention. For example, when my HOA Board holds meetings in “Open Session,” it provides notice to the Members (who have consented to receiving email communications) and it places notices at two of the HOA’s common area parks. In contrast, whenever my HOA Board holds a meeting “in Executive Session Only,” the Board only posts the notices in two of the common

area parks – in a container that resembles a trash can – because it does not want for the Members to know about what is going on during those types of meetings. Furthermore, although Civ. Code Section 4045(b) allows any Member to request “Individual Delivery,” few HOA Members are aware of their legal right to make such a request. Please also note that Civil Code Section 4920(c) only requires HOAs to provide “General Notice” for Board meetings.

The Solution: This resolution will increase HOA Member awareness about potential and proposed HOA Board actions to create or amend the “Operating Rules” and for all HOA Board meeting agenda items. This resolution will make all such Board actions more transparent to the Members - by increasing the minimum standard for “General Notice” from one method of notice to two methods of notice.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code Section 4045 was amended by Stats. 2021, Ch. 640, Sec. 4. (SB 392) Effective January 1, 2022.

AUTHOR AND/OR PERMANENT CONTACT:

Catherine Rucker, 415-246-6647, catherinerucker@me.com, California State Bar No. 309559.

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-05-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Civil Code Sections 4142 and 4165, to read as follows:

- 1 § 4142
- 2 Election Operating Rules” means Operating Rules adopted in accordance with Section 5105.
- 3
- 4 § 4165
- 5 “Operating Rules” means the set of rules adopted in accordance with the procedures prescribed
- 6 by Chapter 3, Article 5 (commencing with Section 4340).

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Civil Code Section 5105 requires every homeowner association (HOA) to adopt “operating rules” for the “Member Elections.” (See The Davis-Stirling Act, Chapter 6, Article 4, “Member Election” (commencing with Section 5100).) However, the Davis-Stirling Act, which applies to all HOAs, does not expressly define the term “Election Operating Rules” - which are created pursuant to Section 5105. In addition, the term “Operating rule” is defined in Section 4340(a), which is within the Davis-Stirling Act Article for “Operating Rules” (commencing with Section 4340). However, the definition for “Operating Rules” is not included in the main list of definitions for the Davis-Stirling Act. (See the Davis-Stirling Act, Chapter 1, Article 2, “Definitions” (commencing with Section 4075.)

The Solution: This Resolution would expressly define the term “Election Operating Rules” by adding it to the main Davis-Stirling Act Article for “Definitions.” In addition, this Resolution would elevate the definition for the term “Operating Rules” by adding it to the main Davis-Stirling Act Article for “Definitions.”

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code Section 5105 was amended on January 1, 2022, by Stats. 2021, Ch. 642, Sec. 2 (SB 432).

AUTHOR AND/OR PERMANENT CONTACT:

Catherine Rucker, SBN 309559, catherinerucker@me.com, 415-246-6647

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-06-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5215, to read as follows:

1 § 5215

2 (a) Except as provided in subdivision (b), the association may withhold or redact
3 information from the association records if any of the following are true:

4 (1) The release of the information is reasonably likely to lead to identity theft. For the
5 purposes of this section, “identity theft” means the unauthorized use of another person’s personal
6 identifying information to obtain credit, goods, services, money, or property. Examples of
7 information that may be withheld or redacted pursuant to this paragraph include bank account
8 numbers of members or vendors, social security or tax identification numbers, and check, stock,
9 and credit card numbers.

10 (2) The release of the information is reasonably likely to lead to fraud in connection with
11 the association.

12 (3) The information is privileged under law. Examples include documents subject to
13 attorney-client privilege or relating to litigation in which the association is or may become
14 involved, and confidential settlement agreements.

15 (4) The release of the information is reasonably likely to compromise the privacy of an
16 individual member of the association.

17 (5) The information contains any of the following:

18 (A) Records of goods or services provided a la carte to individual members of the
19 association for which the association received monetary consideration other than assessments.

20 (B) Records of disciplinary actions, collection activities, or payment plans of members
21 other than the member requesting the records.

22 (C) Any person’s personal identification information, including, without limitation, social
23 security number, tax identification number, driver’s license number, credit card account
24 numbers, bank account number, and bank routing number.

25 (D) Minutes and other information from executive sessions of the board as described in
26 Article 2 (commencing with Section 4900), except for executed contracts not otherwise
27 privileged. Privileged contracts shall not include contracts for maintenance, management, or
28 legal services.

29 (E) Personnel records other than the payroll records required to be provided under
30 subdivision (b).

31 (F) Interior architectural plans, including security features, for individual homes.

