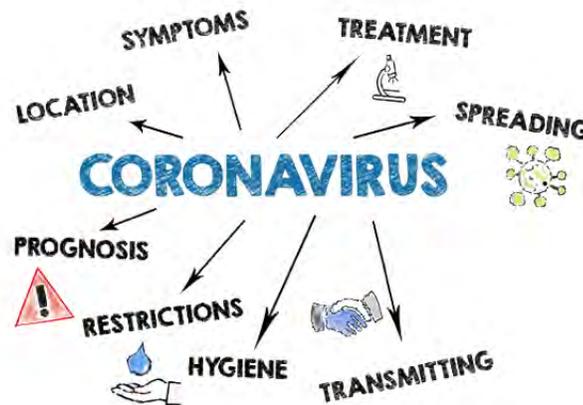


## CORONAVIRUS PROTOCOLS

Two weeks ago, I attended a board meeting where the president was absent because he was in quarantine with the coronavirus. That got my attention.

On March 5, California declared a public health emergency, as have many cities and counties around the state. Airlines, colleges, churches, the entertainment industry, and many other organizations are adopting protocols to protect their employees, customers, and clients from the coronavirus.



Precautions related to the virus are making their way into our industry as well. One of the management companies I work with is located in Seattle, Washington. Last week, the CEO implemented company policies and notified the associations they managed. Following is an edited version of his message:

Dear Board Members,

\*\*\*\*\* is taking the coronavirus seriously and we ramped up our efforts since the first cases were reported in the Seattle area. We want to inform you of the steps we are taking to protect our team and minimize any service disruptions.

We enhanced office cleaning, expanded our work-from-home policies and created tight restrictions on staff members who travel, have known contact with anyone infected, or show signs of illness. For those of you with onsite staff, we are advising our teams of best practices regarding personal protection and encouraging enhanced cleaning and maintenance of common areas.



I join Adrian in inviting you to [contact us](#) for your association's legal needs.

Hon. Lawrence W. Stirling, Senior Partner  
ADAMS|STIRLING  
Author of the Davis-Stirling Act



### **NEW CLIENTS IN FEBRUARY**

3065-77 Middlefield Rd  
3909 Monroe  
55 Redding Road  
Barcelona OA  
Birchwood Grove  
Bridlewood Canyon  
Bullard West Home  
Canyon Colony West  
Canyon Park

We temporarily suspended staff meetings and board and manager education programs and encourage you to do the same by critically considering the benefits of cancelling or postponing board meetings, annual meetings, and community events. We are encouraging our community managers to work with you closely to aid in remote decisionmaking via video conference, conference calls and, when appropriate, unanimous decisionmaking via email. As a company, we will support our individual manager's decision to attend meetings via video conference or conference call.

We urge you to familiarize yourself with the recommendations of experts, take necessary precautions to protect your community, and set community-specific guidelines.

It is likely the precautions we are taking and the potential of increased use of sick leave by staff members may impact turn-around times for certain services. We ask for your support and understanding. As a company, we are doing everything we can to proactively deal with this situation while also minimizing disruptions as we continue to provide services to each of you.

**Recommendation.** Because of the precautions already being taken by the United States, it is possible the coronavirus will have only a mild impact on us individually and our businesses. Still, it doesn't hurt for homeowner associations, management companies, law firms and other industry vendors to implement common sense precautions such as those described above. Not only will they protect everyone from unnecessary exposure to the coronavirus, it protects us against all other viruses as well.



**Kudos #1.** I'm a big fan of the newsletter—it's the one industry communication that I read, in full, every time. Thank you for that. -Jason M.

**Kudos #2.** I believe Davis-Stirling is the best website ever. -Elsa W.

**Kudos #3.** I love your newsletter and look forward to each publication. THANKS! -Barbara S.

**Kudos #4.** Love your newsletters. -Roger K.

**Kudos #5.** Thank you for all your help in educating the population. -Scott C.

**Kudos #6.** Great articles. -Bonnie A.

Carnegie Square  
Crestview Arms  
Del Rey Terrace  
East Duane Avenue  
Eastvale Downs  
La Costa Village  
Lake Don Pedro  
Lynwood OA  
Magill Park Estates  
Marquez Knolls  
Masters Collection at  
Country Club III  
Millerton Lake M. Village  
Moorpark Square  
Norman Place  
Orchard Grove  
Pajaro Vista  
Park El Camino  
Park Row Assn No. 2  
Paseo Del Mar  
Raymus Village No. 1  
Royal Court Estates  
Santa Clara Redwoods  
Tract 4534 HOA  
Turnbull Canyon Village  
Villa San Marco  
Village Sierra  
White Gate  
Windwater Mills  
Wonder Valley  
Woodhaven II

## WEBSITE USAGE

Davis-Stirling.com is the largest website of its kind with thousands of pages of content.

In 2019, we logged more than **one million** unique user sessions and over **6.5 million** page views!



# FEEDBACK

**Term Limits.** Our HOA allows directors to serve two terms and then requires them to step down for 11 months. This has worked fine for decades. Does SB 323 start the clock over again on term limits for those board members whose two terms expire this year? -Toby S.

**RESPONSE:** No, the dumpster fire known as SB 323 does not reset terms. Instead, it knocked out term limits. That means there is no limit on how many times directors can be reelected to their boards.

I don't think that was their intention but the legislation backed by Marjorie Murray's Center for California Homeowner Association Law (CCHAL) was so badly drafted that term limits was one of the many casualties of the bill.

CAI's California Legislative Action Committee (CAI-CLAC), is working to correct this glaring defect so associations can once again impose term limits. Because this is pending, I recommend boards not amend their bylaws to remove term limits. You leave it in place while CLAC works on clean-up legislation.

**Email Addresses.** What is the status on members requesting and receiving member email addresses? Are members entitled upon request to receive all opt-in email addresses? -George B.

**RESPONSE:** Yes, if a member opted into receiving notices from the association via email but has not opted out of sharing their email address with fellow members, it becomes part of the association's membership list and all members have a right to receive and use it. Most members will not be happy to have their email addresses floating around the community. To preserve member privacy, boards should notify all members they can protect their email addresses by opting-out of sharing it with the membership.

**Contacting Marjorie.** Do you know of any way to get hold of Marjorie, or her entity? Their website is down and I really want to ask about uncontested elections. I promise not to yell about it, I just think the intent of the provision is lost in the execution (it had to be, as this is just nuts and is costing us way too much!). -Calli P.

**RESPONSE:** There has been a lot of speculation about why CCHAL's website is no longer operational. To contact Marjorie Murray, try:



## **Litigation**

**Department** handles all HOA litigation needs, including:

- Architectural
- Bankruptcy
- Collections
- Contract disputes
- Disability claims
- Discrimination
- Easement issues
- Election disputes
- Embezzlement
- Employment claims
- Insurance bad faith
- Litigation defense
- Mold
- Noise violations
- Pet issues
- Property damage
- Rules enforcement
- Second-hand smoke
- Water damage

When your association needs assistance, [CONTACT US.](#)



[HOA JOB MARKET](#)

Marjorie Murray  
Center for California Homeowner Association Law  
3758 Grand Avenue, Suite 56  
Oakland, CA 94610  
[mmurray@calhomelaw.org](mailto:mmurray@calhomelaw.org)  
(855) 648-4043

*Full Disclosure.* While you are at it, you might ask Ms. Murray for a list of her members' names and email addresses, the same requirement her organization imposed on nine million members of homeowner associations. Also ask her for a list of the financial backers of her organization. I've been told CCHAL partnered with lawyers who make a practice of suing associations. If so, Ms. Murray should disclose it.

