

Third Supplement to Memorandum 2020-27

Emergency-Related Reforms: Common Interest Development Meetings

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

	<i>Exhibit p.</i>
• Nanette Johnston, Granite Bay (7/6/20).....	1
• Adrian Adams, Adams Stirling (7/6/20).....	2
• Gayle Martin, San Marcos (7/7/20).....	3
• Edward Teyssier, San Diego (7/7/20).....	4
• Aniko Sherry, Laguna Niguel (7/7/20).....	8
• Brian Eisenberg (7/8/20).....	9

The staff does not have time before the July 9 meeting to summarize the content of the attached comments. However, it is safe to say that they are evidence of public support for study of the emergency use of teleconferencing in meetings held by common interest developments. If the Commission decides to conduct such a study, the details of the attached comments will be considered in the course of that work.

Respectfully submitted,

Brian Hebert
Executive Director

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

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

**NANETTE JOHNSTON, GRANITE BAY
(JULY 6, 2020)**

Hi,

I would like to strenuously object to making a recording of the videoconference available to everyone, or even just members. One could say 'may record', but it should not be required nor should it be required to be released!

Sincerely,
Nanette Johnston

ADRIAN ADAMS, ADAMS | STIRLING
(JULY 6, 2020)

I agree with Ms. Johnston. Recording meetings should be optional, not mandatory. Moreover, it should be dealt with through the normal legislative process and not added to emergency meeting issues.

A handwritten signature in blue ink, appearing to read 'Adrian Adams', with a long horizontal flourish extending to the right.

Adrian J. Adams, Esq. | Managing Partner



**GAYLE MARTIN, SAN MARCOS
(JULY 7, 2020)**

California Law Revision Commission
ATTN: Brian Hebert, Executive Secretary

RE: HOA Board Meetings

Dear Mr. Hebert:

My senior community Madrid Manor board here in San Marcos, CA., has been holding HOA meetings by video and phone for several months now. We are given a timely written notice, but no agenda with it. We have much more in-person participation than we have had via video/phone.

Several reasons for this: Lack of home computers, not liking the phone because you can't see what the board is presenting in the on-line slide presentation, the technical help is not up to the task of guiding/helping the owners, the board ignores the "requests to speak" when they don't like you or your topic, the board doesn't wait the minute or two needed for people to have time to type in their question/comment, there have been several meetings where I was the only person that the board muted from their side. The monthly Treasurer's report used to be available to get a copy at the meeting. Now the board will not even send it to me in an email, give me a hard copy, or even post the info on the secured portion of our website. I have not been able to get a copy of the actual annual budget for the HOA's use of water and gas. The numbers we have been given are negative numbers!

I know we have to keep our social distance, but the board is taking advantage of this terrible situation.

Thank you. Be safe.

Best regards,
Gayle Martin

Edward M. Teyssier

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July 7, 2020

Via Email: bhebert@clrc.ca.gov

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

Re: Electronic meetings by HOA Boards (Memorandum 2020-27)

Dear Commission Members:

Thank you for your interest in addressing this one aspect of the many problems we homeowners have living in Common Interest Developments.

I am providing this testimony as a homeowner living in a Common Interest Development because I am frustrated by my HOA board's lack of transparency and accountability. Unless there are changes in legislation this situation will only get worse with electronic meetings.

I urge the Commission to consider the following two suggestions: a.) Each agenda item description must include a specified minimum amount of information, such as what, who, where, why, when, how, and any dollar amount involved. b.) Whatever documents, data, and proposals are available to the HOA board members in their 'board packet' should also be made available to the membership. As I explain below, these issues are interrelated.

Regarding agenda descriptions: I frequently find that the agenda does not adequately describe what the board is going to be voted on. While Civil Code section 4920 prohibits (with some exceptions) a HOA board from any action unless that item has been duly noticed in an agenda, that code section is largely impotent because there are no minimum specifications or requirements as to what information must be contained in that item's description.

For example, our board posted as an agenda item, "Monument repair." Based upon the description and the normal and usual meaning of the word "repair" a homeowner would

have no warning of what the board was about to do, which was to vote on and approve the demolishing of both our HOA monuments. By the time we homeowners saw what was happening, it was too late. The monuments were demolished by an outside contractor and trees planted in front the wall where they had been.

Based on an online dictionary, the word “repair” typically means, “to restore to a good or sound condition after decay or damage; mend. To restore or renew by any process of making good, strengthening, etc.” That’s a far cry from “demolish” which means, “to pull or knock down,” or, “tear down, raze,” and which is what the board did.

Yet the board members involved insisted that their two word description (“Monument repair”) was sufficient notice under the statutes to allow them to demolish and remove the monuments.

For another example, the two-word item “Landscaping Proposals” are frequently listed on our board’s agenda. These proposals can be for anything having to do with the land, such as planting, trimming, irrigation systems, fertilizing, grading, etc. Homeowners are left in the dark as to what the board might be voting on and where the work is proposed. The homeowner won’t know if any of those “proposals” involve fixing a broken sprinkler head several blocks away, or removing or planting a huge tree immediately adjacent to her property!

I believe that the whole purpose of the agenda is to provide sufficient information to the homeowner so that he/she will know with reasonable certainty what is going to be discussed and voted on so he/she can decide to attend, or not. While there is no statute that says this, there should be!

When, as in these examples, the agenda does not provide the five W’s (i.e., what, who, when, where, why) then, in my opinion, the agenda fails to inform which means that it also fails to achieve any useful purpose, other than to provide a ‘cover’ for allowing the board members to do whatever they want, and without alerting any dissent until it is too late and the matter is over and done with.