32 (b) Except as provided by the attorney-client privilege, the association may not withhold
33 or redact information concerning the compensation paid to employees, vendors, or contractors.

34 (i) Compensation information for individual employees shall be set forth by job classification or
35 title, not by the employee’s name, social security number, or other personal information.

36 (ii) Compensation information for attorneys shall be redacted by reporting as “legal fees.”

37 (c) No association, officer, director, employee, agent, or volunteer of an association shall
38 be liable for damages to a member of the association or any third party as the result of identity
39 theft or other breach of privacy because of the failure to withhold or redact that member’s

40 information under this section unless the failure to withhold or redact the information was
41 intentional, willful, or negligent.

42 (d) If requested by the requesting member, an association that denies or redacts records
43 shall provide a written explanation specifying the legal basis for withholding or redacting the
44 requested records.

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

PROPOSER: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: The author is a member of an HOA. A few months ago, she requested a copy of her HOA's check register, pursuant to Civil Code Section 5215. When the property manager provided the check register, "all" of the information about payments made to the HOA's Attorney were redacted, including the check amounts. The property manager cited Los Angeles Board of Supervisors v Superior Court (2016) 2 Cal. 5th 282 and claimed that the holding "stands for the proposition that invoices for work by an attorney in pending and active legal matters are protected by the attorney-client privilege." Although I had requested copies of the check register and had not requested copies of attorney invoices, my HOA Board believed it had the legal authority to do what it did.

The purpose of Section 5215 is to prevent fraud by allowing the Members to inspect specified Association records, including the "check register. HOA Boards should not be able to hide how much association money they are paying attorneys by also redacting the check amounts.

The Solution: This Resolution will maintain attorney-client privilege by requiring HOAs to report the amounts spent on attorney compensation and legal issues as "legal fees" to the Members, upon their request.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code Section 5215 was added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)

AUTHOR AND/OR PERMANENT CONTACT:

Catherine Rucker, SBN 309559, cell: 415-246-6647, catherinerucker@me.com

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-07-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4925, to read as follows:

- 1 § 4925
- 2 (a) Any member may attend board meetings, except when the board adjourns to, or meets
- 3 solely in, executive session. As specified in subdivision (b) of Section 4090, a member of the
- 4 association shall be entitled to attend a teleconference meeting or the portion of a teleconference
- 5 meeting that is open to members, and that meeting or portion of the meeting shall be audible to
- 6 the members in a location specified in the notice of the meeting.
- 7 (b) The board shall permit any member to speak at any meeting of the association or the
- 8 board, except for meetings of the board held in executive session. For non-executive session
- 9 board meetings, the board shall permit members to speak about:
- 10 (i) General association issues that are not included as agenda items in the meeting notice,
- 11 and
- 12 (ii) Each meeting agenda item, before or during consideration of that item.
- 13 (c) A reasonable time limit for all members of the association to speak to the board or
- 14 before a meeting of the association shall be established by the board.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Civil Code Section 4925 only requires HOA Boards to allow each HOA Member to speak only one time at any Board meeting in “Open Session.” For example, HOA Boards can allow the Members to speak during a “Homeowners Forum,” and then they are not required to allow any other Member speech during the remainder of the meeting. Pursuant to Civil Code Section 4920(d), all notices for HOA Board meetings are only required to “contain the agenda for the meeting,” and they are not required to provide attachments for any of the agenda items. As a result, the Members who attend the Board meetings only know about what can be gleaned from the text for each agenda item and whatever information that is orally shared by the Directors during the meeting. Although the Corporations Code requires most HOA Board Members to make “informed” decisions, under the “Duty of Care,” which can be accomplished by relying on legal counsel and various vendors, there are many instances when the Members have important information and advice to share as well.

In addition, since the COVID pandemic, most HOA Board meetings are carried out by “Zoom.” Zoom meetings provide the Boards with much greater control over the meetings. For example, HOA Boards routinely use Zoom to mute all of the Members, and then each Member is unmuted when it is that person’s turn to speak. Unfortunately, the current statutory requirements allow HOA Boards to routinely exclude Member input from Board Member decisions about all of the

agenda items – and to effectively stifle Member speech. (Please note that the term “non-executive session” is used in the proposed statutory language because the Davis-Stirling Act does not define the term “open session.”)

The Solution: To improve the quality of decisions made during HOA Board meetings, HOA Members must have the statutory right to address the Board about general matters and about each meeting agenda item – before each Board decision is made. This Resolution is modeled after the Brown Act’s requirements for local agencies within Government Section 54954, which allows members of the public to: 1) speak about “any item of interest to the public,” and 2) “have an opportunity to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.” This Resolution would improve the democratic processes for all HOAs by requiring all HOA Boards to receive Member input before each and every decision is made.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code Section 4925 was Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.

