

# SPECIAL NEWSLETTER RESPONDING TO COVID-19



*Community Association Attorneys*

895 UNIVERSITY AVENUE  
SACRAMENTO, CA 95825  
TEL 916.669.3500  
FAX 916.669.3501  
WWW.BAYJACLAW.COM

ROD A. BAYDALINE  
JENNIFER M. JACOBSEN  
DARREN M. BEVAN  
JOHN D. HANSEN  
ANGELA C. THOMPSON  
CHRISTIAN M. GEORGELY

## Telephone and Email Board Meetings

In response to the recent COVID-19 outbreak, many associations have decided not to hold in-person Board meetings. Instead, many are opting to hold Board meetings via teleconference. This newsletter is designed to help show how Associations can hold these remote meetings consistent with the need to reduce gatherings of people during this public health emergency, while remaining compliant with the *Davis-Stirling Common Interest Development Act* and ensure transparency with members.

### Board Meetings by Teleconference

Civil Code section 4090(b) permits Board meetings via teleconference. Agendas still must be provided at least four days before the meeting; however, in light of the current recommendation that individuals self-isolate and remain in their homes, unless necessary, it is wise for the notice also be posted on the Association's website and emailed to members or included in an association mailing in addition to its normal posting location. This agenda should inform members that the meeting is being held by teleconference in order to reduce the spread of the virus while promoting transparency.

The teleconference must be accessible to members. This means that Associations should perform a test prior to a meeting held by teleconference to ensure that the technologies being used allow: (1) Directors to hear one another and (2) members wishing to listen to the Board meeting are able to do so. To meet this second requirement, the Association should provide easily understandable instructions to members to allow them to listen to the meeting.

Managing an open forum by telephone can be difficult with people talking over one another. One option to deal with this is to require all open forum statements to be emailed to management in advance of the open forum period. Management will then read the statements, give the Board/management an opportunity respond and then allow that member a chance to briefly reply or clarify over the phone. That process would be repeated for each open forum statement submitted. This is not the same as open forum in person, but may be the only way to manage open forum if you have a large number in attendance. As well, you could follow the ordinary protocol of allowing each member to speak during open forum for a specified period of time.

Associations should forego the requirement that it provide a physical location where members can listen to the Board meeting. Civil Code section 4090(b) requires Boards to provide this physical location, along with stationing a person to be present at the location during teleconference. It would be irresponsible for an Association to actively create a situation where members congregate in a single location contrary to the social distancing guidance the State and the Centers for Disease Control have issued. The current health crisis should justify an Association not complying with this requirement.

### Board Meetings by Email

Boards may meet and make decisions by email when an emergency exists. Civil Code section 4923 establishes that an emergency Board meeting may be held if: (1) the circumstances creating an emergency were not reasonably foreseeable, and

(2) requires a Board's immediate attention and requires the Board to take immediate action rendering the normal notice requirement impracticable.

The emergency meeting may be held by email if the entire Board consents, in writing, to conduct emergency business by email and a copy of the Board's written consent is filed at the next Board meeting after the Board acts by email.

Emergency action by email may be taken if the entire Board consents to conducting a meeting via email, and: (1) a quorum of Directors responds to a call for a meeting to take emergency action, and (2) a majority of those responding agree to approve the action to be taken. After taking emergency action, the Board should disclose to members at the next open Board meeting why there was an emergency meeting held and what action was taken at the emergency meeting.