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I Admissibility

This document, the Association Attorney's documents received by me and my responses, are all admissible in any mediation, legal proceeding, trial, adjudication, digital communication, or other forms of communication irrespective of its use in any mediation. These documents are to be considered in the public domain and available for inspection, copying or evidence in any court proceeding.

II ADR Background

The [minutes](#) of the canceled Internal Dispute Resolution (IDR) Meeting provide a basis for the claim for an Arbitrated Dispute Resolution (ADR). These minutes have been submitted to the Board President, the Director chosen to represent the Board, for his review.

The cancellation was caused by the Board President being unwilling to proceed without the Association attorney, and my expression that after continuous [delays](#) by the Association that rescheduling the meeting beyond four (4) weeks extends the time beyond the requirement for a prompt IDR Meeting (see *Civil Code* §5915(b)(4)). Although the assigned director was present the cancellation after multiple delays causes the Association to be in violation of 5915(b)(2) which mandates the Association to participate in an IDR.

Pursuant to §5925(a) a written request for an ADR was made to enforce compliance with the Association Governing Documents, §5925(b)(3) and statutory requirements. Notice was provided that the respondent either responded in thirty (30) days to the request or the request is considered rejected (§5935(a)(3) and §5935(c)).

III Dialog with Association Attorney

1. [20 Feb 2020 Attorney Letter](#)
2. [24 Feb 2020 Response to Attorney](#)
3. [4 Mar 2020 Attorney Response](#)

IV Independent Conclusion

see: <https://findhoalaw.com/committee-meeting-minutes/>

Committees with "Decisionmaking Authority"

Committees with "decisionmaking authority" must keep and maintain minutes, and must make them available for inspection by members within fifteen (15) calendar days following approval. (*Civ. Code* § 5210; See also "[Deadlines for Producing Records.](#)") Committees with

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“decisionmaking authority” typically include [architectural committees](#) that have the power to approve or deny a member’s [architectural application](#).

V Reasons for Document Denial

The reasons for denying access to documents are varied. The Association, and the Association attorney, have proposed several theories to support denying documents to Association members. In time, the reason’s change.

The denials, and the documents containing the denials, are listed below. All referenced emails and letters are hyperlinked.

There is a particular irony in this. The documents requested on [29 Oct 2019](#) were delivered to me on [15 Apr 2020](#). On [23 Apr 2020](#) I was informed that Architecture Committee Agenda and Minutes were to posted on the Association [website](#) as of 1 Jun 2020. In both cases the documents were denied.

For purposes of this discussion there are two categories of documents:

1. Documents. This refers the Architecture Committee Agenda, Minutes and other documents.
2. Other Documents: This refers to other documents archived by the Architecture Committee. The known documents are the member Application, the Notice of Completion (NOC), and accompanying architectural drawings. There may be other documents of which I am unaware.

Unless otherwise specified, all denials are to all Architecutre Committee Documents.

Denied Documents

Denial Reason	Referenced emails and Letters
Not part of open records	29 Oct 2019 10 Dec 2019
Not Association Records	5 Nov 2019 20 Feb 2020 15 Apr 2020
<i>Civil Code</i> §5200 is Prohibitory	5 Nov 2019 12 Feb 2020 20 Feb 2020 15 Apr 2020
Board denied request	10 Dec 2019
Not a §7212 committee	20 Feb 2020 4 Mar 2020 15 Apr 2020
Not subject to §5210	4 Mar 2020 15 Apr 2020
Doesn’t want to provide other documents	30 Apr 2020

VI Architecture Committee Inspection and Copying Rights

The initial request for this material was on [29 Oct 2019](#). No reason for denial of access or copying for a member committee ([§5200\(a\)\(8\)](#)) has been put forward consistent with either *Civil Code* [§4765\(a\)\(1\)](#), [§5205\(a\)](#), [§5205\(c\)](#), [§5210\(a\)\(2\)](#), [§5200\(a\)\(8\)](#), [§5210\(a\)\(2\)](#), [§5210\(b\)\(4\)](#), [§5210\(b\)\(5\)](#) or [§5240\(b\)](#), or the Association Bylaw [X\(1\)](#). It will be shown that the Architecture Committee is a member committee and its documents are Association Records ([§5200\(a\)\(8\)](#)).

