

RESOLUTION 04-06-2014

DIGEST

Property: Prohibits HOAs from Redacting Information about Financial Transactions

Amends Civil Code section 5215 to prohibit homeowner associations from redacting information about financial transactions.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 5215 to prohibit homeowner associations from redacting information about financial transactions. This resolution should be approved in principle because it ensures transparency, fairness and accuracy in HOA financial transactions.

Civil Code section 5205 allows members to inspect association records, which include financial statements showing income and expenses. Members, who pay dues to the HOA, have an interest in ensuring that the HOA's financial records are accurate and that there are no undisclosed conflicts of interest between the HOA, its board or other members, and persons hired by the HOA. This resolution furthers that interest by preventing HOAs from using Civil Code section 5215 as a way to hide undisclosed conflicts, or secretly bestowing favors on other members. This resolution also ensures that members can review complete records so that they can accurately audit the HOA's use of member dues.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 5215 to read as follows:

§ 5215

1 (a) Except as provided in subdivision (b), the association may withhold or redact
2 information from the association records if any of the following are true:

3 (1) The release of the information is reasonably likely to lead to identity theft. For the
4 purposes of this section, "identity theft" means the unauthorized use of another person's personal
5 identifying information to obtain credit, goods, services, money, or property. Examples of
6 information that may be withheld or redacted pursuant to this paragraph include bank account
7 numbers of members or vendors, social security or tax identification numbers, and check, stock,
8 and credit card numbers.

9 (2) The release of the information is reasonably likely to lead to fraud in connection with
10 the association.

11 (3) The information is privileged under law. Examples include documents subject to
12 attorney-client privilege or relating to litigation in which the association is or may become
13 involved, and confidential settlement agreements.

14 (4) The release of the information is reasonably likely to compromise the privacy of an

15 individual member of the association. This subsection does not authorize the association to
16 redact from records defined as interim financial statements under Civil Code section 5200(a)(3)
17 any of the following information:

18 (A) The identity of the counterparty to any transaction with the association, including but
19 not limited to association members;

20 (B) The date of any transaction with the association;

21 (C) The amount of any transaction with the association;

22 (D) The nature of the transaction.

23 (5) The information contains any of the following:

24 (A) Records of goods or services provided a la carte to individual members of the
25 association for which the association received monetary consideration other than assessments.

26 (B) Records of disciplinary actions, collection activities, or payment plans of members
27 other than the member requesting the records.

28 (C) Any person's personal identification information, including, without limitation, social
29 security number, tax identification number, driver's license number, credit card account
30 numbers, bank account number, and bank routing number.

31 (D) Minutes and other information from executive sessions of the board as described in
32 Article 2 (commencing with Section 4900), except for executed contracts not otherwise
33 privileged. Privileged contracts shall not include contracts for maintenance, management, or
34 legal services.

35 (E) Personnel records other than the payroll records required to be provided under
36 subdivision (b).

37 (F) Interior architectural plans, including security features, for individual homes.

38 (b) Except as provided by the attorney-client privilege, the association may not withhold
39 or redact information concerning the compensation paid to employees, vendors, or contractors.
40 Compensation information for individual employees shall be set forth by job classification or
41 title, not by the employee's name, social security number, or other personal information.

42 (c) No association, officer, director, employee, agent, or volunteer of an association shall
43 be liable for damages to a member of the association or any third party as the result of identity
44 theft or other breach of privacy because of the failure to withhold or redact that member's
45 information under this section unless the failure to withhold or redact the information was
46 intentional, willful, or negligent.

47 (d) If requested by the requesting member, an association that denies or redacts records
48 shall provide a written explanation specifying the legal basis for withholding or redacting the
49 requested records.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Homeowners association ("HOA") boards exercise control over many important aspects of their member's quality of life, such as parking, garbage, window coverings, noise and light, common area maintenance, improvements, and imposing assessments for current and future improvements. By bestowing favors on certain members, an "in group" can retain control over a HOA board for years or decades, promoting the interests of some at the cost of others. There are few checks or balances on the power wielded by the HOA board. One of the only checks is the members' statutory right to inspect association records, to audit whether the HOA board and its agents are properly enforcing the association's governing documents.

In resisting requests for information made by members, associations frequently invoke Civil Code section 5215 to argue that the release of unredacted financial statements that reflect the payment (or non-payment) by members of dues and other obligations comprises a “release of ... information [that] is reasonably likely to compromise the privacy of an individual member of the association.” In this way they effectively prevent their members from auditing the association’s actions.

However, invoking section 5215 in this manner is improper, since the requesting member’s use of the information is already limited by section 5230(a) which provides, among other things, that the associations records and the information they contain “may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member.” That section allows an action for injunctive relief and damages arising from improper use of such information, and authorizes an award of attorney’s fees to the prevailing party.

The Solution: Current law provides that members of a homeowners association or other common interest community are authorized to request, and the association is required to provide, specified records, including interim financial statements, containing any or all of balance sheets, income and expense sheets, and general ledgers. (See Civil Code section 5200 *et seq.*) A homeowners association may redact information from the records provided to a requesting member for reasons set forth in Civil Code section 5215, including when the release of which “is reasonably likely to compromise the privacy of an individual member of the association.” Civ. C. § 5215(a)(4).

This resolution would amend Civil Code section 5215 to make it clear that an association’s right to redact information based on its members’ privacy interests does not extend to basic information regarding the association’s transactions with its members. This resolution would thereby foster transparency in the operations of homeowners associations.

This resolution would also reduce claims against an association by members unhappy that the association released information of their transactions with the association by making it clear that the association did not have the right to redact such information from its financial statements. To the extent that this resolution encourages homeowners associations to provide unredacted financial statements, this resolution also would reduce claims by members who seek such information.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

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

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COMMENTS TO RESOLUTION 04-06-2014

SACRAMENTO COUNTY BAR ASSOCIATION

DISAPPROVE: The problem with this resolution is that it is too broad in its language. The type of records to which this resolution applies are of a nature which would include transactions that may be more personal in their character. The other provisions of Section 5200, describing records to be provided by an association upon request, deal with the much more general operational budgetary aspects of an association. The records which would be included by this resolution under the heading of "interim financial statements" include general ledger entries which, more likely than not, will include such things as amounts paid under settlements or disciplinary matters. The reason that the provisions of Section 5215 (originally Section 1365.2(d)) were included in the Davis-Stirling Act were to prevent the airing of one's private business to the rest of the community. The language, as it stands, would strip away such protection and leave the potential for broadcast of information which some members, who may have been involved in a disciplinary or delinquency matter, would rather not have aired in public.

The author states that this resolution is necessary to prevent boards from gaining favor with a "cadre" of members in order to consolidate and maintain power in the association. However, anecdotal experience shows that such occurrences are extremely rare. But, as presented, this resolution would remove a protection of personal information and likely lead to the exposure of such information, with the potential to bring embarrassment to ridicule upon another member of the association.