**Election by Acclamation.** Thanks for adding your "finished thought" to last week's response to my email. Acclamation is in our governing documents and it makes no sense not to allow it. The law should always make sense (my hope). -Barb D.

**RESPONSE:** We should pass a law that all laws must make sense and not harm citizens. I can think of a few people who should not be allowed to draft legislation.

**Uncontested Election.** Our bylaws state: "5.7 Uncontested Elections. When, at the close of nominations, the number of qualified candidates nominated does not exceed the number of vacancies, the candidates may be declared elected without need for balloting and shall take their seats on the date set for the membership meeting." The word "acclamation" is not contained in the text. Do our bylaws, as written, meet the criteria for an election by acclamation? -Sandy F.

**RESPONSE:** Yes, your bylaws allow for elections by acclamation. I believe associations can conduct such elections despite SB 323, provided their bylaws allow it. But, I'm just one person. You might send an email to Marjorie Murray and ask what she thinks: [mmurray@calhomelaw.org](mailto:mmurray@calhomelaw.org).

**Investors on Boards.** We recently sent an inquiry to an attorney about investors serving on boards. The bylaws require that directors must reside in the development. The attorney answered that SB 323 did not specify that this was not okay. Therefore, it was fine. Am I reading correctly that you disagree and that any bylaw provision which specifies that directors must live onsite is no longer valid? -Jason M.

**RESPONSE:** Sometimes attorneys disagree. This is one of those times. To me, SB 323 is clear--there is one mandatory and four permissive director qualifications. You can qualify a candidate for election with these five points only:

1. Must be an owner.



[Contact us](#) about amending your CC&Rs and Bylaws.



### **HARASSMENT POLICY**

To comply with federal regulations and reduce legal exposure, boards should adopt [anti-harassment, neighbor dispute policies](#).



**FIRM** [News & Events](#)



**HOA DISCLOSURE  
CHECKLIST**

2. Not delinquent in their assessments (with lots of exceptions).
3. Not joint owners.
4. Not an owner less than one year.
5. No criminal conviction that voids fidelity insurance.

Requiring a director to live in the community is nowhere in the five qualifications listed above. Therefore, it cannot be imposed. For more information, see [Candidate Qualifications](#).

**ELECTION RULES.** All associations must adopt new election rules to comply with SB 323. Failure to do so could subject elections to legal challenge and may result in new elections, monetary penalties and an award of attorney fees. To avoid this, [contact us](#) for new election rules.



## ELEVATED STRUCTURE

### INSPECTIONS

**Stock Co-ops.** Does the Balcony Bill ([Senate Bill 326](#)) apply to co-ops in addition to condominiums? -Colleen M.

**RESPONSE:** If your co-op has three or more units constructed as a multi-family dwelling, it applies. ([Civ. Code §5551\(l\)](#).)



**End of Times.** Thank you very much for the inclusion of the “Balcony Bill” in your newsletter. Also appreciate the shout-out to Robert Nordlund and the list of RS companies. He and Mike McDermont, the current APRA President, have been great about getting all the other providers on the same page and proactively setting policies and procedures.

We are confident that our reserve study industry is prepared to have a fairly high level of uniformity with the interpretation of what is and is not included, the timelines for such, and the procedures for including the inspections themselves in the reports.

They, you, and a whole bunch of other great lawyers, deserve the thanks and gratitude of Reserve Specialists. I’m optimistic that the explosion of anger and confusion will be delayed a couple years until these inspections, and their findings implications actually start taking place. Then, of course, it will be the end of times. -*Scott Clements, Reserve Studies Inc.*

**Licensed Contractor.** I am in the SoCal area. Where can I find a licensed and qualified contractor to do this work? -Jim M.

**RESPONSE:** Both management and reserve companies are already lining up inspectors and contractors for the work that needs to be done with elevated



We provide [seminars & training](#) for boards and managers.



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structures. You should ask them for recommendations.

## MISCELLANEOUS QUESTIONS

**Accessory Dwelling Units.** Does this mean that every community must allow people to live in garages?  
-Nancy B.



**RESPONSE:** Yes. If the house is not a condominium and has a garage, owners can convert their garages into apartments. I'm not a fan of Governor Newsom's solution to the housing crisis. Destroying existing communities is not the best way to create new housing.

**Emotional Needs Dogs.** We are a timeshare HOA and have owners who show up with "emotional needs" dogs. Most appear bogus as you can imagine, which ruins it for legit dogs. But in reading what you sent us, we can now ask them to provide a note from a physician to continue bringing their dogs with them? Also, if someone shows up to rent a unit with an emotional needs dog, we can refuse unless they provide a letter from a physician? I just want to be clear on how I am interpreting the info in the newsletter! -Debra C.

**RESPONSE:** People falsely claiming emotional needs dogs is the most abused area of the law I can think of. When the medical condition of the person claiming an assistance animal is not readily apparent, an association can require a letter from a medical provider that the dog is necessary for the person's health. Once the letter has been produced, the association must grant the requested accommodation. Unfortunately, too many doctors will write such notes even though no medical condition actually exists.



*Recommendation.* You should talk to your association's legal counsel about creating a written policy for you to follow when people show up with squirrels, peacocks, goats, miniature horses, pigs, goats, and the occasional dog, claiming they are assistance animals that must be allowed into common areas, club houses, gyms, pools, etc.

**Dog DNA.** I am the president of our 1,290-home gated community. We try to maintain our community as a safe and enjoyable place to live. Many residents have dogs and walk them every day but do not pick up after their pets. Is there anything that would prevent us from having a DNA test done on dog droppings and fining owners? -Ruth G

**RESPONSE:** There is nothing more disgusting than stepping into a dog's

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feces. Yes, you can test a scofflaw's dog droppings. (See [DNA Testing.](#))

**Mailbox Break-In.** To what degree is the association liable when thieves break into both incoming & outgoing mail boxes on the property? -Elliot S.

**RESPONSE:** Except under rare circumstances, associations are not liable for the criminal acts of others. (See [Criminal Activity](#) and [Liability for Security.](#))

**Internal Dispute Resolution.** Are there any new rules on IDRs? -Roger K.

**RESPONSE:** Not that I'm aware of. For information about IDRs, see [Internal Dispute Resolution.](#)

**Association records.** What documents should be transferred when an association terminates a management contract? We changed management companies and when we receive an inquiry regarding accounting or correspondence information, no documentation can be located. -Barbara S.

**RESPONSE:** When you change management companies, all association records should be transferred to the new management company or to the association. This includes both paper records and electronic. Unfortunately, that does not always happen. Part of the problem is the sheer volume of records management companies handle. From each association the company manages, they receive:

CC&Rs, bylaws, amendments, articles of incorporation, condominium plans, rules & regs, architectural guidelines, collection rules, election rules, minutes (board open and executive session plus annual and special meetings), deeds, budgets, financial records (general ledgers, journals, accounts payable, accounts receivable, canceled checks, vendor invoices, deposit slips, etc.), contracts, insurance policies, general correspondence, newsletters, emailed instructions and correspondence, hearing notices, litigation related materials, and more.



