

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2460 (Ta)
Version: May 20, 2024
Hearing Date: July 2, 2024
Fiscal: No
Urgency: No
ID

SUBJECT

Common interest developments: association governance: member election

DIGEST

This bill makes various clarifying changes to the process by which a homeowners' association of a common interest development (CID) may hold an election under a lowered quorum requirement if a quorum was not met at the initial election meeting.

EXECUTIVE SUMMARY

CIDs are self-governing housing developments comprised of individually-owned housing units and common space that all homeowners and residents of the common interest development can enjoy. The rules for CIDs are tightly prescribed by law, including how members of the development may elect a board of directors to manage the development and its homeowners' association. Elections for the board of directors must be by secret ballot, in which members of the CID are mailed a ballot that they must complete and return. The votes are counted and tabulated by an election inspector or inspectors at a public meeting. If the CID's guiding documents require a quorum for board elections, a quorum must be met at this public meeting.

A recent bill, AB 1458 (Ta, Ch. 303, Stats. 2023), provided a process to address what a homeowners' association may do if a quorum is not met, specifying that the board may set another meeting for counting the votes at least 20 days after the election, at which the quorum requirement will be 20 percent. AB 1458 also required that the board provide homeowner association members general notice of this subsequent meeting with specified information at least 15 days before the meeting. However, some ambiguities in the language of AB 1458 remain. This bill corrects those ambiguities and provides clarifying language for various parts of the provisions created by AB 1458. This bill is sponsored by the Community Associations Institute - California Legislative Action Committee, and the Committee has received no timely opposition. This bill previously passed out of the Senate Housing Committee by a vote of 10 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes, within the Davis-Stirling Common Interest Development Act, rules and regulations governing the operation of a residential common interest development (CID) and the respective rights and duties of a Homeowners Association (HOA) and its members. (Civ. Code § 4000 et seq.)
- 2) Obligates HOAs to hold an election by secret ballot, according to specified procedures, for:
 - a) assessments legally requiring a vote;
 - b) election and removal of directors;
 - c) amendments to the governing documents; or
 - d) the grant of exclusive use of a common area. (Civ. Code § 5100(a).)
- 3) Prohibits an HOA board of directors from taking action on an item of business outside of a board meeting. (Civ. Code § 4910(a).)
- 4) Provides that an HOA must provide general notice of the procedure and deadline for submitting a nomination for board of directors at least 30 days before the nomination deadline. (Civ. Code § 5115(a).)
- 5) Specifies the voting process for an HOA election as follows:
 - a) ballots and two pre-addressed envelopes with instructions on how to return ballots must be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, lot, parcel, or unit number on the ballot. The association must use as a model those procedures used by California counties for ensuring confidentiality of vote-by-mail ballots, including all of the following:
 - i. the ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote; and
 - ii. the second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery. (Civ. Code § 5115(a).)

- 6) Requires the HOA to select one to three independent, third-party inspectors to run the election and receive and tabulate ballots, and specifies their duties and obligations. Specifies that an inspector may be a volunteer. (Civ. Code § 5110.)
- 7) Requires that all votes in a board election are to be counted and tabulated by the inspector or inspectors of elections in public at a properly noticed open meeting of the board or members, and that any candidate or other member of the association may witness the counting and tabulation of the votes. Prohibits any person, including a member of the association or an employee of the management company, from opening or otherwise reviewing any ballot prior to the time and place at which the ballots are counted and tabulated. (Civ. Code § 5120(a).)
- 8) Specifies a quorum is required in a board election only if stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections is to be treated as a member present at a meeting for purposes of establishing a quorum. (Civ. Code § 5115(d).)
- 9) Specifies that, if a quorum is not met at the public meeting to count the votes for a board election, the board may call a subsequent meeting at least 20 days after a scheduled election, at which meeting the quorum will be 20 percent of the HOA's members voting in person, by proxy, or by secret ballot. Specifies that, in order to utilize this lowered quorum process, the HOA must provide general notice of the subsequent meeting at least 15 days prior to the election, which must include:
 - a) the date, time, and location of the meeting;
 - b) the list of all candidates;
 - c) a statement that 20% of the HOA present or voting by proxy or secret ballot will satisfy the quorum requirements for the election, and that the ballots will be counted if a quorum is reached. (Civ. Code § 5115(d).)
- 10) Allows an HOA with 6,000 or more units to seat candidates for the board of directors by acclamation in lieu of balloting if, at the close of nominations for directors, the number of nominees is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of elections, provided that all of the following are true:
 - a) the HOA provided individual notice of the election and the procedure for nominating candidates at least 30 days before the close of nominations;
 - b) the HOA permits all candidates to run if nominated, except that:
 - i. an HOA shall disqualify a person from nomination as a candidate if the person is not a member of the association at the time of the nomination. This does not restrict a developer from making a nomination of a non-member candidate consistent with the developer's voting powers;

