

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

SB 900 (Umberg)
Version: April 18, 2024
Hearing Date: April 30, 2024
Fiscal: No
Urgency: No
ID

SUBJECT

Common interest developments: repair and maintenance

DIGEST

This bill provides that a Homeowner's Association (HOA) of a Common Interest Development (CID) is responsible for the repair or replacement of matters pertaining to the interruption of gas, heat, water, or electrical services that begin in the common area, and provides procedures for completing such repairs, among other changes relating to HOA law.

EXECUTIVE SUMMARY

In June of 2023, a gas leak in the La Veta Monterey Condominium complex in Orange, California led to the entire condominium's gas being shut off. Months went by with residents having no hot water or gas for cooking. The condominium's Homeowner's Association (HOA) ultimately had to replace the complex's entire gas line. Yet the La Veta complex is not alone; as other condominium and apartment complexes across the state age, faulty gas lines may also cause significant interruptions in service and risks to the health and safety of residents. To ensure that HOAs promptly address and fix problems that interrupt residents' gas, water, heat, or electrical services, this bill amends various provisions of the Davis-Sterling Common Interest Development Act that regulates HOA communities. It specifies that an HOA is responsible for the repairs and replacements for matters pertaining to the interruption of gas, heat, water, or electrical services that begin in the common area, and provides that the HOA must commence the process for making repairs on such matters within 10 days. It also specifies that the HOA board may vote electronically to initiate repairs, and may obtain competitive financing to fund repairs if repairs have not commenced within 10 days and there are insufficient reserve funds available to cover the cost. This bill also requires an HOA to visually inspect gas lines as part of its reserve study, and provides for emergency assessments to fund an extraordinary expense where a threat to personal

health is discovered on the property. SB 900 is author-sponsored, and is opposed by the Center for California Homeowner Association Law.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Davis-Sterling Common Interest Development Act, providing the rules governing the formation and operation of common interest developments, defining a common interest development (CID) as a community apartment project, condominium project, planned development, or a stock cooperative. Specifies the rights and responsibilities of homeowners and the homeowners' association that governs the CID. (Civ. Code §§ 4000 et seq.)
- 2) Specifies that a CID is created whenever a separate interest coupled with an interest in a common area or membership in an association is conveyed, provided that a declaration, condominium plan, if any, and a final map or parcel map are recorded. (Civ. Code § 4200.)
- 3) Establishes the contents and limitations of a CID declaration, how a declaration can be amended, and that the declaration shall describe the restrictions on the use or enjoyment of any portion of the CID that are intended to be enforceable equitable servitudes. (Civ. Code §§ 4250-4275.)
- 4) Provides that the covenants and restrictions in a CID's declaration are enforceable equitable servitudes, unless unreasonable, and shall take effect to the benefit of and bind all owners of separate interests in the CID. Specifies that these servitudes may be enforced by any owner of a separate interest, or by the association, and that in an action to enforce the servitudes, a prevailing party shall be awarded reasonable attorney's fees and costs. (Civ. Code § 5975.)
- 5) Provides that, unless otherwise provided in the declaration of the CID, an association is responsible for repairing, replacing, and maintaining the common areas of the CID, and that the owner of each separate interest is responsible for repairing, replacing, and maintaining their separate interest. Specifies that the owner of each interest is responsible for maintaining the exclusive use common area appurtenant to their separate interest, and that the association is responsible for repairing and replacing the exclusive use common area. Provides that the costs of temporary relocation during the repair and maintenance of areas within the responsibility of the HOA are to be borne by the affected owner of the separate interest. (Civ. Code § 4775.)
- 6) Requires that the HOA board conduct a reasonably competent and diligent visual inspection of the accessible areas of the major components of the CID that the HOA

is responsible for repairing, replacing, restoring and maintaining, as part of a study of the reserve account requirements of the CID every three years, if the current replacement value of the major components is equal to or greater than half of the gross annual budget of the HOA, excluding the reserve account. Requires the board to review the reserves study every year, and consider and implement necessary adjustments to the board's analysis of the reserve account requirements. Requires that the reserve study include, at a minimum:

- a) Identification of the major components that the association is obligated to repair, replace, restore, or maintain that have a remaining useful life of less than 30 years as of the date of the study;
 - b) Identification of the probable remaining useful life of the components identified in (a);
 - c) An estimate of the cost to repair, replace, restore, or maintain the components identified in (a);
 - d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in (a) during and at the end of their useful life, less total reserve funds; and
 - e) A reserve funding plan that indicates how the association plans to fund the contribution identified in (d) to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less that the board determines will be replaced or repaired. (Civ. Code § 5550.)
- 7) Specifies that all assessments must not exceed the amount necessary to defray the costs for which they are levied. (Civ. Code § 5600.)
- 8) Specifies that an increase of a regular assessment can only be imposed by the board of an HOA if the board has provided specified information regarding the HOA's budget in its annual report, or if approved by the majority of a quorum of HOA members in a member meeting or election. Prohibits an HOA from increasing regular assessments more than 20 percent from the previous year's assessment without approval of a majority of HOA members in a member meeting or election. Provides that the board may impose a special assessment without the approval of a majority of a quorum of the membership as long as the special assessment in the aggregate does not exceed five percent of the budgeted gross expenses of the HOA for that fiscal year. (Civ. Code § 5605.)
- 9) Provides that limits on assessments and their amounts, as specified in (7), do not apply for emergency situations, and defines an emergency situation as:
- a) An extraordinary expense required by an order of a court;
 - b) An extraordinary expense necessary to repair or maintain the CID or any part of it for which the association is responsible where a threat to personal safety is discovered; and