The number of records can be staggering. Not all management companies have the same systems in place to handle the volume.

*Storage Costs.* Paper is expensive to archive and it's difficult to find a particular document without investing significant time looking for it. Sometimes they are warehoused and then forgotten. Ideally, all records are digitized and stored in a searchable format on a hard drive. For that to happen, the management company must invest in the technology for digitizing records and the manpower needed to scan, name, and store records.

Our law firm went paperless years ago, but many management companies have yet to make the investment.

*Shortsighted Boards.* It means boards should be willing to pay a little more for a management company that is paperless. If a board is solely concerned with the lowest possible cost for management, it is being shortsighted and is foregoing a lot of services--one of them being the conversion of paper to electronic records.

*Recommendation:* Ask how your management company how they are storing your records.

**Roof Antenna.** When we had a new roof installed two years ago, the owners agreed to not reinstall the antenna (vintage 1974) as no one used it. Now an owner wants to have a new antenna installed. Is the HOA required to do that and to pay for the installation? -Ursula F.

**RESPONSE:** No, you are not required to install an antenna. You can, however, allow the requesting owner to install it. Since it only benefits him/her, it would be at that owner's sole expense. You want to be careful that it not be installed in a manner that would void your roof warranty. You should consider recording a covenant making the installing owner responsible for maintaining the antenna and any damage it may cause.



Boards can [contact us](#) for friendly, professional advice.

A handwritten signature in blue ink that reads "Adrian". The signature is fluid and cursive.

[Adrian J. Adams, Esq.](#)  
Founder & Managing Partner  
ADAMS|STIRLING PLC



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## Board Meetings & The Coronavirus

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Many boards and managers have inquired about whether an association can hold an entirely telephonic or electronic open board meeting in light of the concerns related to the coronavirus (COVID-19). Legally speaking, the Open Meeting Act that governs association board meetings requires a board to provide a physical location for its open meetings that are otherwise held over the phone or on a computer. Practically speaking, in the face of a legal claim by an owner for an Open Meeting Act violation, a court may elect to overlook the technical violation because its rooted in the greater good: the safety and well-being of the owners, directors, and vendors who may otherwise attend and get sick or cause others to get sick.

The real answer comes down to risk tolerance for a particular board and whether there's little potential for a lawsuit because of a technical Open Meeting Act violation

or if they have a litigious owner who seems to look for every possible violation and try to capitalize on a board's failure (inadvertent or otherwise) to follow the Davis-Stirling Act to the letter of the law. Boards may need to be flexible in how they approach their ongoing community management in the face of the COVID-19 viral pandemic. Some additional recommendations include:

- Make sure the board's agenda and notice explain why the board is holding an entirely telephonic or electronic meeting.
- Ensure owners have access to attend telephonically or electronically.
- Encourage people to contact management (or a designated Board member) in advance if they have questions about how to access the meeting. This approach demonstrates a good faith basis for the board's actions and also proactively endeavors to reach out to owners who may be unfamiliar or uncomfortable with whatever technology is needed to access the meeting to ensure that all owners who want to attend are able.
- For those communities that still continue to provide a physical location for the meeting, still strongly encourage owners on the notice, for everyone's safety, to stay home and participate from afar.
- Consider a physical location that allows owners to create the recommended social distance space (even if it's at a nearby restaurant, onsite meeting space, or outdoor location).
- Request that for people who elect to attend a meeting in person, the board is requesting they only attend if they are not unwell and even if they are physically ok that they allow for two arms' length of distance between each other which is what the Centers for Disease Control is suggesting.
- A board could elect to postpone its open meeting, assuming the association's Bylaws don't require monthly board meetings (which many do not), for a month or two until things calm down because the law only requires boards to meet once a quarter.
- The board could allow owners to send in open forum comments in advance of the meeting, so the Board can still answer the question and provide the owners with feedback. While it doesn't get around the Open Meeting Act requirement, it can help provide an avenue for owners to feel they are still being heard and responded to.
- Record the board meeting and upload it to YouTube or other online platform so it can be viewed at an owner's convenience (or for their health and well-being). If a board takes this approach, they need to remove the recording when they've approved the minutes of the meeting.
- Boards should post the meeting minutes to the community website (if they have one) or email them to the members so they can see business is continuing.

We encourage boards to be proactive and as transparent as they can so their members can feel confident that their community is in good hands and being responsibly governed. When in doubt, please feel free to contact your attorney at Angius & Terry, we are here to help.

Stay safe everyone!



**Jasmine Hale, Esq., CCAL**  
Partner, Angius & Terry LLP  
[jhale@angius-terry.com](mailto:jhale@angius-terry.com)

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**Walnut Creek**

**1990 N. California Blvd., Suite 950  
Walnut Creek, CA 94596  
925-939-9933**

**Manteca**

**1169 S. Main Street, Suite 328  
Manteca, CA 95337  
209-665-4181**

**Fresno**

**5588 N. Palm Ave.  
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559-312-2830**

**Los Angeles**

**3154 Glendale Blvd., Suite 1025  
Los Angeles, CA 90039**

**800-610-4292**

**Riverside**

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619-488-2972**

**San Diego**

**1111 Sixth Avenue  
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619-488-2972**

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## CORONAVIRUS IMPACTS ASSOCIATIONS

Due to the growing impact of the coronavirus on all industries, I decided to publish a newsletter today rather than wait until Sunday. With rising concerns about what is now a pandemic, boards of directors are uncertain what actions, if any, they should take.

Following are questions we received about the coronavirus and general guidelines I believe are prudent.

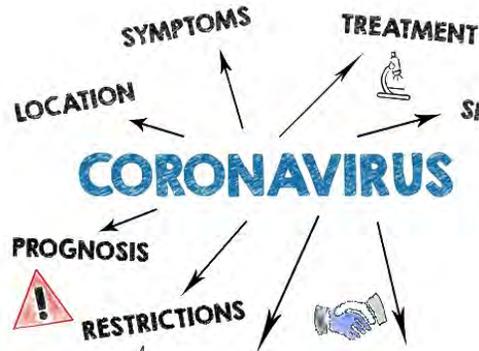
While boards are obligated to make good faith decisions in the best interests of the membership, we are in uncharted territory when it comes to the coronavirus. -Adrian

**#1. Conducting Board Meetings.** Would associations be justified in holding their board meetings via conference calls as "emergency meetings" due to the declared pandemic, and then ratifying those actions after the health issues are over? -Russ H.

**RESPONSE:** Probably not.

Older board members with underlying medical conditions are justifiably concerned about possible exposure to the coronavirus. There are steps they can take to minimize their risk and still fulfill their duties as directors.

*Conference Phone.* Concerned directors can attend meetings electronically via telephone, provided they can hear all other directors in the meeting and all other directors can hear them. This is easily accomplished with a conference phone. Attendance in this manner counts as if the director were physically present in the meeting. ([Corp. Code §7211\(a\)\(6\).](#))



I join Adrian in inviting you to [contact us](#) for your association's legal needs.

