

Memorandum 2020-49

**Emergency-Related Reforms:  
Common Interest Development Meetings  
(Public Comment)**

The Commission<sup>1</sup> has received a number of communications relating to its new study of common interest development teleconference meetings held during an emergency. This memorandum serves as a convenient place to collect those comments, for easy distribution and reference. With one exception, any further comments received before the next meeting will be attached to one or more supplements to this memorandum. The exception involves materials received too close to the meeting for such treatment; they will be distributed after the meeting.

The following submissions are attached to this memorandum as an Exhibit:

*Exhibit p.*

- Marjorie Murray, Center for California Homeowner Association  
Law (8/12/20) ..... 1
- Linda Brown, Oakland (8/12/20)..... 4
- Steve Linke (8/16/20)..... 9
- Janice (8/17/20) ..... 11

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](http://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.





August 11, 2020

Victor King, Chair  
California Law Revision Commission  
Attn: Brian Hebert, Executive Secretary  
UC Davis Law School, 400 Mrak Drive  
Davis, California 95616 --  
via email to [bhebert@clrc.ca.gov](mailto:bhebert@clrc.ca.gov)

**Re: CLRC Studies X-100, H-850, Supplemental Memo 2020-35 on Emergency Measures: Common Interest Development Meetings**

TO: Chairman King and Members of the Commission:

The Center for California Homeowner Association Law (CCHAL) is a 501c3 nonprofit that advocates for the protection of the consumer and civil rights of homeowners living in the state's 55,000 common interest developments. We both initiate and monitor legislation affecting those rights.

We offer the following comments on Memo 2020-35 and the draft legislation.

1. **Draft legislation is based on the debatable premise that Internet and cell/phone service for convening electronic meetings is readily available to associations and their members.** California truly does have a “digital divide” which is concentrated in – though not exclusive to – its rural counties. Covid19 has laid this fact bare as schools in rural counties try to conduct classes online where broadband and cell service are either nonexistent or unreliable. Therefore, the recommendation that associations (HOAs) convene meetings by cell phone or software like Zoom is a questionable one for the thousands of associations throughout the great Central Valley and up and down the Sierras and other mountain ranges. The chief economist for the Rural Counties Representatives of California (RCRC) now calls it the “digital chasm” because **digital access – both cell and internet -- is so poor (or non-existent) among its 37-member counties.** [See the June 19, 2020 newsletter “Barbed Wire” <https://www.rcrcnet.org/rural-digital-opportunity-fund-0>

Placer County alone – adjacent to the State's Capital – has 700+ associations. In November Placer itself was branded as “the town with the slowest internet in the United States.” (USA Today, November 2019). Commission members and staff need only take a Sunday drive into Amador or Calaveras counties to see whether they can use their cell phone or laptop to get in touch with family members back home in Sacramento or in Oakland.

2. **Not all HOA members have the equipment needed to participate in teleconference meetings or the skill to use it.** Even in those communities where cell and internet service is available, not all homeowners will have the equipment to access the meeting or the technical skills to operate a laptop, an IPAD, or a cell phone. Commission staff has tried to solve this problem in the draft legislation by requiring that technical assistance be made available to members before and during an electronic meeting. This is a viable solution but of course does not address the “digital divide” issue, that is, homeowners may possess the equipment, but they can't link it to broadband or cell service if it's not available in their area. We do have to point out that using a landline (or some cell services) can trigger

toll charges for the owner, so a 2 to 3 hour board meeting by phone can mean a substantial cost for the homeowner. (See below our recommendation that archiving meetings could help solve the cost issue.)

3. **Delivery of the meeting notice.** Commission staff asks if “posting by general notice should be prohibited” in the draft legislation. CCHAL says “Yes, it should be prohibited”. Permissible methods of notice from a HOA to its members are listed in Civil Code §4040. Posting general notice on a bulletin board in a remote location in the subdivision may be “notice” in law but is meaningless in reality. If the legislation means to guide meetings during an emergency, then the notice too should be delivered by urgent means: either by email or by phone call or text. The purpose of a HOA meeting during/after a wildfire could be, for example, to discuss insurance recovery and building permits, matters of urgent interest to homeowners who need the information immediately. We urge that the meeting notice be by “individual notice,” that is Civil Code §4040(a)
4. **Meeting materials.** Just as the CLRC and other public bodies distribute meeting materials, we urge that HOA board meeting materials be made available to members. They can be emailed, texted, posted on a website, or hard copies mailed, per the notice requirements of Civil Code §4040. Making materials available is essential to good governance, especially if the board is to be voting on money matters like raising assessments or levying a special assessment or other critical matters affecting the membership like a rule change under Civil Code §§4340 et seq. We think materials are also critical if the board is discussing issues like insurance after a wildfire. We hear from homeowners that boards are already holding electronic meetings but members have no information about the agenda let alone background materials on the items to be voted on, e.g. budgets.
5. **Voting.** CCHAL is somewhat baffled by the discussion of “voting” (p 6 of the July 31 memo). **“Voting” at a board meeting is done by directors only** – not homeowner-members. Most boards are small having between 5-7 members; many have only three. (Most California HOAs are small: 25 units or fewer.) So a roll-call vote should be a straightforward event that takes only moments. More important, roll-call votes, preserved in the meeting records, promote transparency, which is vital to HOA operations, especially if the vote is on a money matter like a special assessment.

