

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

AB 648 (Valencia)
Version: April 20, 2023
Hearing Date: June 20, 2023
Fiscal: No
Urgency: No
AM

SUBJECT

Common interest developments: procedures: meetings by teleconference

DIGEST

This bill would authorize a homeowners' association to conduct a board meeting entirely by teleconference if certain minimum standards are met.

EXECUTIVE SUMMARY

Residential common interest developments come in many physical formats, from small apartment buildings to vast subdivisions with single-family residences. What unites them is their combination of separately-owned housing units with shared common spaces and amenities, all governed by a homeowners' association (HOA) and its elected board of directors. The HOA board's primary duties are to levy annual assessments on the membership, authorize expenditures, set rules, and enforce them. To perform these duties, the board must conduct regular meetings carried out in accordance with the provisions of state law. As relevant to this bill, those laws currently require that, for any board meeting conducted by telephone or video conference, there must also be at least one physical location at which members can attend and where at least one director is present, except for during an officially declared disaster or emergency. This bill seeks to enact authority for board meetings to be held via teleconference without requiring a physical location at which members can attend and where at least one director is present, if certain conditions are met.

The bill is sponsored by the California Association of Community Managers and the Community Associations Institute-California Legislative Action Committee and supported by the California Association of Realtors. There is no known opposition.

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) Prohibits an HOA board of directors from taking action on an item of business outside of a board meeting. (Civ. Code § 4910(a).)
- 3) Defines a “board meeting” as either of the following:
 - a) a congregation, at the same time and place, of a sufficient number of directors to establish a quorum of the board, to hear, discuss, or deliberate upon any item of business that is within the authority of the board;
 - b) a teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both. (Civ. Code § 4090.)
- 4) Requires all of the following in relation to a board meeting conducted by teleconference:
 - a) the meeting must be conducted in a manner that protects the rights of members of the association and complies with all other Davis-Stirling Act requirements;
 - b) participation by board members constitutes presence at the meeting as long as all directors participating can hear one another, as well as members of the association speaking on matters before the board;
 - c) the notice of the teleconference meeting must identify at least one physical location so that members of the association may attend and at least one director or a person designated by the board is present at that location. (Civ. Code § 4090(b).)
- 5) Provides that any HOA member may attend a board meeting, except while it is in executive session, and that any HOA member is entitled to attend a teleconference meeting, which shall be audible to the members in a location specified in the meeting notice. (Civ. Code § 4925.)
- 6) Requires an HOA to provide general notice of the time and place of a board meeting at least four days before a meeting, except as follows:
 - a) only two days’ notice is required for a non-emergency board meeting that is held solely in executive session;
 - b) no notice is required for an emergency meeting, as defined. (Civ. Code § 4920.)

- 7) Provides that if an HOA must provide “individual notice” of a meeting, it shall deliver the notice by mail or overnight delivery unless the recipient has consented to delivery by email, facsimile, or other electronic means. (Civ. Code § 4040(a).)
- 8) Provides that if an HOA must provide “general notice” of a meeting, it may deliver the notice by any of the following means:
 - a) any method constituting individual notice;
 - b) including the notice in a billing statement, newsletter, or other document;
 - c) posting the notice in a prominent location that is accessible to all members, as specified; or
 - d) television broadcast, if the association broadcasts television programming. (Civ. Code § 4045(a).)
- 9) Requires an HOA to provide all general notices by individual notice if a member requests it. (Civ. Code § 4045(b).)
- 10) Provides that all votes in a board election shall be counted and tabulated by the inspector or inspectors of elections in public at a properly noticed open meeting of the board or members. Any candidate or other member of the association may witness the counting and tabulation of the votes. No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. (Civ. Code § 5120(a).)
- 11) Provides that a board meeting may be conducted entirely by teleconference during an officially declared disaster or emergency if certain conditions are met. (Civ. Code § 5450.)

This bill:

- 1) Authorizes HOA boards to meet by teleconference without any physical location being held open where HOA members may attend, notwithstanding any other law or the association’s governing documents, provided that the notice for each meeting, in addition to any other required content for meeting notices, includes 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; and
 - c) a reminder that a member may request individual delivery of meeting notices, with instructions on how to do so.

- 2) Authorizes HOA boards to meet by teleconference without any physical location being held open where HOA members may attend, notwithstanding any other law or the association's governing documents, provided that all of the following are met:
 - a) every director and member has the same ability to participate in the meeting that would exist if the meeting were held in person;
 - b) any vote of the directors is conducted by a roll call vote; and
 - c) any person who is entitled to participate in the meeting must be given the option of participating by telephone.
- 3) Provides that these provisions do not apply to a meeting in which ballots are counted and tabulated, as specified.
- 4) Makes the following findings and declarations:
 - a) board meetings pursuant to the Davis-Stirling Common Interest Development Act that are held virtually, using telephone, audio-video, or other audio-only conferencing enable greater access for all members of the association;
 - b) virtual homeowner association meetings improve and enhance homeowner members' ability to participate and comment on business-related matters of the association and their community; and
 - c) virtual meetings should continue to be conducted in a manner that offers every member and director access equal to that offered by conventional meetings and be conducted consistent with notice and accessibility requirements.

COMMENTS

1. Stated need for the bill

The author writes:

AB 648 will increase access to homeowner association meetings by allowing meetings to take place remotely, if certain conditions are met.