Hon. Lawrence W. Stirling, Senior Partner  
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### **NEW CLIENTS IN FEBRUARY**

3065-77 Middlefield Rd  
3909 Monroe  
55 Redding Road  
Barcelona OA  
Birchwood Grove  
Bridlewood Canyon  
Bullard West Home  
Canyon Colony West  
Canyon Park  
Carnegie Square  
Crestview Arms



*The Entire Board.* If ALL directors wish to attend a board meeting by telephone, they can do so. However, notice of open meetings must identify at least one physical location with a conference phone where homeowners can attend the meeting and listen to the board conduct business. ([Civ. Code §4090\(b\)](#).) The statute does not require any of the directors be physically present at the meeting location--only a representative of the board (such as the manager).

*Emergency Meeting?* What if the management company has suspended all meeting attendance for their managers due to the coronavirus? If no other representative can be found to set up the conference phone, can the meeting still be held as an emergency meeting. Unfortunately, this does not meet the definition of an emergency. An emergency is defined as "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" to the membership. ([Civ. Code §4923](#); [Civ Code §4930\(d\)\(1\)](#).)

Fortunately, technology has reached the point where a call-in number can be published along with the agenda so members who wish to attend can also call into the meeting. All attendees except the board should mute their phones and only listen to the meeting. Except for [open forum](#), members cannot participate in the board's meeting. For associations where there may be a large number of attendees, boards should consult with a technology expert to determine which call-in service best serves their needs.



**#2. Close Pool/Spa Facilities?** Would you advise boards close their pool/spa facilities for the duration? -Russ H.

**RESPONSE:** Yesterday, Governor Newsom limited all public gatherings in the state to no more than 250 people. Los Angeles announced it was limiting gatherings to no more than 50 people. Disneyland and all other theme parks in California announced they were suspending operations to help limit the spread of the coronavirus. If boards want to temporarily close their pool/spa facilities, they can certainly do so. If directors are uncertain what to do, they can consult health care professionals for recommendations, as well as consulting legal counsel.

**#3. A Quarantined Resident.** How should boards respond if they learn that a resident tested positive for the coronavirus? Do they have an obligation to inform residents? Is there liability for the board if it does not? -Anonymous

**RESPONSE:** This raises conflicting interests--a person's privacy about their medical condition and the membership's safety.

*Authorized Disclosure.* If the person with the coronavirus authorizes full disclosure, the board can disclose the person's name to the membership. This allows residents who had contact with the person to immediately self-

Del Rey Terrace  
 East Duane Avenue  
 Eastvale Downs  
 La Costa Village  
 Lake Don Pedro  
 Lynwood OA  
 Magill Park Estates  
 Marquez Knolls  
 Masters Collection at  
 Country Club III  
 Millerton Lake M. Village  
 Moorpark Square  
 Norman Place  
 Orchard Grove  
 Pajaro Vista  
 Park El Camino  
 Park Row Assn No. 2  
 Paseo Del Mar  
 Raymus Village No. 1  
 Royal Court Estates  
 Santa Clara Redwoods  
 Tract 4534 HOA  
 Turnbull Canyon Village  
 Villa San Marco  
 Village Sierra  
 White Gate  
 Windwater Mills  
 Wonder Valley  
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- Mold
- Noise violations
- Pet issues

quarantine and get tested for the virus.

Before doing so, I encourage two precautionary steps for boards. First, the authorization should be in a written communication from the person or the person's attorney. It should never be based on hearsay and rumors.

Second, the disclosure should be limited to members and residents. Particular vendors who may have had contact with the person could also be alerted. The board should not broadcast the information outside of the community.

*No Authorization.* If the infected person tells the board in confidence that he contracted the coronavirus and does not want anyone to know, the board may still have a duty to notify the membership. However, it would do so without disclosing the person's name. The board would simply report, "A resident has reported testing positive for the coronavirus."

A disclosure, however limited, alerts residents to take extra precautions to protect themselves. In addition to giving notice, the board should contact the [Centers for Disease Control](#). The CDC has the power to make additional disclosures, trace contacts, quarantine individuals, and take other actions it deems medically necessary.

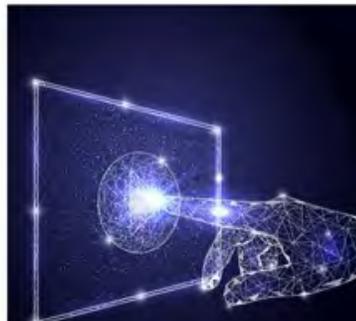
*Self-Quarantine.* What if the person does not have the coronavirus—he is simply self-quarantining as a precaution? If that is all he is doing, I don't believe the board has an obligation to notify the membership.

*Potential Liability.* There is always the potential for liability if a board becomes aware of a threat to their community and does nothing. If, as a result of the failure to disclose, members fall ill and some die from the illness, lawsuits will likely follow. Accordingly, silence may not be the best course of action.

*Recommendation:* As volunteers, boards are allowed to seek expert advice. When confronted with issues involving the coronavirus, directors should not make decisions based solely on recommendations in a newsletter--whether mine or someone else's. They should contact legal counsel and the CDC for guidance.

**#4. Law Firm Disaster Plan.** Two years ago, our firm established a disaster continuity plan. With our existing onsite computer servers, we were vulnerable to a complete shutdown of the firm's operations in the event of a natural disaster.

To address the problem, we "virtualized" our operations, i.e., we moved all operations into the cloud. Instead of onsite servers, we moved everything to servers housed in hardened facilities with multiple redundancies for power, cooling, and backup systems in areas of the U.S. with little or no vulnerability to natural disasters.



Property damage  
Rules enforcement  
Second-hand smoke  
Water damage

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*Seamless Operation.* Since our document management system, accounting programs, office productivity suite, time tracking software, internal communications and phones are now in the cloud, our entire law firm--all attorneys, paralegals, staff members and executive team--can work remotely from any device. If some or most were quarantined at home (or on a cruise ship), we can continue to operate without missing a beat.

*Zombie Apocalypse.* When we did our disaster planning, we thought it would be an earthquake or fire. We never imagined it would be a zombie apocalypse. Boards should take stalk of their own planning for a natural disaster. At some point, their association may have to wrestle with the aftermath of a major earthquake or fire.

**TONYA TODD  
JOINS ADAMS|STIRLING**



I am pleased to announce Tonya Todd joined our team of attorneys.

**Former JAG Officer.** As a Captain in the Army and a JAG officer, Tonya led the prosecution of felony crimes including sexual assaults, larceny, aggravated assaults, child abuse, fraud, conspiracy, and homicides.

**Magistrate Judge.** Tonya also served as a Magistrate Judge and presided over pretrial confinements, reviewed evidence, made findings, issued warrants and ruled on law enforcement applications for search and seizure authorizations. In addition, Tonya authored over 150 legal opinions on matters such as sexual harassment, discrimination, ethics, and environmental law.

**Education.** Tonya received her Bachelor of Arts in Sociology from Sacramento State University in Sacramento, California. She then went on to earn a Juris Doctorate from the Hastings College of Law in San Francisco, California.

*We are delighted to have Tonya join our team. If your association needs legal services, [contact us for a proposal](#).*



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# CALMING CORONAVIRUS FEARS BY PUTTING STATISTICS IN PERSPECTIVE

BY: Mark T. Guithues, Community Legal Advisors Inc  
Prepared Saturday, March 14, 2020

The purpose of this correspondence is threefold. 1) Give everyone encouragement and calm their fears in these anxious days. 2) Review some of the simple ways that you can protect yourself from getting the virus. 3.) Give healthy people a list of practical ways they can protect the most vulnerable around us.