Under existing law, **voting by members – whether they are choosing board directors or voting on special assessments or ballot measures** -- is done by mail-in ballot. Voting by acclamation is done **SOLELY** by HOAs with 6000 members or more and used **SOLELY** to seat board directors.

CACM has used the draft legislation to raise again the prospect of INTERNET VOTING in HOA elections, a topic thoroughly vetted by the Legislature in 2014 via AB1360/Torres. The proposal to institute internet voting in HOA elections was soundly rejected in a two-page letter of opposition by the California Secretary of State, because of its inherent dangers.<sup>1</sup> Not even the Department of Homeland Security and the military have been able to safeguard against the security risks of internet voting for members of the military voting from overseas posts.<sup>2</sup>

There is one issue related to voting that we want to raise and that is: the tabulating of ballots by an Inspector of Elections at a properly-noticed board meeting. **Homeowners have the right to observe the tabulation** and it’s not clear to us how, under the CLRC proposal, the electronic meeting would ensure compliance and homeowner rights.

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<sup>1</sup> AB1360 was also rejected by the Senate Judiciary Committee.

<sup>2</sup> There are countless research studies done on the security risks of internet voting. We can cite many sources.

**6. Recording and archiving meetings.** We have cited some of the chief obstacles to convening HOA meetings electronically, namely:

- the “digital divide,”;
- lack of equipment and/or technical know-how;
- cost of participation to the individual homeowner
- inability of members to participate in a meaningful way in governance because meeting materials are not available.

Some of these obstacles could be overcome by recording the meetings and the meeting materials and posting them for later viewing. The first obstacle – described in our July letter to the CLRC – is that board meetings are often held at a time/day that conflicts with the schedule of HOA members. \

Scheduling conflicts have probably become even more numerous during the pandemic as homeowners work from home and monitor home-schooling. Working from home and home-schooling also assume that internet and cell service are available, neither or which may be true.

We join with others in supporting the idea that electronic meetings may be a way to promote homeowner participation in the governance of an association. However, we urge the Commission first to question the key assumptions on which the proposal is based. Is the proposal meant for the convenience of the board OR is it designed to promote homeowner participation? If the proposal is truly designed to promote homeowner participation, then steps must be taken to ensure

- timely notice of the meeting and the agenda to owners
- availability of agenda materials
- technical assistance to homeowners who need it
- recording and archiving of the meeting for those who can’t participate in real time because of scheduling conflicts or because of the cost of participating.

The Center’s legislative committee is also considering related issues, e.g. the physical location issue and we will offer further comments as the Commission continues its work.

Sincerely,

Marjorie Murray, President  
Center for California Homeowner Association Law

**Linda L. Brown**

Tel & Fax: 510-530-1261  
2609 Chelsea Drive  
Oakland, CA 94611

[lindabrown@aol.com](mailto:lindabrown@aol.com)

August 12, 2020

To: Mr. Brian Hebert and the CA Law Revision Commission (CLRC)

From: Linda Brown

Re: **Common Interest Developments (CIDs)-Reforms Needed**

Ref: *Comments for August 13+July 9 Follow-up*

First, thank you for meeting monthly, making the meetings *easily accessible* to the public via Zoom. I appreciate your letting me know about the meetings in advance and for facilitating public comments. .

Here is follow-up to my July 9 oral comments and additional comments for Thursday.

Last month I urged you to better alert individual CID unit owners of the good work of the CLRC and enlist their help in solving the many problems with CID housing and more specifically the laws governing CIDS. This letter provides three areas of information unit owners need to know and a list of “keywords” describing some, not all, problems.. Due to my time and technology expertise limitations, I offer a few solutions now. More will follow.