- c) An extraordinary expense necessary to repair or maintain the CID or any part of it for which the association is responsible could not have been reasonably foreseen by the board in preparing or distributing the annual budget report as required, if before the imposition or collection of such an assessment the board passes and distributes to the HOA membership a resolution with writing findings relating to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process. (Civ. Code § 5610.)

This bill:

- 1) Provides that, unless otherwise provided in the declaration of a common interest development, the association of the development is responsible for repairs and replacements for matters pertaining to the interruption of gas, heat, water, or electrical services that begin in the common area, even if the matter extends into a separate interest or the exclusive use common area appurtenant to a separate interest.
- 2) Requires an HOA to commence the process of making repairs or replacements pertaining to the interruption of gas, heat, water, or electrical services within 10 days, and specifies that:
 - a) If a vote does not take place to commence the process to make repairs within ten days, and if there are insufficient reserve funds available to cover the costs of repairs or replacements, an HOA may obtain competitive financing, as specified, to pay for the costs of the needed repairs without a vote of the HOA membership.
 - b) Requires that, prior to obtaining financing as allowed, the HOA board pass a resolution of findings regarding the HOA's expenses and how the HOA's reserves do not cover the necessary costs to be distributed to HOA members with the notice of assessment.
 - c) Provides that, if the HOA board must vote to commence repairs relating to the interruption of gas, heat, water, or electrical services, the board may do so through electronic means, including email.
 - d) Provides that, if substantial repairs are needed to the CID's gas, heat, water, or electrical services, a representative from the impacted utility must address the HOA in person to provide a description of the problem, suggested solutions, and expected timelines.
- 3) Defines "major components" for the purposes of the statutorily-required reserves assessment that an HOA must complete every three years to include gas lines, to the extent that the HOA is responsible for the repair or replacement of such lines.
- 4) Provides that an emergency situation for which an HOA board need not obtain membership approval or comply with specified monetary limits to assessments

includes an extraordinary expense necessary to repair or maintain the CID or any part of it for which the HOA is responsible where a threat to personal health is discovered.

COMMENTS

1. Author's statement

According to the author:

For several months last year, my district office worked and coordinated with numerous state and local entities, along with non-profits and utility companies, to organize relief and remediation for a condominium complex in Orange, CA that experienced a sizeable natural gas leak.

My team and I were directly involved in trying to resolve this issue for the nearly 600 homeowners and tenants that were left without gas to cook or even hot water to shower. Our office worked with local municipalities, state agencies, and utility companies to try and mediate this issue in a timely manner, and it still took the HOA and property manager months to resolve an issue they initially said would take a few weeks. Families were left with a substandard level of living for over three months, and I want to make sure no resident has to endure something like this again.

Sadly, while perhaps unique in its variables, this situation is not entirely unheard of in California:

- Just earlier this month, 174 residents at a mobile home park in Vacaville were left without gas for several days over another set of circumstances.
- In January 2023, 162 units at a condominium complex in Sacramento County spent weeks without hot water.
- In April 2020, a mobile home in Lancaster, CA experienced a gas outage that left over 300 residents without natural gas for over a month.

None of these four examples were storm or natural disaster-related.

SB 900 would make an association responsible for repairs and replacements for matters pertaining to the interruption of gas, heat, water, or electrical services that begin in a development's common area. It also gives associations a timetable to make repairs to aforementioned interruptions and expand the definition of emergency situations, as defined under current law, to include extraordinary expenses necessary to repair or maintain an area in a common interest development that associations are responsible for where they present a threat to personal health or safety on the property.

This is an issue that impacted hundreds of people in an instant. It was only because a handful of residents reached out to us for help against their HOA's demands and attempted legal action, that it even came to light. While this scenario may have been the result of inaction by one particularly egregious bad actor, I can't imagine how many people have faced issues like this and were too afraid to speak up. As our cities begin to construct and convert more housing to meet one crisis (affordable housing), we should ensure they have the tools to prevent another from emerging in the years ahead.

2. The La Veta Condominium Complex Leak

On June 2, 2024, the residents of the La Veta Condominium complex in Orange, California, found themselves without hot water or the ability to cook due to a gas leak. According to the complex's utility company, SoCal Gas, which detected the gas leak and disconnected the complex's meter for safety reasons, the gas leak took place on the complex's side, such that it was the property owners' and HOA's responsibility.¹ The HOA's board of directors determined that the entire complex's 51-year old gas line would need to be replaced, at a cost of as much as a million dollars.² While repairs were being completed, residents were left without gas for months.³ According to news reports and the author, the HOA and its management company did not act quickly to make repairs, in part because it did not have the funds to pay for the repairs, and were hesitant to impose an emergency assessment on the HOA members.⁴ Despite this, many of the tenant residents were still required to pay rent while not having gas or hot water.