**The Super Spooky Scary Stuff Has A Good Purpose.** On Wednesday, California's Governor suggested closure of any public gathering of more than 250 people, President Trump limited travel to the United States from Europe for 30 days and the NBA and MLB suspended their seasons. Disneyland sent its guests home, and the World Health Organization said groups greater than 50 should not meet. These were the right moves, but they are super-spooky-scary to those who don't understand the basic statistics. Cancelled events and quarantines are safe and simple tools we use to save lives. Specifically, they stretch out the lifespan of a virus, thereby "flattening" out its impact on our medical services, while allowing time for the development of an anti-virus. There a few simple things you can do today (or every day) to fight virus spread, protecting yourself and the most vulnerable around you.

**Shutting Off the Noise and Understanding the Numbers will Bring You Peace.** The scariest thing about this is the endless cacophony of emails, social posts and the media repeatedly clubbing us with pending disaster. You can find peace in the real numbers. There are only two numbers you should pay attention to with a disease like coronavirus: (a) infection rate, and (b) mortality rate (also called "death rate"). Infection rate is the likelihood that you or a loved one will catch the disease, while mortality rate is the likelihood a person who caught the disease will die from it. For example, depending on the year, the CDC predicts an infection rate of between 5% and 20% (so for example 15% of 330 million Americans = about 50 million) will be infected by the common flu, and a mortality rate of about .00003 (about 12,000/330 million will pass from it). Sometimes you'll see the term "morbidity rate," which simply means the patient is both infected and is suffering from symptoms, and which is different from either of the above.

**Perspective - Understanding Some Baseline Numbers is Necessary for Perspective.** Americans live, on average, about 79 years. If we divide 330 million Americans by 79, about 4.1 million will pass away each year. Obviously, the influenza discussed above isn't the largest killer in our society. Heart disease will kill about 0.0019 (647,000); Cancer will take about 0.0018% (606,000), and unintentional injuries about 0.0005% (169,936). Stroke and cerebrovascular diseases will account for 0.0004% (140,000) deaths this year. The National Highway Traffic Safety Administration reports that about 35,000 (less than 0.0001%) of Americans died in car crashes last year.

**The Estimated Numbers For Coronavirus Have Been Roughly Predicted.** Because of how early we are in the process, medical experts estimate the infection rate widely, from 10%-50% of Americans (somewhere from comparable to, to 3 times, the infection rate of the flu discussed above), so for discussion purposes, let's pick a median number of 30%, or about 100 million who may catch this virus. As to mortality rate, although the World Health Organization recently suggested a (worldwide) mortality rate at 0.034%, countries with

modern medicine and disease spread prevention like South Korea have a reported mortality rate of (72/8006 or) about 0.009%. Again, picking a number in the middle, let's estimate a possible American mortality rate of 0.025%. If we multiply 100 million x 0.025% it equals 2.5 million Americans who might die from this coronavirus.

**You'll know somebody who dies from Coronavirus, but it probably won't be you.** 2.5 million is a big number, but still far less than 1% of our 330 million population, and even far less than the 4.1 million who would normally pass away in any given year. This assumes current medical availability and current statistics. We might learn the infection or mortality rates are grossly overreported. We might learn the disease goes dormant in the summer, like most flu's do. We might have a vaccination by next year which puts this safely into the rear-view mirror. Most experts predict this will take two years to work through the population, so figure a number around 1.25 million a year. **Stop!** Take a moment and compare this with the numbers in the **Perspective** paragraph above and, hopefully, a quiet stream of peace will drown out that incessant CNN chatter.

**Catching the Virus Is Not The End of Your Life.** I said there were two numbers (infection and mortality) which mattered. But there are some other interesting statistical subtleties, at least in the US. According to the World Health Organization about 80% of the infected describe their symptoms as mild, 15% as serious, and the last 4% as critical. That means that of the 100 million possibly infected, 80 million may just feel a little sick and woozy. It also appears that children and youth under the age of 9 have been spared the wrath of the disease - with thus far no American deaths. Conversely, where our average lifespan is just short of 79 years, 80% of the American deaths have occurred in patients over the age of 80, with the balance deaths occurring to slightly younger but who also suffer from additional "co-morbidity factors" such as heart disease, asthma or other underlying, active or complicating factors. In short, our seniors are the most vulnerable and we should focus on the **Practical Steps** outlined below.

**Cancelled Events and Quarantines Ration Modern Medicine.** Having that many people sick at once has a huge impact on access to quality healthcare. By way of example, a 2018 Johns Hopkins Center for Health Security reported that, according to US government estimates, about 65,000 people in the United States would require ventilation in an outbreak similar to the flu pandemics of 1957-1958 (which killed 116,000 people in the US) and 1968 (which killed 100,000 Americans). The maximum number of ventilators that could be put in the field in the United States is about 160,000, or maybe a tenth of what could be needed. Cancelled events and sequestration help "flatten the curve below healthcare capacity" by slowing the stream of patients to our limited medical facilities. Personal sequestration keeps you out of the loop of infected people, and out of the hospital personally. Keeping the kids away from grandpa this spring and summer, though seemingly cruel, may be the kindest gift you can give. (Remember phones and video conferencing are available every day.)

**Practical Ways You Can Help the Most Vulnerable.** The balance of this article is dedicated to discussing some of the simple ways that you can protect yourself from getting the virus, and providing healthy people a list of practical ways they can protect the most vulnerable around us.

Attend Board And Other Business Meetings By Web Conference Or Teleconference:

Community Legal Advisors Inc is in the homeowners association law business, so we are interested in helping our clients continue to do business through this challenging period. But

these tips apply to all business meetings. If your community is our client and would like our assistance in arranging a video or teleconference, just contact our office and Community Legal Advisors will set up the first meeting and attend it to help the Board and members acclimate to this new system. Our firm provides video conferencing bridges for our clients using ZOOM software which is easy and quick to learn. If all directors attend an open meeting by phone, your notice of the meeting must identify at least one physical location where owners can attend and listen to the board's meeting. (Civ. Code §4090(b).) That means a conference phone must be at that location so members can hear directors conduct the meeting and so members can be heard by the board during Open Forum.

#### Around Home:

- Stuck in with family, start a Netflix tradition with the kids, get addicted to board games, make food for elderly or sick neighbors, look for opportunities to do things at home rather than on the road.
- Stay home when you are sick. Call your employer if you have questions about your time off benefits. Don't go to work sick and actively encourage those who are sick to go home.
- Avoid close contact with people who are sick.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Wash your hands often with soap and water for at least 20 seconds. Regularly use an alcohol-based hand sanitizer that contains at least 60% alcohol if soap and water are not available.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash. While sneezing in your elbow is certainly preferable to sneezing in your hand, the clothing on your elbow will contain infectious virus that can be passed on for up to a week or more. Clean and disinfect frequently touched objects and surfaces. All surfaces where infectious droplets land can remain infectious for about a week, on average.
- To the extent possible, use knuckles to touch light switches, elevator buttons, etc.
- When not in the office, use disinfectant wipes when available, including wiping cart handles and child seats in stores.
- Keep hand sanitizer in your home entrances and in your car for use after getting gas or touching contaminated objects when you can't immediately wash your hands.
- Wipe down hard surfaces periodically with alcohol based anti-bacterial sprays and towelettes.