- ii. an HOA may disqualify a nominee with a prior criminal conviction that would prevent the association from purchasing or maintaining the required fidelity bond coverage;
- iii. an HOA may disqualify a nominee who is not current on their payment of regular and special assessments, which are consumer debts subject to validation. This does not allow disqualification based on failure to pay any third parties and that non-payment of assessments is not disqualifying if payments are made under protest, the nominee has entered into a payment plan, or the nominee has not been given a chance to engage in internal dispute resolution;
- iv. an HOA may disqualify a nominee who, if elected, would be serving on the board at the same time as another person with a joint ownership interest in the same separate interest parcel as the person, and the other person is either properly nominated for the current election or an incumbent director; and
- v. an HOA may disqualify a nominee who has been a member of the association for less than one year. (Civ. Code § 5100(g).)

This bill:

- 1) Clarifies that, if a subsequent meeting must be held for an election of directors due to failure to attain a quorum, the HOA (rather than the board of directors) may call a reconvened meeting to be held at least 20 days after the scheduled election.
- 2) Requires the general election notice sent to HOA members to include a statement that if a quorum is not attained, the HOA may call a reconvened meeting to be held at least 20 days after the initial meeting, which will require a quorum of 20% of the HOA's members voting in person, by proxy, or by secret ballot.
- 3) Provides that the requirements in 2) do not apply if the HOA's governing documents provide for a quorum of less than 20% of the HOA's members.
- 4) Clarifies that an HOA may call a reconvened meeting for an election of directors due to failure to attain a quorum, rather than being restricted to holding an election at a membership meeting.
- 5) Clarifies that the required general notice for a reconvened meeting be provided at least 15 days prior to the reconvened meeting, and include a statement that, unless the HOA's governing documents provide for a lower quorum, 20 percent of the HOA's members, voting in person, by proxy, or secret ballot will satisfy the quorum requirements at the reconvened meeting.

- 6) Clarifies the language throughout the provisions for a lowered quorum by utilizing the phrase “reconvened meeting” to specify the meeting at which the lowered quorum requirement will apply.

COMMENTS

1. Author’s statement

According to the author:

AB 2460 would clarify the correct vocabulary as defined by the California Department of Real Estate when it comes to proceeding with a Board of Directors election for a Homeowners Association.

2. Common Interest Developments

Common Interest Developments (CIDs) are self-governing housing developments comprised of individually-owned housing units and common space that all homeowners and residents of the CID can enjoy. Arrangements of CIDs can vary widely, from condominiums, townhouses, and detached single-family homes, to apartment-like high rises. They may be comprised of only a few housing units, or thousands. CIDs are commonly referred to as HOAs, or homeowner associations, for the body that provides for the CID’s self-governance.

The laws that regulate CIDs are encompassed in the Davis-Sterling Common Interest Development Act. (Civil Code Section 4000 et seq.) All homeowners in the CID are members of the HOA, which provides for the self-governance of the CID, managing and maintaining the common space of the CID, setting the rules for the CID, and resolving disputes. The HOA elects a board of directors, and usually has bylaws outlining the governance rules of the HOA and its board of directors. The board of directors of the association has a number of duties and powers. The board manages the community, frequently by hiring an individual or entity to do so on its behalf. The board determines the annual assessments that members must pay in order to cover communal expenses. Many of the rules and structure of the CID are determined by the Declaration of Covenants, Conditions, and Restrictions (CC&Rs) that are filed with the county recorder when the CID is established. These CC&Rs identify the CID’s common area, the HOA’s responsibilities, the obligation of the HOA to collect assessments from homeowners to cover the HOA’s expenses, and a variety of other topics.