I urge the CLRC to:

- 1) reach out to individual CID unit owners quarterly and help educate them on:
  - current laws, legislative bills, and newly-enacted laws, and
  - the health and financial safety risks of owning a CID home
  
- 2) ensure CLRC and all HOA records are available online 24/7 and made available within two business days upon written and phone call requests, and
  
- 3) recognize the inherent disadvantage individual CID homeowners face in:
  - forums like this,
  - the legislative process,
  - associations<sup>1</sup>, henceforth also called a homeowners association (HOA) and
  - the courts

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<sup>1</sup> Yes, I know the law uses the term “association.” For brevity, and since my experience is with an attached and stacked apartment-to-condominium conversion governed by a homeowners association (HOA) , I will that term and acronym interchangeable with “association” and to be inclusive and to cover Community Associations (CA) typically associated with planned communities and other associations such as those governing mobile home parks and stock-ownership entities.. I know CID owners in those type of associations who have experienced the same or similar problems.

*Solution 1 Reach out to associations through the list with the Secretary of State's office and to property managers through their licensing agency. Require both to transmit information to individual CID unit owners within two business day. Allow transmission via e-mail and on association web and social media sites*

*Solution 2 Commission experts in the law and in mass communications to prepare 24/7 brief podcasts or webinars on all topics and include links to statutory and case law. Recruit and pay six new and long-term CID unit owners to review these products and provide feedback before release.. Make the finished product available online 24/7 and upon request by any written form—mail, e-mail, or fax.*

*Solution 3-Work with the county law libraries to make this educational material available locally in the forms described above and to host in-person workshops and briefings when the pandemic restrictions end.*

Here are keywords problems in CID living that can be improved with changes to the laws.

#### *Current realities*

Inherent disadvantage of individual unit owners compared to the professionals<sup>2</sup>  
Lack of accountability, responsibility, and oversight of the professional as their work relates to work in CIDs or on behalf of HOA boards of directors (BODs)  
Professionals who take advantage of naïve and unsuspecting CID homeowners, including  
-individual unit owners  
-those who volunteer on the association BOD  
Lack of transparency of who (or what entity) pays for (and benefits from) experts who  
-inspect properties  
-provide analysis, recommendations, and work

*Parties to a dispute or research need to know the scope of work and who is paying the tab for experts: the HOA, the HOA's insurance company attorneys paid for by the HOA or paid for by the HOA's insurance or a unit owner.*

Construct Defect laws and litigation that affects new construction  
Hidden defects that affect older structures

Insurance policies of 300 pages or more that ordinary people cannot understand

Agency staff (especially in the Department of Insurance and Department of Real Estate) whose wide variation in knowledge and oral communication skills do not help resolve problems.

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<sup>2</sup> Property managers, insurance company staff and brokers, attorneys, especially those paid for by an insurance company to defend a HOA, and “preferred construction contractors” of insurance companies and/or property managers whose relationship can present a conflict of interest and is not necessarily disclosed upfront.

*Conflict resolution realities within the association that are preventable with legal changes*

No rights and responsibility awareness education or training for

- current association homeowners or prospective CID homebuyers

No best practices training for volunteer BODs and owners

- Training in the laws and governing documents
- Training in communications and conflict resolution

Confidential internal dispute resolution practices that result in problems being repeated

BODs that do not share information from the professionals while paying these

professionals with monies all HOA members pay as dues and/or special assessments

Default conflict resolution going straight to the courts

*Conflicts that go to the courts where the process exponentially increases the costs and delays*

Confidential mediation that professionals can and do use as a delay tactic

Confidential mediation that ensures problems are repeated

Non-disclosure agreements (NDAs) that:

- ensures bad behavior of all parties is hidden, for example withholding needed documents and
- ensures problems are repeated

Misuse of Strategic Lawsuits Against Public Participation (SLAPPS)

Costs in terms of time and dollars that most CID/association homeowners

- do not know about in advance
- are not prepared to pay
- directly, or
- indirectly through increased dues and special assessments

Due to my time and computer expertise limitations, I am unable to provide examples and recommended solutions at this time. I will do so soon.

In summary, big improvements are needed to CID law now. While education and training using low or no-cost technology like your Zoom meeting will help resolve the problems, reform and a complete overhaul is also needed.

Online access to live CLRC and to all HOA BOD meetings is necessary along with online 24/7 and other forms of access are also needed after the live meeting for those who cannot participate live due to work, family commitments, or other reasons.