The Association attorney, Mr. Cane of Cane, Walker & Harkins LLP responded to my *Civil Code* [§5215\(d\)](#) request. A legal opinion was sent by post supporting the Managing Agent's denial of my request for access to Architecture Committee (Committee) Minutes but contained support for inspection, stating that "... the Association is not statutorily obligated to allow you to inspect or copy the architectural application, the plans, or the Architectural Committee meeting minutes subject of your correspondence.", and that "the Board of Directors (the Board) resolved to allow you to review the documents". His arguments are based on the following:

1. *Civil Code* [§5200\(a\)](#) enumerates all items available to members for inspection and copying.
2. This list is exclusive. No other documents shall be required to be available to the members, citing *Gikas v. Zolin* (1993) 6 Cal.4th 841, 852.
3. The Committee is not a *California Corporate Code* [§7212](#) entity, and therefore is immune from requirements to inspect or copy any documents.

The clear intent of the legal opinion is that any member committee which does not have two (2) directors on it (*California Corporate Code* [§7212](#)) has no member oversight.

Lets address the Board action to deny my request and whether the legal interpretation is a prohibition of releasing the requested documents or a discretionary release by the Board.

(a) Board of Directors (Board) Denial Action

A [10 Dec 2019](#) email, a [12 Feb 2020](#) letter from the Managing Agents and a [22 Feb 2020](#) letter from the Association attorney is that the Board decision against my request is legal. It was written that the Board acted on my request to deny it in [Nov 2019](#) and then granted inspection rights (see [12 Feb 2020](#) letter).

The [Nov 2019](#), [Dec 2019](#), [Jan 2020](#) and [Feb 2020](#) Agenda do not mention an action to be taken by the Board on my request. *Civil Code* [§4930](#) requires all actions taken by the Board to be on the Agenda, and *Civil Code* [§4910\(a\)](#) requires that no action be taken outside of a Board meeting. Bylaw [VIII\(8\)\(c\)](#) requires the Board Secretary to record all actions and the Director's yays and nays. See also *Civil Code* [§4920\(b\)\(2\)](#), [§4920\(d\)](#), [§4935\(a\)](#). No available Board Minutes for [Nov](#)

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[2019](#), [Dec 2019](#) and [Feb 2019](#) has a reference to any Board vote on this matter. If the decision was made in Executive Session of the Board then this must be noted in the Board Minutes, §[4930\(a\)](#).

If the Board affirms the [10 Dec 2019](#) and [12 Feb 2020](#) letters, of the Managing Agents, that the Board acted on my request, then the Board is in violation of *Civil Code* §[4930\(a\)](#) requiring that all matters to be acted upon must be in the Board Agenda (excepting an Emergency Meeting) and Bylaw [VII\(3\)\(1\)](#) which requires the Board to keep a record of all its acts.

(b) Discretionary Release

One interpretation of the legal opinion is that the Board is not statutorily encumbered to provide the documents for inspection and copying and that the matter is discretionary ([12 Feb 2020](#)). This is consistent with the statement that the Board's decision to grant me inspection rights but not copying rights. That is, at the Board's pleasure they can grant a request or deny it.

Think of this as an example. Three persons address the Board at the same time. Each persons requests to see the same Architecture Committee, or any member committee, documents. The Board, at its discretion, grants person 1 inspection and copying rights, person 2 inspection rights, and person 3 neither inspection nor copying rights. The decision to grant or not grant is without oversight. That is, this interpretation leads to a conclusion that the Board can arbitrarily do what it wants, and that right is statutorily supported and can not be contested.

However, if *Civil Code* §[5200\(a\)\(8\)](#), §[5210\(a\)\(2\)](#) and §[5210\(b\)\(5\)](#) are not prohibitory then they are silent on the Park Paseo Homeowner Association (PPHOA) governing documents. That is, the statutes do not override the governing documents and the governing documents, therefor, hold sway. Park Paseo Homeowner Association Bylaw [X\(1\)](#) requires that the Architecture Committee documents be available to members for inspection and copying.

(c) Prohibited Release

Suppose that we interpret the legal opinion to mean that Association members are prohibited access to Architecture Committee documents (see [29 Oct 2019](#)). If this is the interpretation then it overrides Bylaw [X\(1\)](#) (State laws take precedence) and it prohibits the Board from granting inspection and/or copy rights to any member of the Association. This prevents any member oversight of any member committee appointed by the Board, which is not compliant with California Corporate Code §[7212](#), not only the Architecture Committee, that is, any committee which does not have two (2) Board members. The problem is that this prohibition prevents the Board from offering to allow inspection but not copy right to any committee records. If the Board offers this as an option then it violates the governing *Civil Code* statute ([5 Nov 2019](#)) and is an illegal act.

