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## Governor Brown Signs SB 563; Say Good-bye to Actions Without a Meeting

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Despite significant industry opposition, the Governor has signed into law amendments to the Davis-Stirling Act and specifically Civil Code Section 1363.05, also known as the Common Interest Development Open Meeting Act. Attached is a copy of Civil Code Section 1363.05 with the changes highlighted. Here is the story of how this new law came to be:

As most of you know, the Act was amended with the addition of this code section requiring that board meetings at California community associations be open to members except for certain specified executive session meetings when those meetings should be kept confidential or emergency meetings when the required notice to owners is not possible.

Civil Code Section 1363.05, The Common Interest Development Open Meeting Act states:

“(b) Any member of the association may attend meetings of the board of the association, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member upon the member’s request, regarding the members payment of assessments as specified in Section 1367 or 1367.1. The board shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.” ... and ... “(j) As used in this section, “meeting” includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.”

However, as most California community associations are corporations, the California Corporations Code applies and addresses this issue in part and states:

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“7211. (b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For purposes of this subdivision only, “all members of the board” does not include an “interested director” as defined in Section 5233, insofar as it is made applicable pursuant to Section 7238.”

This is where the term “Action Without A Meeting” comes from.

There has been a debate as to whether this section of the Corporations Code applies to California condominium, planned development and/or stock cooperative community associations, as it seems to conflict with the language, if not the spirit, of the Open Meeting Act. Well, the Legislature has ended that debate and Actions Without A Meeting are no longer allowed.

The new amendments to the open meeting act eliminate actions without a meeting, clarify what and how emergency meetings can be conducted, and address notices of executive session meetings and meetings held via email, among other things.

As if a volunteer board of directors’ job was not difficult enough, the California legislature’s abolishing actions without a meeting just made their jobs a bit more difficult by eliminating the ability of a board take some actions without a meeting, as well as the additional requirement of a two day notice for executive session meetings and the new added requirement that if a board meets telephonically, at least one Board member must be at the meeting location so that the association’s members can attend and listen in person to the board’s deliberations and decisions.

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Here are the important changes in the Open Meeting Act that will be effective as of January 1, 2012:

(f) Unless the ~~time and place of meeting is fixed by the bylaws, or unless the~~ bylaws provide for a longer period of notice, ~~members~~ members shall be given notice of the time and place of a meeting as defined in subdivision (k), except for an emergency meeting or a meeting that will be held solely in executive session, at least four days prior to the meeting. Except for an emergency meeting, members shall be given notice of the time and place of a meeting as defined that will be held solely in subdivision (j), except for an emergency meeting, executive session at least fourtwo days prior to the days prior to the meeting. meeting. Notice shall be given by posting the notice in a prominent place or places within the common area and by mail to any owner who had requested notification of board meetings by mail, at the address requested by the owner. Notice may also be given, ~~by mail or,~~ by delivery of the notice to each unit in the development ~~or,~~ by newsletter or similar means of communication, ~~or, with the consent of the member, by electronic means.~~ The notice shall contain the agenda for the meeting. meeting.

(g) An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section.

(j) (1) The board of directors shall not take action on any item of business outside of a meeting.

(2) (A) Notwithstanding Section 7211 of the Corporations Code, the board of directors shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as specified in subparagraph (B).

(B) Electronic transmissions may be used as a method of conducting an emergency meeting if all members of the board, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the

meeting of the board. Written consent to conduct an emergency meeting may be transmitted electronically.

(k) As used in this section, "meeting" includes any:

(1) "Item of business" means any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a majority of the directors.

(2) "Meeting" means either of the following:

(A) A congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by of business that is within the authority of the board, except those matters that may.

(B) A teleconference in which a majority of the members of the board, in different locations, are connected by electronic means, through audio or video or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this title. Except for a meeting that will be discussed held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend and at least one member of the board of directors shall be present at that location. Participation by board members in a tele-conference meeting constitutes presence at that meeting as long as all board members participating in the meeting are able to hear one another and members of the association speaking on matters before the board.