

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

AB 1458 (Ta)
Version: July 3, 2023
Hearing Date: July 11, 2023
Fiscal: No
Urgency: No
AM

SUBJECT

Common interest developments: association governance: member election

DIGEST

This bill authorizes a reduced quorum requirement for homeowner association board elections if the first attempt at holding the election failed to establish a quorum and certain procedural requirements are met.

EXECUTIVE SUMMARY

Common interest development (CID) communities are, with rare exceptions, managed by a homeowners association (HOA) which essentially acts as a mini-government. Each property owner within the CID is a member of the HOA and the membership elects the HOA's board of directors, which is responsible for making key decisions about the CID community on behalf of everyone. Participation in HOA board elections varies greatly. In some CID communities, elections for the HOA board of directors are hotly contested affairs. This bill seeks to address the opposite scenario: where the CID suffers from a lack of interest and participation by members. This bill seeks to address this issue by allowing a reduced quorum of 20 percent of the voting members to be used for a board election if at the initial election the HOA adjourns the meeting and provides for a new election with the reduced quorum requirement at least 20 days after the adjourned proceeding and after certain notice requirements are met.

The bill is author sponsored and supported by the California Association of Community Managers and the Community Associations Institute's California Legislative Action Committee. The bill is opposed by the Center for California Homeowner Association Law. The bill passed the Senate Housing Committee on a vote of 10 to 1.

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 an HOA and its members. (Civ. Code § 4000 et seq.)
- 2) Obligates HOAs to hold an election by secret ballot and 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 procedure for an HOA election as follows:
 - a) ballots and two preaddressed envelopes with instructions on how to return ballots shall 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 shall 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 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. Further 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).)
- 7) 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).)
- 8) 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 nonmember 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).)

7) Permits a non-profit public benefit corporation to declare nominees for the board of directors elected without further action if, at the close of nominations, the number of people nominated for the board is not more than the number of directors to be elected. (Corp. Code § 7522(d).)

This bill:

- 1) Provides that for an election of directors of a corporation that is a common interest development association, as defined, and in the absence of meeting quorum, as specified, the association may adjourn the proceeding to a date at least 20 days after the adjourned proceeding, at which time the quorum required for purposes of a membership meeting to elect directors shall be 20 percent of the association's voting members present in person, by proxy, or by secret written ballot received, unless a lower quorum is authorized by the association's governing documents.
- 2) Requires an association whose governing documents require a quorum for election of directors to provide general notice of a statement that the board of directors may call a subsequent meeting at least 20 days after a scheduled election if the quorum is not reached at which time the quorum of the membership to elect directors will be 20 percent of the association's members voting in person, by proxy, or by secret ballot.
- 3) Requires that if a homeowner association opts to utilize the reduced quorum procedure pursuant to 1), above, the association must provide a general notice 15 days prior to the rescheduled election that contains all of the following:
 - a) the date, time, and location of the meeting;
 - b) the list of all candidates; and
 - c) a statement that 20 percent of the association present or voting by proxy or secret ballot will satisfy the quorum requirements for the election of directors and that the ballots will be counted if a quorum is reached, if the association's governing documents require a quorum.

COMMENTS

1. Stated need for the bill

The author writes:

California is home to more than 55,000 homeowners associations (HOAs), housing more than 13 million residents. HOAs are also referred to as Common Interest Developments, or CIDs. An HOA is governed by its Covenants, Conditions, and

Restrictions (C,C,&Rs, or “governing documents”), which are often drafted by the developer and generally include a minimum quorum requirement for votes to raise assessments, elect boards of directors, and for making changes to the governing documents.

The Davis-Stirling Act sets forth the guidelines for conducting HOA elections. However, current law has no remedy for an association that is not able to achieve quorum in board members elections, other than conducting an additional election. Many associations are not able to achieve the quorum set forth in the governing documents, which then prevents new board members from being seated when they seek to challenge a sitting board member, or prohibits vacant seats from being filled when more than one candidate is seeking the position. This legislation would remedy this situation.

2. Background on HOAs and addressing the issue of low participation in board elections

CIDs are self-governing groups of dwellings that share common spaces and amenities. They come in a wide variety of physical layouts: condominium complexes, apartment buildings, and neighborhoods of detached, single-family residences, for example. Units within common housing developments currently account for approximately a quarter of the state’s overall housing stock, meaning that the laws governing such developments have a large impact on the population. In California, CIDs are governed by the Davis-Stirling Act. (Civ. Code §§ 4000-6150.)

The Davis-Stirling Act sets forth a system for CID self-governance. The owners of the separate properties within the community are the members of the HOA. HOA members vote for the board of directors of the association that oversees operation of the community. An HOA board 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 – much like taxes – that members must pay in order to cover communal expenses. The board enforces the community rules and can propose as well as make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members and, if necessary, the power to foreclose upon the offending member’s property. This combination of responsibilities and authority has led multiple courts to observe that HOAs function in many ways almost “as a second municipal government, regulating many aspects of [the homeowners’] daily lives.” (*Villa Milano Homeowners Ass’n v. Il Davorge* (2000) 84 Cal.App.4th 819, 836. Internal citations omitted.)