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To bypass the illegal nature of the offer it seems more reasonable to assume that the legal interpretation is not a prohibition but is discretionary, then the Board decisions must comply with the PPHOA governing documents which allow such access.

VII Arguments

The requirement that a Committee satisfy *California Corporate Code* §[7212](#) fails for each of the following reasons independently:

1. *Civil Code* §[4765\(a\)\(1\)](#) delegates responsibility for establishment of the Committee to the Board of Directors and directs the Association to establish procedures of the Committee.
2. *Civil Code* §[5200\(a\)\(8\)](#) identifies “agendas and minutes of meetings of the members ...” as an Association Record subject to member inspection and copying. The Committee is a meeting of the members and its agendas and minutes are Association Records.
3. *Civil Code* §[5210\(a\)\(2\)](#) and §[5210\(b\)\(5\)](#), state that if *any* committee has decision making authority then minutes are permanently available. The Committee is decision making.

The legal opinion given is that Item 3 above is restricted to *Civil Code* §[7212](#) organized committees and that the Committee is not organized according to *Civil Code* §[7212](#). This is in clear disagreement of the common reading of the statute as being incumbent on *any* committee with decision making authority and the statute does not distinguish between committees organized according to *Civil Code* §[7212](#) and those not so organized.

The legal opinion’s claim that the list of items in *Civil Code* §[5200\(a\)](#) is an exclusive enumeration is incorrect.

1. *Civil Code* §[4045\(a\)\(2\)](#) allows general delivery of items not on the enumerated list and specifies an unknown number of items.
2. *Civil Code* §[5105\(a\)](#) specifies a newsletter, not on the enumerated list.

If the intent of the legislature was to make *Civil Code* §[5200\(a\)](#) an exclusive enumeration of items accessible to member inspection and copying, then the Section would contain newsletters, and wherever distribution or posting of General Notices was mentioned this Section would have been referenced. Lacking both these conditions means that the legislative intention was to mandate documents which must be available but to not restrict Associations to having only those documents.

What is the provenance of the Committee. *Civil Code* §[4765\(a\)\(1\)](#) specifies that each association is left to establish a Committee. Our guidance is:

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1. Bylaw [IX](#) we have “The Association shall appoint an Architectural Control Committee, as provided in the Declaration,”
1. CC&R [VI\(1\)](#) states the “... Architectural Committee composed of three (3) or more representatives appointed by the Board of Directors ...”.
2. CC&R [I\(2\)](#) “Architectural Committee shall mean and refer to the committee provided for in Article VI hereof entitled Architectural Control”

Showing that the Architecture Committee is a Board appointed member committee as defined in [§5200\(a\)\(8\)](#) and all records of this Committee are Association Records as defined in [§5200\(a\)](#).

By *Civil Code* [§4765\(a\)\(4\)](#) and CC&R [VI\(3\)](#) the Committee has decision making authority, and by *Civil Code* [§4765\(a\)\(5\)](#) and CC&R [VI\(5\)](#) the Board must review a disapproved application during open session. No need to approve something if there is no decision.

VIII Summary

The Association, the Board, and all committees work for the members of the Association who have right-of-oversight ([§5210\(a\)\(2\)](#)), and to perform this right, the members need data. This is one of the basic arguments in the Davis-Stirling Act. It is to mandate that the Association provide sufficient data to allow member oversight. The only exclusions to providing this data is the Board Executive Session. The initial request for this material was on [29 Oct 2019](#). No reason for denial of access or copying has been put forward consistent with either *Civil Codes* [§4765\(a\)\(1\)](#), [§5205\(a\)](#), [§5210\(a\)\(2\)](#), [§5200\(a\)\(8\)](#), [§5210\(a\)\(2\)](#), [§5210\(b\)\(5\)](#) and [§5240\(b\)](#) or the Association Bylaw [X\(1\)](#).

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Association CC&Rs

Section	Title	Article Text
I(2)	Definitions	<u>Architectural Committee</u> ” shall mean and refer to the committee provided for in Article VI hereof entitled “Architectural Control.
VI(1)	Approval Required	... representatives appointed by the Board of Directors... with such conditions as the committee may impose
VI(3)	Powers	Approval of said plans and specification may be withheld ...
VI(5)	Appeal	... parties making such submission may appeal to the Board ...

Association Bylaws

Article	Title	Statement
VII(3)(1)	Duties	It shall be the duty of the Board or Directors to: Cause to be kept a complete record of all its acts
VIII(8)(c)	Secretary	The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members
IX	Committees	The Association shall appoint an Architecture Control Committee ...
X(1)	Inspection and Copying	The membership register, books of account and minutes of meetings of the members, of the Board of Directors and of committees of the Board of Directors of the Association shall be made available for inspection and copying by any member of the Association ...

