

## **New Civil Code Section 5450 Provides Requirements for Teleconference Board and Member Meetings During Government Declared States of Emergency**

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On September 23, 2021, Governor Gavin Newsom signed Senate Bill No. 391 (“SB 391”) into law as urgency legislation. SB 391 adds Section 5450 to the Civil Code, which allows California common interest developments (“CIDs”) to conduct board and member meetings via teleconference if gathering in person is unsafe or impossible because the CID is in an area affected by a declared federal, state, or local emergency.

Under current law, a board meeting can be conducted via teleconference (audio or video, or both) as long as all of the directors participating in the meeting are able to hear one another. ([Civil Code section 4090\(b\)](#).) For open board meetings conducted via teleconference, current Section 4090(b) requires that the notice of the teleconference meeting identify at least “one physical location where members of the association may attend and at least one director or a person designated by the board... be present at that location.” As we are all well aware, this in-person requirement proved difficult during the COVID-19 pandemic as gathering with persons outside of one’s immediate household could lead to the spread/transmission of the virus. Consequently, [Civil Code section 4090\(b\)](#) made it impossible for CID boards to simultaneously comply with State and local no-gathering orders and the Section 4090 requirement of providing a physical location where members could attend a board teleconference meeting in person.

The California Legislature recognized that the Civil Code did not effectively provide CID boards with a way to conduct business during a disaster or emergency so it passed SB 391 to add Section 5450 to the Civil Code in order to address this problem.

***If your association is continuing to conduct board and/or membership meetings solely via telephone or web-conference platforms because of the ongoing pandemic, your association must immediately comply with the requirements of [Civil Code section 5450\(b\)](#).*** Be sure to note the notice requirements of (b)(1) and (b)(2) below.

[Civil Code section 5450](#) provides as follows:

*(a) This section only applies to a common interest development if gathering in person is unsafe or impossible because the common interest development is in an area affected by one or more of the following conditions:*

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- (1) A state of disaster or emergency declared by the federal government.
  - (2) A state of emergency proclaimed by the Governor under Section 8625 of the Government Code.
  - (3) A local emergency proclaimed by a local governing body or official under Section 8630 of the Government Code.
- (b) Notwithstanding any other law or the association's governing documents, and except as provided in subdivision (d), a board meeting or meeting of the members may be conducted entirely by teleconference, without any physical location being held open for the attendance of any director or member, if all of the following conditions are satisfied:
- (1) Notice of the first meeting that is conducted under this section for a particular disaster or emergency affecting the association is delivered to members by individual delivery.
  - (2) The notice for each meeting conducted under this section includes, in addition to other required content for meeting notices, all of the following:
    - (A) Clear technical instructions on how to participate by teleconference.
    - (B) The telephone number and electronic mail address of a person who can provide technical assistance with the teleconference process, both before and during the meeting.
    - (C) A reminder that a member may request individual delivery of meeting notices, with instructions on how to do so.
  - (3) Every director and member has the same ability to participate in the meeting that would exist if the meeting were held in person.
  - (4) Any vote of the directors shall be conducted by a roll call vote.
  - (5) Any person who is entitled to participate in the meeting shall be given the option of participating by telephone.
- (c) If, as a result of the disaster or emergency, mail delivery or retrieval is not possible at any association onsite address and the address on file with the association for that member is the same association onsite address, then the association shall send the notice of the first meeting referenced in paragraph (1) of subdivision (b) to any email address provided to the association by that member, in writing, pursuant to paragraph (2) of subdivision (a) of Section 4040 or subdivision (b) of Section 4041.
- (d) Subdivision (b) does not apply to a meeting at which ballots are counted and tabulated pursuant to Section 5120, unless both of the following conditions are met:
- (1) The meeting at which ballots are to be counted and tabulated is conducted by video conference.
  - (2) The camera is placed in a location such that members can witness the inspector of elections counting and tabulating the votes.
- (e) The remedies available pursuant to Section 4955 shall also be available to address violations of this section.

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Again, please note that [Civil Code section 5450](#) only applies if gathering in person is unsafe or impossible because your CID is in an area affected by a federal, state or local disaster or emergency declaration or proclamation.

Also, please note for purposes of Section 5450(b)(4) a “roll call” vote means the names of directors voting and how they voted are recorded in the minutes. For the purposes of Section 5450(c), [Civil Code section 4040](#) defines “individual delivery” as the association delivering a document(s) to an owner or owners via personal delivery, certain specified methods of mail delivery, or by email (if the recipient has consented in writing or by email to receive association notices via email).

Finally, Section 5450(d) is instructive as to how members may witness the counting and tabulation of ballots as required by [Civil Code section 5120](#) should that process need to be conducted by teleconference pursuant to Section 5450.

***Your board of directors should reach out to your association’s legal counsel for advice should the board have any questions regarding the application or mechanics of [Civil Code section 5450](#).***