Allowing electronic meetings will, without some safeguards in place (which safeguards should already have been included in the “Open Meeting Act” even for in-person meetings), will not improve this situation.

To summarize my first concern, I urge this commission to promote legislation that would change the Open Meeting Act (Civil Code Section 4900, et seq.) by creating enforceable minimums on what information must be contained in an agenda item before it may be discussed and voted on by the HOA board. I suggest that every agenda item be required to contain, as a minimum, a reasonably close wording of the resolution to be introduced at the board meeting, the name of the proponent, the amount of money involved, the location(s) of the work to be done and including the closest addresses or unit numbers,

when the work will be done, why it is deemed necessary or what purpose is to be served, and whomever else (i.e., outside service provider) is to be considered.

Of course, by the time of the meeting, even a conscientious board may decide that, after sensible debate, the preliminary wording of the resolution needs some changing. Fair enough. But if the resolution is so completely changed that it becomes an entirely different resolution, that should be prohibited.

Secondly, the board packet containing all the information available to the board should also be made available to the membership so that the members can better understand what the board is doing.

As the above examples show, the agenda can be worded to obfuscate what the board is contemplating. However, the documents in the board packet will show more, and probably differently than what has been itemized on the agenda.

(Just to be clear, by ‘board packet’ I mean the background information, documents and data provided, sometimes via email but more likely via email, before a meeting to each board member. It may go by different names, but it is whatever information and data that is provided to the board members for their consideration regarding the items on the agenda.)

Even attendance at the board meeting will not, by itself, divulge to the homeowner in the audience what the board is contemplating and voting on. The board president may call for a vote, for example, to approve “Item 6 on page 14.” Unless the homeowner has her own copy of that document she’ll have no clue what “Item 6” might be, so she’ll not know what they’re talking about and voting on. The board members are each reading the description and proposals from documents in their ‘packet.’ and so unless that packet is made available so that the homeowner can read what they are reading, she’ll learn nothing from attending.

Electronic meetings will only make this lack of transparency worse. That is because, sometimes, boards will have hardcopies of what they are reading from. Or they might have exhibits or presentations to show to their fellow board members. In those cases, the homeowners in attendance will be able to see what the other board members are seeing. With electronic meetings, it may be expected that all the available documents, data, and presentations will only be via the board packet. Hence, with electronic meetings the need to make board packets available to the homeowner becomes more urgent.

Therefore, I urge the Commission to promote legislation that requires board packets to be made available to the membership, and included under the definition of Association Record under Civil Code section 5100 (a), and treated the same as board meeting minutes. This could be done simply via email or by posting on the association’s website. For

members without computers a printed copy could be required to be available for inspection and copying at the HOA's offices.

Allowing for board meetings to be routinely conducted electronically could have a lot of advantages. Instead of having to leave work early or re-schedule dinner, a homeowner could simply call in or watch on his/her computer. For many years we have had teleconferenced meetings at various levels of government, from local City Councils to even the US House of Representatives. I can think of no good reason why teleconferencing of HOA meetings should not be allowed and, in fact, even promoted. It appears to me that the legislative authority for this already exists under Civil Code section 4090.

Also, the same sort of technological advancements that has allowed distance-meetings has also provided for the ability to send packets of documents electronically (i.e., via email) for a cost that is practically free. Hence, it is not unreasonable that more detailed agendas and even complete board packets should be expected to be distributed or at least made available to HOA members.

Further, transportable data storage devices, such as DVD disks and USB 'thumbdrives' are so cheap that over a hundred pages of documents can be stored for less than a cup of Starbucks coffee. Hence, there is no good reason why HOA documents which are already being digitized and stored electronically should not be digitized and stored for the benefit of the homeowners who are, ultimately, paying for them in any case.

Thank you in advance for your courteous attention to the above. Please feel free to contact me with any questions, comments, or concerns.

Sincerely,

s/

Edward M. Teyssier

ANIKO SHERRY, LAGUNA NIGUEL
(JULY 7, 2020)

Hello Brian Hebert,

Yes, I am very much interested how the Phone/Video Meetings issue could be solved. Our Board and Management Company did everything in the past and the present to keep homeowners away from the Board meetings. They chose the most inconvenient time, Friday mornings at 8 am to cater to the management company's need. Not the homeowners.

My concern with the phone/video conferencing is the control of the audio part. Poor quality to hear, poor voice quality and the "administrator's" ability to control the voice transmission.

I am a regular attendee of brokers meeting via Zoom. Last time I was sitting through a meeting where the voice of the speakers were "turned" off. I emailed the moderator. There was no voice improvement. After 20 minutes I left the meeting. I have great concern how much the electronic technology controls our lives.

Is voting allowed electronically ?

Below please find the last meeting notice posted for the homeowners. It was posted 3 days, including the meeting date, prior to our meeting date. The monthly invoice includes no information regarding the Zoom meetings. The agenda is posted, homeowners drive by. Nobody will stop in the middle of the road to read the agenda, but at least it is posted.

Thank you for the opportunity,

Aniko Sherry
Homeowner, Ex-Board member, Laguna Niguel.

BRIAN EISENBERG
(JULY 8, 2020)

Dear Mr. Hebert,

I would like to see all Board mtgs be available by Zoom or some other secure app, so that I, and others like me, can attend via computer if we can't make it in-person. My only concern is how to handle closed session segments of the mtgs.

Also as part of the mtgs - the board needs to make available all handouts and documents that homeowners should have access to - via PDF files to download.

Thanks, B

Brian Eisenberg, CPA
Eisenberg Consulting