Making the professionals responsible for wrong they know about or should know about will also help. Transparency and full disclosure of ACT information is needed for unit owners to make informed decisions and must be required. (ACT = accurate, complete, and timely)



In short, with online resources, inexpensive podcasts, webinars, more upfront training, and education, unit owners will be protected. Unit owners, especially retirees, should not lose their equity because the HOA failed to disclose lawsuits or made decisions without involving members that led to lawsuits..

Please , please be aware of these topics, news reports, and academic and resources that reveal the disaster that CID/HOA law is for too many individual owners and, by extension, some renters.

1) [www.verdictsearch.org](http://www.verdictsearch.org) that shows the legal fees for one party in a HOA lawsuit runs \$50,000-\$450,000.

2) Educate CID homeowners that legal fees are only one cost. The total costs includes lost time, increased costs for all HOA “members” such as increased dues and special assessments that cover increased construction costs because the project was ignored due to advice of the “professionals” or stopped due to lawsuits, lost revenue for small business owners and lost jobs for employees who have to take off from work to deal with HOA problems, use of savings set aside for retirement, a child’s education and/or to donate to charity to pay for the professionals who prey on naïve and unsuspecting CID association homeowners.

3) Educate elected officials and CID homeowners on the long-term health and community problems created by stress associated with preventable CID problems. Stress that starts with ignored reports of problems because the volunteer BOD either does not have time or expertise to deal with the problem can lead to anxiety, depression, stroke, heart disease, and death.

4) Replace the words “members” with “CID homeowners.” The word “members” implies voluntary membership in a club, a club most association members would not join if not forced to do so by the state of California.

5) Dr. Evan McKenzie’s book [Beyond Privatopia, Rethinking Private Residential Government](#) and this sentence in the attached flyer

**“With CID housing, people are always one election of one controversy away from disaster.”**

6) Dr. McKenzie’s latest (2019) academic article [Private Covenants, Public Laws, and the Financial Future of Condominiums](#) with these words

**“These cases where associations made serious mistakes in dealing with insurance-related issues, illustrate certain uncomfortable facts about the potential liabilities that unit owners assume when they buy a CID unit and they are facts that very few homebuyers understand.”**

7)The news report [\*Home Suite, Home\*](#) that captures the behavior-suspected legal behavior---of insurance company personnel and/or brokers and their defense attorneys that caused delay, displacements, and ridiculously high costs for a common problem: leaks.

I wish I had known about these information resources when the HOA BOD quit communicating with owners. Little did all the homeowners know that:

- the “members” would spend over \$25,000 in special assessments, (\$1,500,000),
- the monthly dues would increase to \$75/month, nearly twice what was my initial monthly mortgage payment, or that
- the BOD quit communicating because “the issues were so complex and the BOD member time so limited that they “relied solely on the professionals.”

The then-president shared this information year later. He also died of a heart attack at a young age. I think the stress of prolonged litigation unnecessarily contributed to his untimely demise.

Thank you for reading and considering my concerns. I will provide specific examples and suggested cost-effective solutions soon. Please let me know if I can provide more support for the work you are doing.

**EMAIL FROM STEVE LINKE**  
**(8/16/20)**

Dear Commissioners:

I am the President of the Corona La Costa Homeowners Association, which is comprised of 209 single-family homes in Carlsbad. I am a strong proponent of transparency and member participation at Board meetings. In fact, that is one of the main reasons I joined our Board of Directors over ten years ago. I understand that many common interest developments probably need some tighter regulations to protect their members from unscrupulous Board members and/or managers. However, we have low fees and a small budget, so I am concerned about the potential unintended regulatory burdens of two of the proposed revisions.

**5450(b)(2) The meeting notice provides the telephone number and electronic mail address of a person who can provide technical assistance with the teleconference process, both before and during the meeting.**

My only concern with this section is the phrase “during the meeting.” We started doing electronic meetings immediately after the COVID-19 stay-at-home order went into effect. We provide a phone number and the [GoToMeeting.com](https://www.gotomeeting.com) URL, along with a nine-digit access code, on all of our meeting notices/agendas. When a Member calls the phone number or uses their web browser, they are simply prompted to enter the code.

That should not be confusing to anybody, but, if it is, they can call our Community Manager **before** the meeting. However, she should not be expected to handle technical assistance during the meeting, because she is managing the participants and participating in the meeting herself.