AUTHOR AND/OR PERMANENT CONTACT:

Catherine Rucker, SBN 309559, catherinerucker@me.com, cell: 415-246-6647

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-08-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5673, to read as follows:

1 § 5673

2 For liens recorded on or after January 1, 2006, the decision to record a lien for delinquent
3 assessments shall be made only by the board and may not be delegated to an agent of the
4 association. During the board discussion about whether to record a lien for delinquent
5 assessments, the Board shall announce the current annual amount for the association’s
6 assessments and the amount of delinquent assessments owed by the owner of the separate
7 interest to be recorded in the lien. The board shall approve the decision by a majority vote of the
8 directors in an open meeting. The board shall record the amount of delinquent assessments to be
9 recorded in the lien and the vote in the minutes of that meeting.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Civil Code Section 5673 allows HOA Boards to record Liens for delinquent assessments in “any amount.” However, Civil Code Section only allows HOA Boards to pursue “non-judicial foreclosure” for delinquent assessment amounts that exceed \$1,800 or when the assessments are more than 12 months delinquent. For example, in 2021, the author’s HOA Board recorded a Lien for a property where the HOA Member owed \$330.00 in delinquent assessments. At the time, the annual assessment amount was \$330.00. When the Lien was recorded, “Trustee Fees & Costs” of \$1,254.48 were included in the Lien amount. So yes! The Board took this aggressive action to place itself in position to force the sale of the Member’s home, which is currently worth approximately \$1,922,000, over a \$330.00 debt that was owed during the height of the COVID pandemic. Recommended viewing: “Homeowners Associations: Last Week Tonight with John Oliver (HBO),” April 10, 2023 (available at youtube.com).

The Solution: this Resolution will motivate HOA Boards to only take action to record liens when such an enforcement action would be warranted because the Boards will be required to openly discuss the lien recording they plan to carry out during a board meeting in open session and to record details about the lien amount in the meeting minutes.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code Section 5673 was added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)

AUTHOR AND/OR PERMANENT CONTACT:

Catherine Rucker, SBN 309559, catherinerucker@me.com, cell: 415-246-6647

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-09-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4355, to read as follows:

1 § 4355

2 (a) ~~Sections 4360 and 4365 only apply to an operating rule that relates to one or more of~~
3 ~~the following subjects: For a set of rules or regulations that relates to any of the following~~
4 ~~subjects to be valid and enforceable, the set shall be “operating rules” and the Sections within~~
5 ~~this Article shall apply:~~

- 6 (1) Use of the common area or of an exclusive use common area.
- 7 (2) Use of a separate interest, including any aesthetic or architectural standards that
- 8 govern alteration of a separate interest.
- 9 (3) Member discipline, including any schedule of monetary penalties for violation of the
- 10 governing documents and any procedure for the imposition of penalties.
- 11 (4) Any standards for delinquent assessment payment plans.
- 12 (5) Any procedures adopted by the association for resolution of disputes.
- 13 (6) Any procedures for reviewing and approving or disapproving a proposed physical
- 14 change to a member’s separate interest or to the common area.

- 15 (7) Procedures for elections.
- 16 (b) Sections 4360 and 4365 do not apply to the following actions by the board:
- 17 (1) A decision regarding maintenance of the common area.
- 18 (2) A decision on a specific matter that is not intended to apply generally.
- 19 (3) A decision setting the amount of a regular or special assessment.
- 20 (4) A rule change that is required by law, if the board has no discretion as to the
- 21 substantive effect of the rule change.
- 22 (5) Issuance of a document that merely repeats existing law or the governing documents.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: As currently written, Civil Code Section 4355 indirectly suggests that if there are rules or regulations for the main types of issues that HOA Boards have enforcement authority over, they should be in the form of “operating rules.” As a result, some HOA Boards believe they have the authority to adopt “Board Rules” for the issues listed in (a)(1-6). If “Board Rules” were “real,” then HOA Boards could adopt and enforce “rules and regulations” that the Members have not reviewed, have not commented on, and would have no ability to reverse. As a result, the Members’ only recourse would be to petition 5% of the Members to hold a special election to recall the entire Board.

