

Memorandum 2021-18

2021 Legislative Program (Status Report)

The attached table shows the status of Commission-related legislation in 2021.¹ Additional information is provided below.

California Public Records Act

Assembly Bills 473 and 474 (Chau) would implement the Commission's recommendations on *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm'n Reports 207 (2019), and *California Public Records Act Clean-Up: Conforming Revisions*, 46 Cal. L. Revision Comm'n Reports 563 (2019), respectively. Both bills have been referred to the Assembly Committee on Appropriations and are expected to be heard there later this month.

Revocable Transfer on Death Deed: Follow-Up Study

Senate Bill 315 (Roth) would implement the Commission's recommendation on *Revocable Transfer on Death Deed: Follow-Up Study*, 46 Cal. L. Revision Comm'n Reports 135 (2019).

As noted in Memorandum 2021-14, there were discussions in the Legislature about amending SB 315 to change the standard for liability of a beneficiary who gives defective notice to the heirs of a deceased transferor. In the Commission's recommendation, such liability would only be imposed if the beneficiary's failure to give proper notice was intentional or grossly negligent. Some persons preferred that the standard be based on a duty of reasonable diligence.

Ultimately, Senator Roth agreed to the following amendment of proposed Probate Code Section 5681(g), which was made on March 25, 2021:

~~(g)(1) A beneficiary is liable to an heir of the transferor for any damage caused by a failure to comply with this section that is~~

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.

~~intentional or grossly negligent.~~ A beneficiary who fails to serve the notification required by this section on an heir who is not a beneficiary and whose identity is known to the beneficiary shall be responsible for all damages caused to the heir by the failure, unless the beneficiary shows that they made a reasonably diligent effort to comply. For purposes of this subdivision, “reasonably diligent effort” means that the beneficiary has delivered notice pursuant to Section 1215 to the heir at the heir’s last address actually known to the beneficiary.

(2) A beneficiary is not liable under this subdivision if that beneficiary reasonably relied, in good faith, on another beneficiary’s statement that the other beneficiary would satisfy the requirements of this section.

(3) A beneficiary is not to be held to the same standard as a fiduciary.

While that amendment would elevate the standard of care, it also includes three new rules that would limit the beneficiary’s potential liability:

- (1) Liability would be limited to cases where the beneficiary fails to give notice to an heir whose identity is known to the beneficiary.
- (2) As a matter of law, the standard of care could be met simply by delivering notice to an heir’s last known address.
- (3) Language was added to make clear that the duty is not that of a fiduciary.

Taken as a whole, the staff does not think that the amendment is incompatible with the Commission’s overall recommendation. It simply reflects a slightly different take on the character of the beneficiary’s duty to give notice to heirs. **The staff does not believe that the official Comment to proposed Section 5681 needs to be revised to accommodate that change.** Thus, no action is required unless the Commission decides that it wishes to distance itself formally from the amendment.

Common Interest Development Meetings During Emergencies

Senate Bill 391 (Min) would implement the Commission’s recommendation on *Emergency-Related Reforms: Common Interest Development Meetings* (Nov. 2020).

The bill was heard in the Senate Committee on Judiciary on April 6, 2021.

At that hearing, Senator Min indicated that he would accept amendments that had been proposed in the Committee’s analysis of the bill. The bill was amended accordingly on April 13, 2021.

Amendments to the bill addressed three issues that have been discussed previously, including in Memorandum 2021-14. They are summarized below.

Meeting Notice

As noted in Memorandum 2021-14, there was legislative interest in adjusting the rules for giving notice of a meeting conducted under the proposed law. Amendments to achieve that purpose have now been made. The current bill language on that issue reads as follows:

(1) Notice of the first meeting that is conducted under this section for a particular disaster or emergency affecting the association is delivered to members by individual delivery.

(2) The notice for each meeting conducted under this section includes, in addition to other required content for meeting notices, all of the following:

...

(C) A reminder that a member may request individual delivery of meeting notices, with instructions on how to do so.

...