#### At Work:

As noted above, we encourage teleconference/videoconference meetings rather than in-person meetings if any attendees have travelled to affected countries or cities.

If you believe you have been exposed to a situation or someone who could have been exposed or if you become sick, contact your employer immediately. Try to arrange to work remotely. It may be difficult for some positions to do a job remotely, but most employers will surely try.

If you or someone with whom you reside has acute respiratory illness, stay home! If you have personally suffered symptoms of acute respiratory illness, the CDC recommends that you stay home until you are free of fever (100.4° F [37.8° C] or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants).

If you have been exposed to Coronavirus but have not been diagnosed and do not have symptoms, engage in an interactive process with your employer and your health care provider to determine appropriate next steps.

If you are confirmed to have the Coronavirus, inform your fellow employees of their possible exposure to COVID-19 in the workplace.

To reiterate, if a fellow employee appears to have respiratory illness symptoms (i.e. cough, shortness of breath, chronic sneezing and sniffles), upon arrival to work or becomes sick during the day, that employee should be separated from other employees and be sent home immediately. There should be no exceptions, and it is reasonable to expect everyone's full cooperation. Sick employees should cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available) until they can leave the premises.

#### When Travelling:

If you travel, including for personal reasons, the CDC has issued guidance recommending that you check the CDC's Traveler's Health Notices for the latest recommendations for each country to which you will travel. <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>

If you are scheduled to meet in person with any international client or other individual traveling from or through one or more of the restricted countries, you should confirm that the individual has been in the U.S. for a minimum of 14 days without symptoms prior to the meeting. If you have questions regarding scheduling meetings with clients/tenants, contact your employer.

**This Isn't the End of the World.** Experts suggest up to a third of the population might contract this virus, with 80% of those infected only mildly affected. People over 60 years old, or those with weakened immune systems or with a chronic illness like lung disease, heart disease, diabetes, cancer, are the most vulnerable. The healthy among us should actively work to slow the spread of the virus, thereby maximizing available space and

medical care in our hospitals. Turn off the TV and remember, this too is going to pass. Things are going to get better and maybe this will be remembered as a time of new family traditions and renewed focus on the well being of those around us.

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**Mark T. Guithues, Esq.**



Community Legal Advisors provides general counsel and assessment collection services to community associations, subdivision and entitlement services to builders, and dispute resolution and advice to owners. You can learn more about us at [www.attorneyforhoa.com](http://www.attorneyforhoa.com).



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**Contact Us**

## CORONAVIRUS AND BOARD MEETINGS

It's remarkable how quickly events are moving related to the coronavirus.

**Panic Buying.** This morning, I drove to the supermarket to pick up a few cleaning supplies for the office. I walked into Vons and was stunned to see a huge line of people with grocery carts filled to overflowing waiting to check out. The line snaked throughout the store. I did a quick walk-through and shelves everywhere were empty. People are panic buying. It was unsettling.

**Social Distancing.** The news media has wall-to-wall coverage about the virus and everyone is being encouraged to stay home. Events everywhere are being canceled. This morning, I sent an email to everyone in our firm encouraging them to cancel face-to-face meetings. For now, all communications with clients will be done via email and phone calls.

**Board Meetings.** Yesterday, I published a newsletter that association board meetings should be done in compliance with the requirements of the Davis-Stirling Act. One of the options was to encourage members to gather in a room and listen to the board conduct its business via a speaker phone. Given the rapidly changing circumstances, I am revising my advice.



**Meeting Protocol.** Boards should not encourage members to gather together. It pains me to say that, for now, boards may need to hold meetings via email and conference calls without member observation. Meeting minutes still need to be taken and published.

The situation is temporary and should not be abused. Where possible, boards should utilize conference call services where members can attend meetings by calling into a conference number without leaving their units.



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Let's hope the virus quickly burns itself out.



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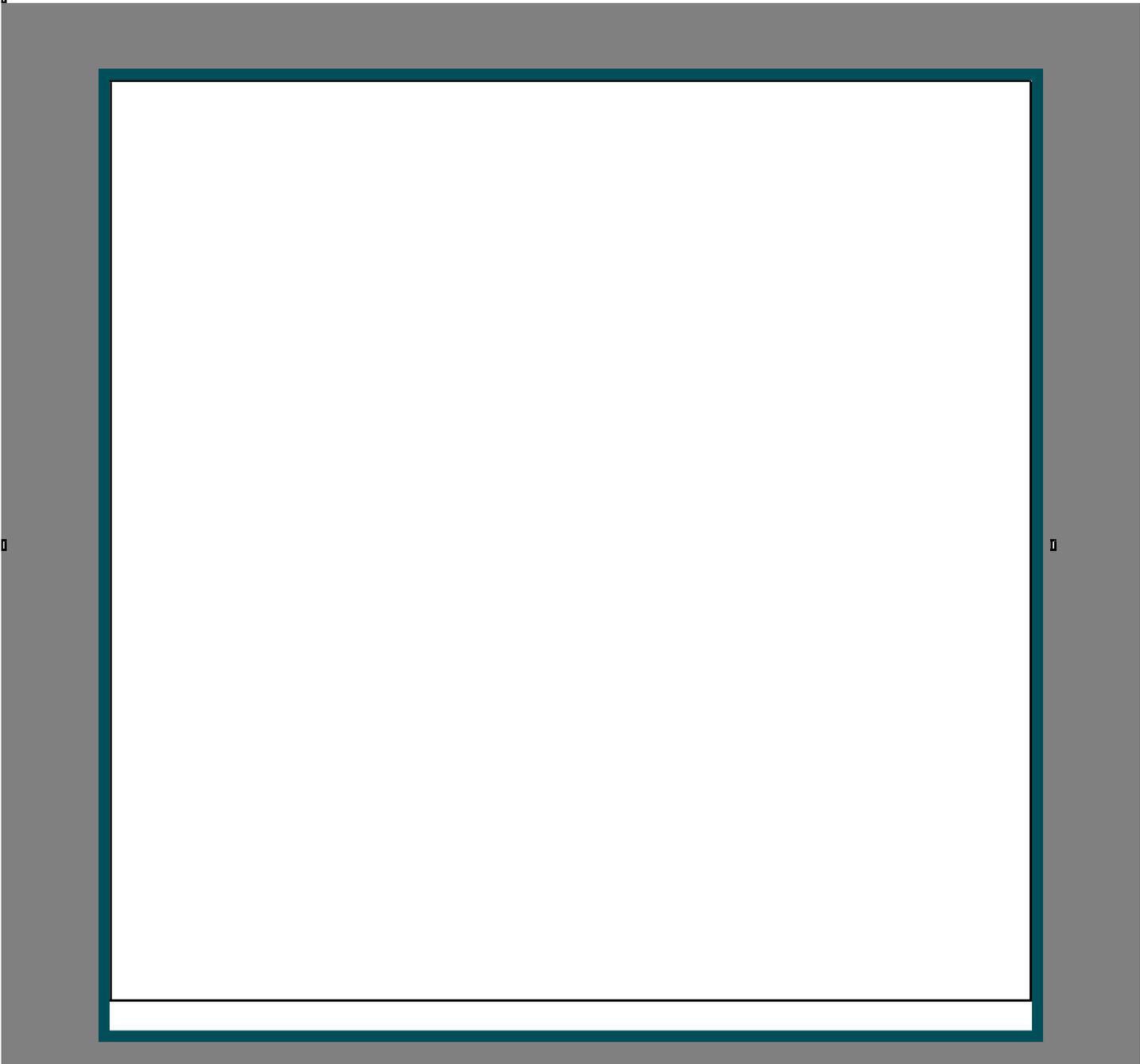
A handwritten signature in blue ink that reads "Adrian". The signature is fluid and cursive, with a long horizontal stroke at the end.