The Solution: This Resolution would amend Civil Code Section 4355 to require all HOA rules and regulations about the issues listed in Section 4355(a) to be characterized as “operating

rules.” As a result, for all “rule changes” about the listed issues, each HOA board would be required to provide notice to the members about the proposed changes, allow a 28-day member review period, consider all of the member comments, and make a decision to adopt the rule changes during a board meeting in open session. See Civil Code Section 4360. In addition, because Civil Code Section 5105 requires all HOAs to have a set of Election “Operating Rules,” all HOAs are familiar with the process and procedures to adopt and amend all types of “Operating Rules.” Further, this Resolution would ensure that the Members would have the right to gather signatures from 5% of the members to call a special election to reverse board decisions to adopt new or amended operating rules. See Civil Code Section 4365. Note: The term “policy” is not being used in the proposed statutory language because Civil Code Section 5310 requires all HOAs to “distribute an annual policy statement” to the Members. In addition, when the proposed statutory language refers to “this Article,” it refers to the Davis-Stirling Act Article about “Operating Rules.” The reference is important because the Article includes Sections to define the term “operating rule” and to set out the requirements for operating rules to be “valid and enforceable.”

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code Section 4355 was (Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180. See also Civil Code Section 5105, which requires all HOAs to adopt operating rules about “Member Elections.”

AUTHOR AND/OR PERMANENT CONTACT:

Catherine Rucker, SBN 309559, catherinerucker@me.com, cell: 415-246-6647

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 02-10-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare & Institutions Code section 15657, subdivision (b), to read as follows:

1 § 15657

2 Where it is proven by clear and convincing evidence that a defendant is liable for
3 physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or
4 abandonment as defined in Section 15610.05, and that the defendant has been guilty of
5 recklessness, oppression, fraud, or malice in the commission of this abuse, the following shall
6 apply, in addition to all other remedies otherwise provided by law:

7 (a) The court shall award to the plaintiff reasonable attorney’s fees and costs. The term
8 “costs” includes, but is not limited to, reasonable fees for the services of a conservator, if any,
9 devoted to the litigation of a claim brought under this article.

10 (b) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the
11 damages recoverable shall not apply. However, the damages recovered shall not exceed the
12 damages permitted to be recovered pursuant to ~~subdivision (b)~~ of Section 3333.2 of the Civil
13 Code.

14 (c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding
15 the imposition of punitive damages on an employer based upon the acts of an employee shall be
16 satisfied before any damages or attorney’s fees permitted under this section may be imposed
17 against an employer.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: 2022 AB35 was a compromise bill drafted and negotiated by stakeholders (Consumer Attorneys, Cal. Medical Assn., and Cal. Hosp. Assn.) before being presented to the Legislature on a “take it or leave it basis” without the opportunity for debate or amendment. The compromise bill was introduced April 27, 2022 and was enacted in less than a month, on May 23, 2022, so that the Fairness for Injured Patients proposition to amend MICRA could be taken off the November 2022 ballot. As amended by AB35, Civil Code 3333.2, subd. (b) now applies only to personal injury actions, while newly enacted Civil Code 3333.2, subd. (c), applies to wrongful death actions. AB35 also added new subsections that established the possibility of separate damages caps for healthcare providers, institutions, and unaffiliated entities. (Code Civ. Proc., 3333.2, subs. (c)-(j).) Although AB-35 amended Civil Code 3333.2, it did not amend the Elder Abuse Act, which continues to refer only Civil Code 3333.2, subd. (b) to limit noneconomic damages. (Welf. & Inst. Code, § 15657, subd. (b).) When MICRA was enacted in 1975, Civil Code 3333.2, subd. (b), was the only provision limiting the recovery of noneconomic damages in actions against healthcare providers based on professional negligence; now there are

multiple subdivisions that do so, so the entire statute (Civ. Code. 3333.2) needs to be cross-referenced by the Elder Abuse Act to ensure that the damages caps are fully aligned.

The Solution: Pursuant to this proposed amendment, Welfare and Institutions Code section 15657, subdivision (b), will cross-reference all MICRA provisions limiting the recovery of noneconomic damages (Civ. Code, § 3333.2) rather than only a single subsection (Civ. Code, § 3333.2, subd. (b)) that now addresses only one limited aspect of the MICRA damages cap, thereby ensuring that the Elder Abuse Act continues to incorporate by reference the entire MICRA limit on noneconomic damages (as modified by 2022 AB 35), as it did before AB35 was enacted.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None

AUTHOR AND/OR PERMANENT CONTACT:

H. Thomas Watson, Horvitz & Levy LLP, 3601 W. Olive Ave., 8th FL, Burbank, CA 91505; 818-995-5813 (direct); 818-995-0800 (main); 844-497-6592 (fax); htwatson@horvitzlevy.com

RESPONSIBLE FLOOR DELEGATE: H. Thomas Watson, Horvitz & Levy LLP