(c) If, as a result of the disaster or emergency, mail delivery or retrieval is not possible at any association onsite address and the address on file with the association for that member is the same association onsite address, then the association shall send the notice of the first meeting referenced in paragraph (1) of subdivision (b) to any email address provided to the association by that member, in writing, pursuant to paragraph 2 [sic] of subdivision (a) of Section 4040 or subdivision (b) of Section 4041.²

The staff recommends that the Commission’s Comment to proposed Civil Code Section 5450 be revised to conform to those changes, as follows:

Comment. Section 5450 is new.

2. The statutory reference to “paragraph 2” appears to be irregular, because such references usually place the numeral between parentheses. If the bill is amended again, the staff will ask that the apparent error be corrected.

Subdivision (a) governs the application of the section. See also 42 U.S.C. §§ 247d (federal public health emergency), 5120-5208 (federal disaster relief).

Subdivision (b) authorizes meetings to be conducted entirely by teleconference, if certain conditions are met.

Paragraphs (b)(1) and (2) govern the required delivery and content of notice of a meeting conducted under this section. ~~The method of delivery of a board meeting notice is governed by Section 4045 (general delivery). Under Section 4045(b) any member has the right to receive meeting notice by individual delivery under Section 4040, which can include delivery by electronic mail. That option must be noted in the common interest development's annual policy statement. See Section 5310(a)(4).~~

Paragraph (b)(4) is similar to Government Code Section 11123(b)(1)(D).

Paragraph (b)(5) provides that a meeting conducted under this section must afford every director and member of the association the same right to participate in the meeting that the person would have had in a face-to-face meeting. This would include the right to witness the opening and counting of paper ballots under Section 5120(a). To comply with that requirement, the meeting would need to provide video that clearly shows the opening of ballot envelopes and the votes cast by the ballots, sufficient to demonstrate the accuracy of the process.

Ballot Counting

The bill was also amended to add a subdivision (d), which provides that a meeting conducted under the proposed law cannot be used to open and count ballots in certain elections, except in limited specified circumstances:

(d) Subdivision (b) does not apply to a meeting at which ballots are counted and tabulated pursuant to Section 5120, unless all of the following conditions are met:

(1) The declared or proclaimed disaster or emergency makes it unsafe or impossible for people to gather in person in order to count and tabulate ballots.

(2) The meeting at which ballots are to be counted and tabulated is conducted by video conference.

(3) The camera is placed in a location such that members can witness the inspector of elections counting and tabulating the votes.

Because this would address an issue that was not addressed by the Commission's recommendation, the Comment to Section 5450 does not discuss it. **Consequently, there is no need to revise the Comment to conform to this change.**

Judicial Enforcement

Finally, the bill was amended to add a subdivision (e), which provides that the existing provision on judicial enforcement of board meeting requirements also applies to the proposed law:

(e) The remedies available pursuant to Section 4955 shall also be available to address violations of this section.

For context, existing Civil Code Section 4955 provides as follows:

(a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues.

(b) A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Again, the amendment would address an issue that was not addressed by the Commission's recommendation. It is not therefore not discussed in the Comment to Section 5450. **There is no need to revise the Comment to conform to this change.**

Respectfully submitted,

Brian Hebert
Executive Director

Status of 2021 Commission Legislative Program

As of April 15, 2021

		AB 414	AB 473	AB 474	AB 1578	ACR 24		SB 315	SB 391		
	Introduced	2/3/21	2/8/21	2/8/2021	3/8/21	2/8/21		2/4/21	2/11/21		
	Last Amended	4/6/21			4/12/21			3/25/21	4/13/21		
First House	Policy Committee	4/14/21	3/23/21	3/23/21	4/20/21	3/23/21		4/6/21	3/18/21		
	Second Committee Passed House	—				4/14/21			4/6/21		
Second House	Policy Committee										
	Second Committee										
	Passed House										
Concurrence											
Governor	Received										
	Approved										
Secretary of State	Date										
	Chapter #										

Bill List: AB 414 (Maienschein): TCR omnibus
 AB 473 (Chau): CRPA
 AB 474 (Chau): CPRA Conforming Revisions
 AB 1578 (Judiciary): Eminent Domain: Precondemnation Activity
 ACR 24 (Chau): Resolution of Authority

SB 315 (Roth): RTODD follow-up
 SB 391 (Min): CID Teleconferencing

KEY _____

Italics: Future or speculative
 “—”: Not applicable