Much like municipal governments, HOAs also use elections to choose members to serve on the association’s board of directors. Under existing law, HOAs conduct these elections through a paper and mail-based balloting system that closely resembles

California's vote-by-mail process. Many associations use quorums for board elections. If a quorum is not reached in an election, there are a few possibilities the CID can pursue. Usually, an association will hold repeated elections until a quorum is achieved. Alternatively, Section 7515 of the Corporations Code provides a legal process where members of the association can petition a court for an order lowering the quorum requirement for a single election to the number of votes cast. This option, however, is generally expensive and time consuming for members to use. Lastly, the HOA can vote to lower the quorum threshold. This option may not be productive if the association already suffers from a lack of participation, as that vote is also subject to quorum requirements. As such, when participation in HOA elections is low, replacing the existing board may become very difficult.

In light of the above, this bill proposes allowing an HOA that held an election where the quorum required in the HOA's governing documents was not met to call a subsequent meeting at least 20 days after the original election. At the subsequent election the quorum needed to elect board members will be 20 percent of the association's members voting in person, by proxy, or by secret ballot. As a safeguard, the bill only requires the association to use the lower quorum if the notice for the original election included a statement that the lower quorum may be used. If the board seeks to use the lower quorum, general notice must be provided to the members of the HOA at least 15 days prior to the second election that contains certain information, including a statement that 20 percent of the association present or voting by proxy or secret ballot will satisfy the quorum requirements for the election of directors and that the ballots will be counted if a quorum is reached, if the association's governing documents require a quorum. Additionally, the second election is prohibited from occurring within 20 days of the initial election where a quorum was not reached. The bill allows for an HOA to authorize a lower quorum requirement in their governing documents.

A similar bill was introduced in 2010 (AB 1726 (Swanson)), but that bill was not heard by this Committee. That bill had a 33 percent requirement for a subsequent election after an initial election failed to receive a quorum. AB 1726 passed the Legislature, but was vetoed by then Governor Schwarzenegger stating that he felt the bill was "unnecessary because existing law allows a HOA to amend its governing documents to establish a lower quorum" and that he felt the bill "bill would interfere with the basic democratic principle of CIDs." As noted above by the author, HOAs can vote to amend their governing documents, but that generally also requires a quorum.

The sole opposition to this bill is the Center for California Homeowner Association Law which raises several concerns. They want statements to owners regarding a potential reduction in quorum to be placed in the Election Operating Rules formed under Civil Code Section 4340, which they state are required to be given by individual notice not general notice. They want specific language stating that the election material must be in the sole custody of the election Inspector when a quorum is being determined and

ballots tabulated. Additionally, they want the meeting at which a quorum is to be determined to be in a physical location readily accessible to the members of the HOA.

3. Proposed amendments¹

The bill in print refers to a “common interest development association as defined in Section 4100 of the Civil Code.” However, Section 4100 of the Civil Code does not define the term “common interest development association” but does define the term “common interest development.” In order to address this discrepancy, the author has agreed to amend the bill to remove “association”.

The specific amendments are as follows:

Amendment 1

On page 4, in line 9, strike out “development association as defined in Section 4100” and insert:

development,

Amendment 2

On page 4, in line 20, strike out “meeting” and insert:

meeting,

Amendment 3

On page 5, in lines 30 and 31, strike out “development association as defined in Section 4100 of the Civil Code,” and insert:

development,

4. Statements in support

The California Association of Community Managers writes in support stating:

There are over 54,000 common interest developments (“CIDs”) throughout California. CIDs are a valuable part of the state's housing stock, as they are self-sufficient and maintain their own communities under boards made up of volunteer homeowners. The boards are charged with preserving, enhancing, and protecting

¹ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

homeowner units. Unfortunately, the HOA industry has long suffered from lack of member participation. It is estimated that around 80% of associations fail to meet quorum. This means that the process must be repeated over and over until quorum is met, all at compounding costs to homeowners and operational delays.

All costs in an association are typically borne by the homeowners and paid for through homeowner assessments. Costs and time associated with nagging homeowners to send in their ballots and to hold numerous meetings only to have to adjourn for lack of quorum are significant. This inability to achieve quorum also prevents important business from occurring due to prolonged board vacancies and the inability to approve actions that are critical to the community. Municipal, state and federal elections do not require quorums. AB 1458 maintains the requirement to attempt to achieve full quorum. However, association business must occur so it is only after the first attempt fails would a reduced quorum requirement become available.

5. Statements in opposition

The Center for California Homeowner Association Law writes in opposition stating:

The authority and duties of associations is such that the California Appellate courts have, in multiple opinions, ruled that associations have all the trappings and powers of government.

Given the extraordinary powers that boards have over the property, the money, and the behavior of owners, the role of quorum is to ensure that there is sufficient participation by owners in the electoral process for choosing who among their neighbors shall be trusted with these powers. [...]

If, as the sponsors of AB1458 assert, reaching quorum has proven to be difficult, then tools already exist in California law to help, that is associations can:

- Petition the court for a reduction in quorum requirements
- Amend the quorum requirements in their government documents

Using these tools have the additional advantage of engaging the association's membership in the process since a petition to the court requires that all interested parties be notified of the petition and changing the governing documents requires a membership vote. Either tool lets an association retain its sovereignty, that is: to make decisions about quorum for itself. (footnotes omitted)

SUPPORT

California Association of Community Managers
Community Associations Institute - California Legislative Action Committee

OPPOSITION

Center for California Homeowner Association Law

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 323 (Wieckowski, 2019, Ch. 848, Stats. 2019) enacted a series of reforms to the laws governing board of director elections for CIDs.

AB 1726 (Swanson, 2010) *see* Comment 2, above.

PRIOR VOTES

Senate Housing Committee (Ayes 10, Noes 1)

Assembly Floor (Ayes 75, Noes 1)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Housing and Community Development Committee (Ayes 8, Noes 0)