[Adrian J. Adams, Esq.](#)  
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**From:** Angius & Terry LLP <[nthemoleas@angius-terry.com](mailto:nthemoleas@angius-terry.com)>

**Sent:** Monday, March 16, 2020 4:49 PM

**Subject:** Board Meetings & The Coronavirus



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## Board Meetings & The Coronavirus

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In light of the concerns about the coronavirus (COVID-19), many boards and managers ask whether an association can hold an entirely telephonic or electronic open board meeting. The answer is YES, but with the requirement under the Open Meeting Act that a telephonic or electric general open meeting provide a physical location with a director or designated present for members to attend, listen and have open forum. (Executive board meeting meetings can be held entirely on the phone or electronic means without need of a physical location.)

But if the board decides to forego the physical location requirement due to concerns with the coronavirus and is challenged for such decision, a court may overlook the technical violation because of the greater safety and well-being of the owners, directors, and vendors who may otherwise attend and get sick or cause others to get sick.

In determining whether to hold an open board meeting without any physical location due to the coronavirus concerns, the board has to weigh the potential for a lawsuit because of a technical Open Meeting Act violation if they have a litigious owner who seems to look for every possible violation and try to capitalize on a board's failure (inadvertent or otherwise) versus concerns with protecting its members and residents. How the state, local governments, companies, and other groups decide to address the coronavirus concerns will weigh into whether a board's decision to forego a physical location to conduct its meetings against any possible legal challenge. The Governor has already issued a directive to postpone or cancel gatherings of over 250 people and other suggestions on smaller gatherings. Ultimately, we believe the safety and health of an association's community will outweigh technical requirements of holding potentially large gatherings that could spread the disease.

Additional recommendations if the board foregoes a physical location for its regular meetings include:

- Make sure the board's agenda and notice explain why the board is holding an entirely telephonic or electronic meeting.
- Try to provide owners access to attend telephonically or electronically.
- Encourage people to contact management (or a designated board member) in advance if they have questions about how to access the meeting. This approach demonstrates a good faith basis for the board's actions and also proactively endeavors to reach out to owners who may be unfamiliar or

uncomfortable with whatever technology is needed to access the meeting to ensure that all owners who want to attend are able.

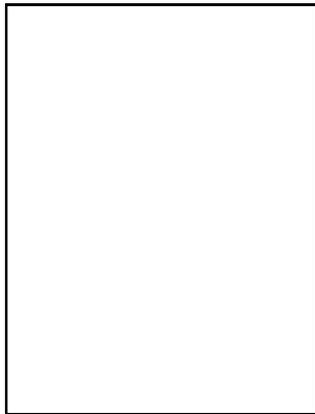
- The board could request owners send in open forum comments in writing in advance of the meeting, so the board can still answer questions and provide the owners with feedback, if any. While it doesn't get around the Open Meeting Act requirement, it can help provide an avenue for owners to feel they are still being heard and responded to.

If a physical location is provided, strongly encourage owners on the notice, for everyone's safety, to stay home and participate from afar. Further, consider a location that allows owners to create the recommended social distance space (even if it's at a nearby restaurant, onsite meeting space, or outdoor location). And request that people who elect to attend a meeting in person, the only attend if they are not showing any symptoms and feel well and even if they are physically ok that they allow for two arms' length of distance between each other which is what the Centers for Disease Control is suggesting.

Last, a board could elect to postpone its open meeting, assuming the association's Bylaws don't require monthly board meetings (which many do not), for a month or two until things calm down because the law only requires boards to meet once a quarter.

We encourage boards to be proactive and as transparent as they can so their members can feel confident that their community is in good hands and being responsibly governed. When in doubt, please feel free to contact your attorney at Angius & Terry, we are here to help.

Stay safe everyone!



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## ***FERRUZZO & FERRUZZO, LLP - NEWSLETTER***



### **EMPLOYER AND EMPLOYEE OPTIONS: COVID-19**

We have seen containment efforts for COVID-19 continue to expand. Employers are facing governmental closures of businesses. The impact of COVID-19 is having an unprecedented impact on employers and employees with school closures, reduction in work hours, or elimination of jobs. In an effort to mitigate the impact of the pandemic, employers and employees will have to work together. Currently, the State and Federal Government have several programs to provide assistance.

#### **EMPLOYER RESOURCES:**

##### **California Unemployment Insurance Work Sharing Program**

As an alternative to layoff, California employers may participate in the California Employment Development Department's ("EDD") Work Sharing Program. If eligible, employees will receive up to 60% of their weekly unemployment benefits, based on how much their wages have been

reduced. In order to participate in the Program, at least 10% of the employer's workforce must be affected by a reduction in hours and wages. The reduction in hours/wages cannot exceed 60%. An employer cannot discriminate with regard to health or retirement benefits being offered to employees on the Program. Temporary or seasonal employees cannot participate in the Program and only regular full- or part-time employees may receive the benefits. The Program lasts for 12 months but employers may apply to renew or cancel it earlier if circumstances change. Additional information about the EDD's Work Sharing Program may be found here: [https://www.edd.ca.gov/Unemployment/Work\\_Sharing\\_Program.htm](https://www.edd.ca.gov/Unemployment/Work_Sharing_Program.htm)

### **Payroll Tax Deadline Extension**

Employers impacted by COVID-19 may apply for a hardship requesting up to a 60-day extension of time to file their payroll taxes without penalty or interest. This extension may be granted under Section 1111.5 of the California Unemployment Insurance Code (CUIC). The EDD requires that the request be received by the EDD within 60 days of the original delinquency date. The following link provides additional information about the EDD payroll extension: [https://www.edd.ca.gov/Payroll\\_Taxes/emergency\\_and\\_disaster\\_assistance\\_for\\_employers.htm](https://www.edd.ca.gov/Payroll_Taxes/emergency_and_disaster_assistance_for_employers.htm)

### **Small Business Loans:**

Employers that are impacted by COVID-19 may qualify for a Small Business Administration ("SBA") loan. The SBA is offering low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of COVID-19. SBA's Economic Injury Disaster Loans offer up to \$2 million in assistance for a small business. These loans can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing. The loans may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact. The interest rate is 3.75% for small businesses without credit available elsewhere; businesses with credit available elsewhere are not eligible. The interest rate for non-profits is 2.75%. SBA offers loans with long-term repayments in order to keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower's ability to repay.