Civil Code

Ref	Title	“Statute Text”
<u>4040</u> (a)	General Delivery or Notice	If a provision of this act requires “general delivery” or “general notice,” the document shall be provided by one or more of the following methods:
<u>4045</u> (a)(2)	General Delivery or Notice	Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.
<u>4765</u> (a)(1)	Architectural Review Procedures	... procedure shall be included in the association’s governing documents.
<u>4765</u> (a)(4)	Architectural Review Procedures	A decision on a proposed change shall be in writing ...
<u>4765</u> (a)(5)	Architectural Review Procedures	If a proposed change is disapproved, the applicant is entitled to reconsideration by the board, at an open meeting of the board.
<u>4900</u>	Open Meeting Act	
<u>4910</u> (a)	Board Meetings Required for Actions; Exceptions	The board shall not take action on any item of business outside of a board meeting.
<u>4920</u> (b)(2)	Board Meeting Notices and Agenda; Timing	,... board meeting is held solely in executive session, the association shall give notice of the time and place of the meeting... .
<u>4920</u> (c)	Board Meeting Notices and Agenda; Timing	Notice of a board meeting shall be given by general delivery ...
<u>4920</u> (d)	Board Meeting Notices and Agenda; Timing	Notice of a board meeting shall contain the agenda for the meeting.
<u>4930</u> (a)	Agenda Required for Board Discussion	... the board may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda,...
<u>4930</u> (b)	Agenda Required for Board Discussion	... a director, a managing agent or other agent of the board, or a member of the staff of the board
<u>4930</u> (e)	Agenda Required for Board Discussion	Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.
<u>4935</u> (a)	Board Executive Sessions	The board may adjourn to ...executive session to consider litigation, matters relating to the ,... personnel matters

Civil Code

Ref	Title	“Statute Text”
4955 (a)	Civil Action to Enforcing Meeting Requirements	A member of an association may bring a civil action ... for a violation of this article
4955 (b)	Civil Action to Enforcing Meeting Requirements	A member who prevails in a civil action to enforce the member’s rights ... shall be entitled to reasonable attorney’s fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500)
5105 (a)	Election Rules Required	... is provided access to ... newsletters
5200 (a)	Association Records	“Association records” means all of the following:
5200 (a)(8)	Association Records	Agendas and minutes of meetings of the members, the board, and any committees appointed by the board ,... .
5205 (a)	Procedures Concerning Availability of Association Records	The association shall make available association records ... for inspection and copying by a member of the association... .
5205 (c)	Procedures Concerning Availability of Association Records	The association shall make the specified association records available for inspection and copying in the association’s business office
5205 (h)	Procedures Concerning Availability of Association Records	Requesting parties shall have the option of receiving ... records ... by electronic transmission
5210 (a)(2)	Board Meetings Required for Actions; Exceptions	... minutes of member and board meetings are subject to inspection permanently. If a committee has decision making authority, minutes of the meetings of that committee shall be , ... permanently subject to inspection.
5210 (b)(4)	Time Periods for Production of Association Records	Minutes of member and board meetings
5210 (b)(5)	Time Periods for Production of Association Records	Minutes of meetings of committees with decision making authority
5215 (1)(5)(D)	Withholding and Redacting Association Records	... except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services.
5215 (d)	Withholding and Redacting Association Records	If requested by the requesting member, an association that denies or redacts records shall provide a written explanation specifying the legal basis for withholding or redacting the requested

Civil Code

Ref	Title	“Statute Text”
		records.
5235 (a)	Enforcement Options Concerning Inspection Rights	... the court shall award the member reasonable costs and expenses, including reasonable attorney’s fees... .
5240 (b)	Applicability and Nonapplicability of Inspection Rights	... members of the association shall have access to association records
5260 (c) - (f)	Member Delivery of Requests to Association	All requests for documents should be sent by email (see 4040).
5915 (b)(2)	Default IDR (Meet and Confer) Procedure	The association may not refuse a request to meet and confer.
5915 (b)(4)	Default IDR (Meet and Confer) Procedure	The parties shall meet promptly at a mutually convenient time and place
5925 (a)	ADR Definitions	“Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process.
5925 (b)(3)	ADR Definitions	Enforcement of the governing documents.
5935 (a)(3)	Initiating ADR by Request for Resolution	A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.
5935 (c)	Initiating ADR by Request for Resolution	A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party