

RESOLUTION 03-03-2015 (as amended and adopted)

DIGEST

Property: Common Interest Developments – Representation by Counsel at Board Meetings
Amends Civil Code section 4925 to permit members to have legal representation at a board meeting in certain circumstances.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Civil Code section 4925 to read as follows:

§4925 Open Board Meeting Limitations

1 (a) Any member and/the member's attorney may attend board meetings, ~~except when~~
2 ~~including meetings of the board held in, executive session,~~ including meetings of the board held
3 in executive session, to which the member is invited to attend, to which the member is invited to
4 attend. As specified in subdivision (b) of Section 4090, a member of the association and/or the
5 member's attorney shall be entitled to attend a teleconference meeting or the portion of a
6 teleconference meeting that is open to members, and that meeting or portion of the meeting shall
7 be audible to the members in a location specified in the notice of the meeting.

8 (b) Subject to the limitations in subdivision (c), the board shall permit any member to
9 speak at any meeting of the association or the board, including meetings of the board held in
10 executive session to which the member is invited to attend. A reasonable time limit for all
11 members of the association to speak to the board or before a meeting of the association shall be
12 established by the board.

13 (c) Subject to any reasonable time limit established by the board as specified in
14 subdivision (b) of this section, a member's attorney shall be permitted to speak, with or without
15 the member, at any meeting described in subdivision (b) in which a member is also permitted to
16 speak in order to address any item on the agenda, provided the member and/or the member's
17 attorney gives at least 48 hours advance written notice to the association of the member's
18 attorney 's intention to attend and speak on the agenda item.

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

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Under existing law a community association may prohibit a member (property owner) from being represented by an attorney at a Board of Directors meeting of the association, even though the association may be represented by its attorney at these meetings. See *SB Liberty, LLC v. Isla Verde Association, Inc.* (2013) 217 Cal.App.4th 272.

The Solution: This resolution will provide a member of a community association the right to have attorney representation at a board of director meeting of the association, ~~provided the~~

association has attorney representation or the association waives its right to have its attorney present. This change in the law would be consistent with the change enacted in 2014 by the Legislature in Civil Code Sections 5910 and 5915 which specify that members of a community association may be represented by an attorney at internal dispute resolution meetings of the association.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Barry A. Ross

RESOLUTION COMMITTEE RECOMMENDATION

DISAPPROVE (Reasons for Disapproval Addressed by Amendments)

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 4925 to permit members to have legal representation at a board meeting in certain circumstances. This resolution should be disapproved because it allows the board to deny a member the ability to have attorney representation at a board meeting by instructing the board's attorney to not attend the meeting.

The last line of the proposed amendment states: "If the board is represented by an attorney and the board's attorney is unable to attend the board meeting, the member's attorney may not speak to the board unless the board's attorney consents in advance of the meeting." A member appearing at a board meeting without an attorney is clearly at a procedural disadvantage and subject to a denial of due process, regardless of the presence, or lack thereof, of the board's attorney. However, under this resolution, the board can effectively deny members from being represented by counsel at board meetings by instructing the board's attorney not to attend. If the board's attorney does not attend, then the member's attorney cannot speak at the meeting and, therefore, cannot adequately represent the member. In a judicial proceeding, each party is entitled to appear with counsel regardless of the opposing party's choice to appear with or without counsel. The same rule should apply here.

This resolution is similar in concept to Resolutions 04-01-2014 and 02-03-2012, but those resolutions amended Civil Code section 5915, and were more limited in scope than the present resolution. Resolution 02-03-2012 was approved as amended, and Resolution 04-01-2014 was approved in principle.

COUNTERARGUMENTS TO RESOLUTION 03-03-2015

BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY

Permitting a member's attorney to attend any board meeting, not just the executive session meeting to which a member is invited, could potentially (a) have a chilling effect on the meeting and (b) increase costs for the community if the association is forced to bring an attorney to the meeting. Further, proposed subsection (c) assumes that a community's attorney would be able to attend a meeting with 48 hours advance written notice and that a board of directors could authorize such attendance so shortly before a meeting.

As an alternative, a member concerned by a particular agenda item, may ask his or her attorney to submit a letter to the Board on an agenda item at issue.

~~SAN DIEGO COUNTY BAR ASSOCIATION~~ (Objection addressed by amendment)

~~The SDCBA Delegation would approve this resolution if amended to delete the last sentence of subdivision (c). While the resolution seeks to allow participation by HOA members' lawyers in meetings, the current language gives the HOA the power to control when the member may have an attorney appear and speak for the member. As presently drafted, the right to have an attorney present at a meeting and address the board is made contingent on the HOA's attorney being present. This gives the HOA board the ability to control representation simply by determining whether the HOA will have its own counsel present. Likewise, since smaller HOAs are unlikely to have counsel present at HOA meetings due to cost concerns, this resolution will lead to two classes of HOA members — those who can be represented because the HOA Board can afford to have its attorney present versus those who cannot be represented because the HOA Board cannot afford or is unwilling to pay to have its attorney present.~~