

RESOLUTION 11-05-2018

DIGEST

Homeowners Associations: Board Member Standards of Conduct

Amends the title of Division 4, Part 5, Chapter 6, Article 8 of the Civil Code and adds Civil Code section 5351 to codify the board member duties for residential common interest developments.

STATEMENT OF REASONS

The Problem: Most people who serve on the Boards of Directors for “Common Interest Developments” are laypeople, having had little or no legal training, and they do not realize that they must act and make their decisions according to the “Standards of Conduct” that are within the Corporations Code. For example, Common Interest Developments are also known as “Homeowners Associations,” or “HOA’s.” And HOA Board Members are not required to complete any formal training in order to serve on such Boards. And yet, HOA Board Members are required to follow the laws that apply to all directors of “Nonprofit Mutual Benefit Corporations,” which include all HOA’s. The law imposes fiduciary duties upon such directors, including the “Duty of Care” and the “Duty of Loyalty.” In California, the “Duty of Care” is set out in Corporations Code section 7231-7231.5; and the “Duty of Loyalty” is set out in Corporations Code section 7233.

The Solution: HOA Members who serve on their respective Boards of Directors need to know that they are subject to the fiduciary requirements set forth in Corporations Code sections 7230 - 7238, for “Standards of Conduct.” For example, HOA Board Members are bound by law to adhere to the “Duty of Care” standard, which involves performing a reasonable inquiry before making decisions and to make decisions that are in the best interest of the HOA. In addition, HOA Board Members are bound by law to adhere to the “Duty of Loyalty” standard, to refrain from or to restrict self-dealing.

This resolution would add Civil Code section 5350, in order to add a reference to the applicable Corporations Code sections that are about “standards of care.” As a result, this resolution would notify HOA Board members about the standards of care that already exist in the Corporations Code, and it would not create any new requirements. If this resolution were implemented, then such Board Members would be more motivated to act in accordance with the law by making informed decisions, by avoiding self-dealing, and by making decisions that are in the best interest of the HOA.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend the title of Division 4, Part 5, Chapter 6, Article 8 of the Civil Code and to add Civil Code section 5351, to read as follows:

- 1 ARTICLE 8. Board Member Standards of Conduct~~Conflict of Interest~~[5350- ~~5350~~5351.]
- 2
- 3 § 5350

4 (a) Notwithstanding any other law, and regardless of whether an association is
5 incorporated or unincorporated, the provisions of Sections 7233 and 7234 of the Corporations
6 Code shall apply to any contract or other transaction authorized, approved, or ratified by the
7 board or a committee of the board.

8 (b) A director or member of a committee shall not vote on any of the following matters:

9 (1) Discipline of the director or committee member.

10 (2) An assessment against the director or committee member for damage to the common
11 area or facilities.

12 (3) A request, by the director or committee member, for a payment plan for overdue
13 assessments.

14 (4) A decision whether to foreclose on a lien on the separate interest of the director or
15 committee member.

16 (5) Review of a proposed physical change to the separate interest of the director or
17 committee member.

18 (6) A grant of exclusive use common area to the director or committee member.

19 (c) Nothing in this section limits any other provision of law or the governing documents
20 that govern a decision in which a director may have an interest.

21
22 § 5351

23 Regardless of whether an association is incorporated or unincorporated members who
24 serve on Boards of Directors of Common Interest Developments:

25 (a) Are fiduciaries of the Common Interest Development of which they serve.

26 (b) Shall adhere to the standards of conduct specified for nonprofit mutual benefit
27 corporations as prescribed in Corporations Code sections 7230 – 7238.

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

PROPONENT: San Mateo County Bar Association

IMPACT STATEMENT

Civil Code section 5350, for Common Interest Developments, within the “Davis-Stirling Act” – for residential uses, has language that is identical to Civil Code section 6758, for Commercial and Industrial Common Interest Developments, within the “Common Interest Development Act” – which is not about residential uses. In general, if an amendment is to be made that is not exclusively about residential use, then both Acts should be amended in the same way.

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code Section 5350 was added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)

AUTHOR AND/OR PERMANENT CONTACT: Catherine Rucker, P.O. Box 854, Novato, CA 94948-0854, catherinerucker@me.com, 415-246-6647

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends the title of Division 4, Part 5, Chapter 6, Article 8 of the Civil Code and adds Civil Code section 5351 to codify the duties held by board members for common interest developments. This resolution should be approved in principle because it simply codifies the common law duties and responsibilities that Board members must follow when they serve common interest developments.

Division 4, Part 5, of the Civil Code is commonly known as the Davis-Stirling Common Interest Development Act (“the Act”). (Civ. Code, § 4000.) The Act governs “Common Interest Developments,” including “planned developments” which have a common area owned by an association or in common by owners of the separate interests who possess appurtenant rights. (Civ. Code, §§ 4100, 4175.) Under the Act, an “association” means a nonprofit corporation or unincorporated association. (Civ. Code, § 4080.) Associations are commonly referred to as “HOAs.”

The Act expressly provides that statutes governing nonprofit mutual benefit corporations apply to “associations.” (See Civ. Code, § 4805, subd. (a), *defining the scope of an association’s powers*; and Civ. Code, § 5350, subd. (a), *determining when an association’s director has a conflict of interest*.)

Case law clearly holds that Board members for HOAs owe fiduciary duties to the HOA and the members they serve. (*Kovich v. Paseo Del Mar Homeowners’ Assn.* (1996) 41 Cal.App.4th 863, 867; *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642, 650-651.) Codifying these duties simply clarifies existing law for HOA members and Board members who volunteer for those positions.

Moreover, since the Act already incorporates statutes governing nonprofit mutual benefit corporations, requiring HOA Board members to adhere to the same standards of conduct set out in that established statutory scheme would help clarify their duties and maintain consistency in the law.

This resolution is related to 11-04-2018 and 11-06-2018.