I also do not think it is reasonable for us to have to pay our management company for extra hours for an additional technical support person during our meetings, or for us to find a monthly volunteer willing to give out their phone number and email address and sit for two hours doing nothing (we have very little member participation at our meetings).

I would argue that if a Member is capable of making a phone call or email to ask for technical assistance, they should be capable of simply making the telephone call for access to our meeting and entering a nine-digit code when prompted to do so (without the need for technical assistance). Any additional cost to our Association like this is paid by all of the Members, unless the State of California is willing to reimburse our Association for such mandates.

*Please remove the need for technical assistance **during** meetings, or make exceptions to the requirement when joining a meeting is a simple phone call plus a code (and similar).*

**5450(b)(3) The meeting notice is delivered by a method other than posting a printed copy of the notice.**

I watched your 8/13/2020 meeting, and Chair King had exactly the right suggestion—make “general delivery” meeting notices **opt-in** for regular mail for Members who prefer that, but continue to allow posting in a common area to satisfy the notice requirement. Perhaps I missed something, but I was very confused by Mr. Hebert’s comments. He initially seemed to suggest

that meeting notices be changed from “general delivery” to “individual delivery,” which is a huge change that effectively would require sending all meeting notices by regular mail to all members. But then he later challenged Chair King’s suggestion as being a huge leap, even though it is much more modest and reasonable.

In our Association, up to two years ago, we were sending all of our monthly Board meeting notices/agendas to all of our members by regular mail, which was costing thousands of dollars per year. So, we effectively were doing it by “individual delivery,” even though we were only required to do it by “general delivery.”

Two years ago, we changed our policy to posting meeting notices/agendas in a case mounted outside in our small community park. That policy change was described to all of the members by regular mail, and there were no objections, nor has anybody ever complained about lack of meeting notices. In addition, we email the meeting notices/agendas to all Members with email addresses on file.

Further, every year, we are required by statute to send by “individual delivery” (regular mail) a copy of all of our policies, including our meeting notice policy. In that mailing, we provide the option for Members to request receiving meeting notices in the regular mail. I do not believe any Member has made that request in the two years since we made the policy change.

In other words, all of our Members that have provided their email addresses get an electronic copy of the meeting notices/agendas. If a Member does not want to provide an email address, they are asked once a year in a letter that comes in their regular mail if they want to receive the meeting notices by regular mail. And, they always have the option of just going to the display case in the park to look at the posted notices/agendas. It is in a wide open area outside, and there is only a phone number (and “[GoToMeeting.com](http://GoToMeeting.com)”) and the nine-digit code to write down, which do not change month-to-month.

So, I think we have gone to great lengths to make sure everybody who wants to receive meeting notices can get them. I do not want to be forced to go back to sending all of the notices by regular mail, which is what would happen if you change the meeting notice requirement to “individual delivery.” I can say with great confidence that, if you create a default situation of requiring individual delivery (regular mail), and then hope for individuals to opt for email or posting instead of regular mail, barely anybody in our Association would notify us of those options—not because they really want to get the meeting notices in the mail, but rather because they would just throw the option form in the trash without reading it or would be confused and ignore it.

Again, any additional cost to our Association like this is paid by all of the members, unless the State of California is willing to reimburse our Association for such mandates.

*Please do not impose any sort of “individual delivery” requirement on meeting notices, unless there is an unusual emergency situation, such as the location where the notices are supposed to be posted cannot be reasonably accessed (not just due to COVID-19). Perhaps you also can make a requirement that there is an option provided in the annual policy mailing for regular mail delivery for those members who would like to opt-in, as our Association provides.*

Best regards,  
Steve Linke

**EMAIL FROM JANICE**  
**(8/17/20)**

Dear Mr. King, Mr. Herbert

To answer your questions

- Give you timely **NOTICE**?
- **HOW** do you get notices? (Does the HOA ask you what delivery method you want?)
- Give you an **AGENDA**?
- Give you **TECHNICAL ASSISTANCE** to enable you to participate?
- Give you background on issues to be **VOTED ON** by the board?
- HOW exactly do you get NOTICE (assuming you do get it)?
- Is there a clear record of **how individual board directors VOTE**, especially on money matters?
- Are board meetings **recorded** so that members can view/listen to them later if they can't attend in real time?

My answer is NO to all questions.

I just discovered my HOA's meetings have been being held via Zoom. I sent an email to our Property Management rep this today and asked for a copy of the agenda to be emailed to me so I could join the Zoom meeting. I'm waiting for their response.

Regards,  
Janice