Link to SBA Loan Information: <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-provide-disaster-assistance-loans-small-businesses-impacted-coronavirus-covid-19>

### **EMPLOYEE RESOURCES**

On March 4, 2020, Gavin Newsom signed executive Order N-26-20, to provide assistance to workers:

- If you're unable to work because you are caring for an ill or quarantined family member you may qualify for Paid Family Leave (PFL).
- If you're unable to work due to medical quarantine or illness, you may qualify for State Disability Insurance.
- Those who have lost a job or have had their hours reduced for reasons related to COVID-19 may be able to partially recover their wages by filing an unemployment insurance claim.
- If a worker or a family member is sick or for preventative care when civil authorities recommend quarantine, workers may use accrued paid sick leave in accordance with the law.

- If workers are unable to perform their usual job because they were exposed to and contracted the virus during the regular course of their work, they may be eligible for workers' compensation benefits.

### **Employer Best Practices for COVID-19 and What's to Come**

- \* Permit remote work where job duties allow and encourage employees to use telephone and video conferencing instead of face-to-face meetings. Make certain that IT support is easily accessible.
- \* Review the EDD's Work Sharing Program as an alternative to layoffs.
- \* Be mindful of the tension between preventing the spread of COVID-19 and protecting your employee's privacy under the requirements of the Americans with Disabilities Act and related state law. The ADA prohibits an employer from making disability-related inquiries and requiring medical examinations of employees, except under limited circumstances. During a pandemic, you may send employees home if they display COVID-19-like symptoms. Speak with counsel before taking the temperature of your employees, however. You must maintain the confidentiality of any employee with confirmed COVID-19.
- \* Review your Telecommuting Policy and if none, create one. Non-exempt employees who work remotely should be reminded to take all meal and rest breaks as if they were working onsite, and that they must record and report all time worked accurately.
- \* Review your sick leave and vacation policies so that you are prepared to respond to employee questions about time off. Many schools have cancelled classes, so in addition to paid time off, parents, guardians and grandparents and others may be entitled to up to 40 hours of unpaid School and Child Care Activities Leave if you have 25 or more employees. School closures trigger this obligation, although you can require employees to use existing vacation, paid time off or other personal leave first. The CDC's guidance to employers suggests that you do not require a doctor's note for employees who are sick with acute respiratory illness because healthcare providers are extremely busy and are not able to provide documentation in a timely manner.

*This Article is one of a series of Articles Ferruzzo & Ferruzzo, LLP will be circulating to address questions from clients related to COVID-19. Ferruzzo & Ferruzzo, LLP has formed a task force to assist business owners with their needs related to COVID-19.*

Authors:



Timothy J McElfish, Esq. is a Partner and chairs the Firm's Corporate and Real Estate Practice Group. His practice group dedicates itself to representing business owners and entrepreneurs. Mr. McElfish also handles all aspects of Corporate Governance, Mergers and Acquisitions, Real Estate Acquisitions and Dispositions, and Business Succession Planning.



Colleen M. McCarthy, Esq. is a Partner and chairs the Firm's Employment Practices Group. She has dedicated her practice to representing and protecting employers, through preventative counseling and sound practical advice. Ms. McCarthy has counseled employers about the complicated employment laws that impact their businesses to ensure that they are in compliance, and to reduce the chance of costly litigation.

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## COMMUNITY ASSOCIATIONS & COVID-19



Over the last few business days, our firm has received several calls regarding the Coronavirus (COVID - 19). We understand the obstacles created by COVID - 19 because successful association governance depends upon engaged community involvement and personal interaction.

The information below provides a brief overview of our response to some of the common questions we have received. It is based upon information which is currently available as of March 17, 2020. The recommendations discussed below are subject to change based upon governmental mandates.

### **Continuance of Necessary Business Operations:**

Community associations, as non-profit corporations, should continue to perform essential business operations (i.e. collect Member assessments and pay Association bills) during this epidemic. As of the time of this drafting (3/17/20), [President Trump released new guidelines](#) to slow the spread of COVID - 19 by advising the public to avoid groups of more than ten (10) individuals, among other safeguards. Governor Newsome recommends that restaurants eliminate dine-in options and the closure of movie theaters and health clubs. Medical professionals have uniformly taken the position that social distancing can minimize virus transmission. In view of those protections, boards, in consultation with management and legal counsel, should consider the temporary closure of community-based events and functions, particularly in situations where residents constitute a high-risk demographic (i.e. age-restricted communities).

### **Board Meetings:**

Board meeting procedure is regulated by an association's governing documents and the Civil Code. An association's by-laws will set forth the frequency of board meetings. Boards should consider postponing non-essential general session board meetings, or in the alternative, conducting essential association business in executive session only via teleconference as permitted by California law. Boards may conduct general session and executive session board meetings via teleconference upon proper notice which identifies at least one physical location so that Members of the association may attend ( [Civ. Code section 4090\(b\)](#)). At least one director or a person designated by the board shall be present at that location ( [Civ. Code section 4090\(b\)](#)).

To the extent possible, efforts should be made to protect Member rights, such as the right to attend board meetings and participate in homeowner's forums. How do we balance those rights with current social distancing recommendations? There might be a viable path under the [Open Meeting Act](#). Members possess the legal right to attend general session board meetings and shall be entitled to attend teleconferenced board meetings ( [Civ. Code section 4925](#)). An argument could be made that Members may attend general session board meetings via teleconferencing means if such board meeting was previously noticed as a teleconference board meeting and the procedural requirements are satisfied as referenced above. Discuss with legal counsel whether the Open Meeting Act could be interpreted to allow Member attendance (via audio and/or video means) at teleconferenced board meetings instead of physical presence at the meeting location.

We recommend that boards consult with legal counsel to discuss teleconferenced general session board meeting procedure before deciding to hold open meetings without members and then issuing minutes thereafter. It is unclear how a superior court judge, in the event of a later Member challenge, might evaluate the handling of board meeting procedure during this current state of emergency. A possible judicial response might be to review how the association attempted to substantially comply with the law using the governance tools that are presently available through the Open Meeting Act.

### **Member Notice:**

Medical professionals state that individuals respond to crisis and stress in different ways; it is very likely that some may be scared while others may not be. Residents

may look to the association and management for guidance and direction. For that reason, transparency is desirable. Boards should work with their management partners and legal counsel to develop a policy statement which identifies how your community intends to respond to COVID - 19 with respect to association meetings and community affairs. In the event of common area closure or facility limitations, notices should be posted which explain the board's reasoning in that regard. Association residents should be directed to governmental agencies (e.g. [CDC](#), [Ca. Dept. of Public Health](#), and county health agencies) for more information.

On March 12, 2020, California Governor Gavin Newsom issued [Executive Order N-25-20](#) ("Order") which modified how legislative bodies may conduct public meetings via teleconference under the Brown Act. That Order does not apply to private association meetings which are governed by the Open Meeting Act and we are not aware of emergency legislation that might govern how association meetings are expected to be handled during this health crisis. Although not applicable, the spirit of the Order's final provision should be considered as we think about association governance during this time; namely, the Order concludes by stating that, "all state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as reasonably as possible to the provisions of the ... Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide access to their meetings."

**It is critically important that boards work closely with their management partners and legal counsel to develop practical solutions regarding Board governance which, to the extent possible, complies with the Open Meeting Act while protecting Member safety.**

**The Tinnelly Law Group and Alterra Assessment Recovery teams are working remotely and remain able to assist our clients and their management partners during this time.**

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