HOAs are usually funded through monthly dues set and charged by the board to the owners of each separate unit within the CID. In addition, HOAs may implement one-time assessments on their members to cover a major project or unexpected costs that the members’ dues are not able to cover. The HOA has significant power over individual members: when a homeowner in the CID does not pay their assessments, the HOA has

the authority to impose a lien and foreclose on an individual's property. (Civ. Code §§ 5660, 5700.) The Davis-Sterling Act also sets out the various responsibilities for maintenance of the facilities of the CID between the HOA and the individual homeowners.

The HOA's board of directors are elected through HOA-wide elections. These elections must be conducted through a secret paper balloting system that is designed to be similar to the state's vote-by-mail system. (Civ. Code § 5100 et seq.) The HOA must select one to three independent, third-party inspectors to run the election and receive and tabulate ballots. (Civ. Code § 5110.) HOA members are provided with paper ballots which they must complete and return by a specified date, and then the ballots are counted and tabulated by the election inspector at a public, open meeting of the board. (Civ. Code § 5120.) Sometimes, HOA elections require a quorum of members at the public meeting where the votes are to be counted in order for the election to take place. This the case if the HOA's governing documents or other law requires there be a quorum. (Civ. Code § 5115(d).)

An issue may sometimes arise in which a quorum is not reached in the board election. In this case, historically, the HOA would have to hold another election, repeatedly until a quorum is reached, or they may vote to lower the quorum (a vote which would also be subject to a quorum). Alternatively, the HOA could petition a court for an order lowering the quorum requirement for an election through Section 7515 of the Corporations Code. However, this may be a costly and extended process.

3. AB 2460 makes various clarifications to the process for lowering the quorum requirement for an HOA election that was created by AB 1458

To attempt to address the issue of when an HOA cannot reach a quorum in an HOA election, last year the Legislature enacted AB 1458 (Ta, Ch. 303, Stats. 2023). AB 1458 authorized an HOA to adjourn an election that fails to obtain a quorum until at least 20 days after the initial election, on which date the HOA can hold a subsequent meeting with a quorum requirement of 20% of the HOA's members. AB 1458 also required that the board provide the HOA with general notice of the subsequent membership meeting at least 15 days prior to the new election. As a safeguard, AB 1458 required that the lowered quorum requirement may only be used if the general notice of the initial election include a notice that a lowered quorum may be used.

However, the authors assert that there were some technical errors present in that bill. This bill aims to correct those errors. It revises the language of the required notice about the lowered quorum requirements that an HOA must provide HOA members with the general notice of the election, clarifying that the HOA may call the second meeting for the election. It makes additional clarifications in the language of AB 1458, including to specify that the second election meeting is a reconvened meeting. This bill also specifies

that the lowered quorum provisions do not apply if the HOA's governing documents already provide for a quorum lower than 20 percent.

SUPPORT

Community Associations Institute – California Legislative Action Committee

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: AB 2159 (Maienschein, 2024) allows an HOA to conduct an election by electronic secret ballot, as specified. This bill is currently in this Committee.

Prior Legislation:

AB 1458 (Ta, Ch. 303, Stats. 2023) authorized a lower quorum requirement for HOA elections of directors, if a quorum is not met in the initial election, and provided a process for that lowered quorum requirement and reconvened election, as specified.

AB 502 (Davies, Ch. 517, Stats. 2021) removed the requirement that an HOA must have 6,000 or more units in order to use an election by acclamation procedure that allows HOAs to bypass a full election for board of directors if the number of nominees is not more than the number of vacancies to be filled.

SB 323 (Wieckowski, Ch. 848, Stats. 2019) enacted a series of reforms to the laws governing board of director elections in HOAs that seek to increase the regularity, fairness, formality, and transparency associated with such elections.

SB 754 (Moorlach, Ch. 858, Stats. 2019) provided that nominees to an HOA board in an HOA are considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board.

AB 1726 (Swanson, 2010) provided a 33 percent quorum requirement for a subsequent election after an HOA's initial election failed to receive a quorum. AB 1726 was vetoed by Governor Schwarzenegger under the explanation that the bill was "unnecessary because existing law allows a HOA to amend its governing documents to establish a lower quorum" and that the bill "would interfere with the basic democratic principle of CIDs."

PRIOR VOTES:

Senate Housing Committee (Ayes 10, Noes 0)

Assembly Floor (Ayes 58, Noes 1)

Assembly Judiciary Committee (Ayes 12, Noes 0)

Assembly Housing and Community Development Committee (Ayes 7, Noes 1)
