

## RESOLUTION 04-01-2014

### DIGEST

Common Interest Developments: Legal Representation Allowed in Internal Dispute Proceedings  
Amends Civil Code section 5915 to allow members and homeowners' associations to be represented by counsel in internal dispute resolution proceedings.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

Similar to Resolution 02-03-2012, which was approved in principle as amended.

#### Reasons:

This resolution amends Civil Code section 5915 to allow members and homeowners' associations to be represented by counsel in internal dispute resolution proceedings. This resolution should be approved in principle because it ensures that homeowners association members, as well as the association, may, but are not required to, be represented by counsel during dispute resolution proceedings.

Homeowner associations must engage in an internal dispute resolution process when there is a dispute between the association and a member involving their rights, duties or liabilities. (Civ. Code, § 5900.) That process can be binding and judicially enforceable. (Civ. Code, § 5915, subd. (c).) Associations are commonly represented by general counsel and have access to their legal advice. While some associations allow their members to be represented by counsel during these proceedings, others do not. A member who is denied the opportunity to be represented by counsel in these proceedings is at a great disadvantage to the association who is represented by counsel. This resolution provides the opportunity for an equal playing field between the parties.

This resolution is similar to 02-03-2012, which was approved in principle with recommended amendments, and provided that members had the right to be represented by counsel, at their own expense, in dispute resolution proceedings. Resolution 02-03-2012 sought to amend Civil Code sections 1363.830 and 1363.840. Those sections were repealed in 2012 and replaced by Civil Code sections 5910 and 5915, respectively.

This resolution is similar to AB 1738 (Chau) (2013-2014 Reg. Sess.), which proposes that each party has the "right" to have an attorney present in these proceedings, that the attorney may present the party's position on the issue, and that each party must bear their own legal fees and costs.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5915 to read as follows:

§ 5915

1 (a) This section applies to an association that does not otherwise provide a fair,  
2 reasonable, and expeditious dispute resolution procedure. The procedure provided in this section  
3 is fair, reasonable, and expeditious, within the meaning of this article.

4 (b) Either party to a dispute within the scope of this article may invoke the following  
5 procedure:

6 (1) The party may request the other party to meet and confer in an effort to resolve the  
7 dispute. The request shall be in writing.

8 (2) A member of an association may refuse a request to meet and confer. The association  
9 may not refuse a request to meet and confer.

10 (3) The board shall designate a director to meet and confer.

11 (4) The parties shall meet promptly at a mutually convenient time and place, explain their  
12 positions to each other, and confer in good faith in an effort to resolve the dispute.

13 (5) A resolution of the dispute agreed to by the parties shall be memorialized in writing  
14 and signed by the parties, including the board designee on behalf of the association.

15 (c) An agreement reached under this section binds the parties and is judicially enforceable  
16 if both of the following conditions are satisfied:

17 (1) The agreement is not in conflict with law or the governing documents of the common  
18 interest development or association.

19 (2) The agreement is either consistent with the authority granted by the board to its  
20 designee or the agreement is ratified by the board.

21 (d) A member may not be charged a fee to participate in the process.

22 (e) The procedures in this article shall provide that both the member and the association  
23 may be represented by counsel.

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

**PROPONENT:** Los Angeles County Bar Association

**STATEMENT OF REASONS**

The Problem: Since existing law provides that in some circumstances, resolution of a homeowners association's dispute is binding and judicially enforceable, any default meet and confer procedure that is "fair, reasonable, and expeditious" would clearly state that both the member and the association may be represented by counsel. This is an access to justice issue since millions of California homeowners live in residential common interest developments and could be denied meaningful access to justice without a clear understanding that they have access to counsel in these internal proceedings and appeals, some of which could be binding and judicially enforceable.

The Solution: Amends section 5915 to specifically require that the default meet and confer procedures adopted by all homeowners associations' comply with a newly added subsection (e) which states that a common interest development's default meet and confer procedures in this article shall provide that both the member and the association may be represented by counsel.

**LEGISLATIVE HISTORY**

Not known.

**IMPACT STATEMENT**

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

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