Homeowners have busy lives and attending evening HOA meetings is often difficult or not feasible due to scheduling conflicts or existing statutory requirements. As a result, it is not uncommon for these meetings to typically have low participation rates. Yet, significant resources are required to conduct such meetings. Typically, these meetings are staffed and in smaller associations, facilities must be rented out to accommodate such meetings. All these costs are paid for by assessments that the homeowners are required to pay.

The COVID pandemic highlighted the ability to successfully perform tasks remotely, including conducting a board meeting or meeting of the members. Legislation enacted during the pandemic allowed an association to conduct meetings entirely by remote means. When associations began doing this, participation vastly increased.

Not only was the ability to participate via teleconference now provided, but people also became comfortable with how to participate virtually.

2. Background

a. Common interest developments

Common interest developments (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. Some consist of thousands of units. Others are made up of just a handful. Dwellings 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 primarily governed by the Davis-Stirling Act. (Civ. Code §§ 4000-6150.)

The Davis-Stirling Act sets forth a system for each CID to govern itself through a homeowners' association (HOA). The owners of the separate properties within the CID are the members of the HOA. Association members vote for the board of directors of the HOA. The board manages the HOA, frequently by hiring an individual or entity – the property manager – 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 and 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, place liens on the offending member's property, and, if ultimately necessary, the power to foreclose. This array of responsibilities and powers 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 [citations omitted].)

b. HOA board meeting requirements

HOA boards must carry out the functions described above, through formal board meetings. (Civ. Code § 4910.) The Common Interest Development Open Meetings Act sets forth certain basic ground rules for how these meetings must be noticed, conducted, and memorialized. (Civ. Code § 4900 *et seq.*) Ordinarily, the board must provide at least four days' general notice to the HOA members of the time and place at which the board meeting will take place, as well the agenda for the meeting. (Civ. Code § 4920.) The meeting can be conducted by telephone or video conference, but if it is, the board must identify a physical location at which HOA members can attend the meeting in-person and where at least one director or their designate will be present. (Civ. Code § 4090(b).) That location must be included in the notice of the meeting. (*Ibid.*)

If an HOA board violates the requirements contained in the Common Interest Development Open Meetings Act, homeowners have a clear set of remedies. They can file a civil action against the HOA seeking declaratory or equitable relief, including an injunction ordering the HOA to comply. (Civ. Code § 4955(a).) The Act also entitles a prevailing homeowner to reasonable attorney's fees and court costs. In addition, the court may impose civil penalties on the HOA for having violated the meeting requirements. (Civ. Code § 4955(b).)

3. This bill authorizes HOA boards to meet by teleconference without any physical location being held open where HOA members may attend

Last year the Legislature passed a bill to allow HOA boards to meet via teleconference without a physical location during an officially declared disaster or emergency. This bill seeks to go beyond those provisions and generally allow board meetings to be conducted via teleconference without a physical location for members of the HOA to attend if certain conditions are met. These conditions include:

- The notice for the meeting, in addition to any other existing notice requirements, must have: clear technical instructions on how to participate by teleconference, the telephone number and email of a person who can provide technical assistance with the teleconference process, both before and during the meeting, and a reminder that a member may request individual delivery of meeting notices, with instructions on how to do so.
- Every director and member has the same ability to participate in the meeting that would exist if the meeting were held in person.
- Any vote of the directors is to be conducted by a roll call vote.
- Any person who is entitled to participate in the meeting must be given the option of participating by telephone.
- This authorization cannot be used for a meeting at which ballots are counted and tabulated.

The author and sponsors of the bill claim that the physical location requirement in current law is burdensome for communities and that often times no one turns up to the physical location, which wastes time and resources. They posit that this bill will provide HOA boards more freedom to determine how to hold board meetings that better suit the needs of their communities.

4. Statements in support

The California Association of Community Managers, a sponsor of the bill, writes:

In every instance, associations report significant increases in participation when members were no longer required to participate in person. People have busy lives and homeowner association meetings, often conducted in the evenings, are difficult

to attend. They often take a lower priority to work and family obligations. Yet association business impacts one of the most fundamental and personal aspects of a member's life: their quality of living and home investment.

Making it easier for a member to engage on issues related to the maintenance, safety and quality of their communities is critical. This is from both the perspective as a homeowner but also as a board member, as it expands the ability for members to serve on the board where they may not have been able to before. AB 648 would allow homeowners to engage while at the same time providing guardrails such as requiring each member to have the same ability to participate if a meeting were held in person, ensuring notices, clear instructions and technical assistance are provided, and requiring that any ballot counting be done via video conference where members can witness the counting and tabulating of votes.

SUPPORT

California Association of Community Managers (sponsor)
Community Associations Institute-California Legislative Action Committee (sponsor)
California Association of Realtors

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 391 (Min, Ch. 276, Stats. 2021) established an alternative set of minimum procedural standards for conducting homeowners' association meetings by video or telephone conference during an officially declared disaster or emergency.

SB 323 (Wieckowski, Ch. 848, Stats. 2019) enacted a series of reforms to the laws governing homeowners' association board of directors elections in common interest developments. In broad strokes, the reforms increased the regularity, fairness, formality, and transparency associated with such elections. As relevant to this bill, the bill established certain rights for HOA members to observe the counting and tabulation of HOA board election ballots.

SB 61 (Battin, Ch. 450, Stats. 2005) enacted the basic requirements for conduct of an HOA, including access to association publications for candidates, appointment of an elections inspector, and the methods for conducting balloting.

PRIOR VOTES

Assembly Floor (Ayes 72, Noes 0)

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