While the La Veta condominium complex leak was a recent and serious incident, such leaks and utilities interruptions are not entirely unique to La Veta, especially as many gas lines and utility systems in condominium complexes age. Many of the state's condominium complexes were built in the middle or second half of the twentieth century, and are now 50 to 70 years old. The author references a recent gas leak that resulted in shut off gas for a condominium complex in Sacramento, and other instances of leaks affecting mobilehome parks, as additional examples of problems with gas lines leading to long periods of time without gas for residents.

¹ David González, Residents of OC condo complex forced to live without natural gas for 3 weeks, ABC 7 News (Jun. 23, 2023), available at <https://abc7.com/orange-la-veta-monterey-condominiums-no-natural-gas-socalgas-company/13419987/>.

² Christian Cazares, Residents in Orange frustrated after being left without natural gas, NBC Los Angeles (Jun. 27, 2023), available at <https://www.nbclosangeles.com/news/local/residents-in-orange-frustrated-after-being-left-without-natural-gas/3177263/>; Michele Gile, Condo residents frustrated with management company after going weeks without gas (Jun. 20, 2023), available at <https://www.cbsnews.com/losangeles/news/condo-residents-frustrated-with-management-company-after-going-weeks-without-gas/>.

³ Carrie Graham, Orange condo complex residents living without gas and hot water (Aug. 1, 2023), available at <https://foothillssentry.com/f/orange-condo-complex-residents-living-without-gas-and-hot-water>.

⁴ ABC 7 News, *supra* note 1.

2. Common Interest Development Organization and Management

Condominium complexes are a type of housing development called a CID. The laws that regulate CIDs and their HOAs are encompassed in the Davis-Sterling Common Interest Development Act (Civil Code Section 4000 et seq.). Common interest developments are housing developments comprised of individually-owned housing units and common space for all homeowners and residents of the CID to enjoy. CIDs can be condominiums, townhouses, detached single-family homes, and apartment-like high rises. 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. CIDs are governed 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 issues. The HOA elects a board of directors, and usually has bylaws outlining the governance rules of the HOA and its board of directors.

An HOA's board of directors can establish rules governing a broad variety of topics relating to the CID. Such rules can prescribe a great variety of limitations on homeowners; for example, they may limit what can be placed on a homeowner's balcony, prohibit a homeowner from having pets, and specify what kinds of improvements a homeowner is allowed to make on the exterior of their unit. These rules, or Architectural Guidelines, can require submission to an "Architectural Committee" or other body within the HOA of any proposed alterations or additions to a homeowner's property, with approval required before a homeowner can begin the alteration. The rules of the CID on individual homeowners can be enforced by the association or by other individual homeowners through a lawsuit.

The Davis-Sterling Act also sets out the various responsibilities for maintenance of the facilities between the HOA and the individual homeowners within the CID. The association is generally responsible for repairing, replacing, and maintaining the common area in the CID, while each owner is responsible for repairing, replacing, and maintaining their separate interest in the CID (typically their individual unit). (Civ. Code § 4775.) Exclusive use common areas appurtenant to an owner's separate interest must be maintained by the owner of the separate interest, while the HOA is responsible for repairing and replacing this exclusive use common area. (Civ. Code § 4775(a)(3).) An exclusive use common area is a portion of the common area designated by the CID's declaration for the exclusive use of one or more, but fewer than all, owners of a separate interest in the CID, and which is tied to the respective separate interest or interests. (Civ. Code § 4145.) Exclusive use common areas are typically balconies, patios, exterior entryways, and designated parking spaces. The law specifies that any costs for temporary relocation during repair and maintenance of areas within the responsibility

of the association are to be borne by the owner of the separate interest that is affected. (Civ. Code § 4775(b).)

HOAs are usually funded through monthly dues charged by the HOA 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. All dues and assessments must not exceed the amount necessary to defray the costs for which they are levied. (Civ. Code § 5600.) To impose such assessments, an HOA must follow certain procedures. An increase in a regular assessment (the dues an HOA member pays) can only be imposed if the HOA has provided specified information regarding the HOA's budget and expenses in an annual report, or if approved by the majority of a quorum of HOA members at a member meeting or election. (Civ. Code § 5605.) An HOA cannot increase regular assessments more than 20 percent from the previous year's assessments without approval of a majority of members in a member meeting or election. (Civ. Code § 6505(b).) The HOA board may impose a special assessment without the approval of the membership, as long as the special assessment, or special assessments in the aggregate, do not exceed five percent of the budgeted gross expenses of the association for the year. (*Id.*)

However, special assessments for emergencies are not constrained by these limits. Such emergency situations include: an extraordinary expense required by an order of a court; an extraordinary expense necessary to repair or maintain the CID or any part for which the HOA is responsible where a threat to personal safety is discovered; and an extraordinary expense necessary to repair or maintain the CID or any part for which the HOA is responsible that could not have been reasonably foreseen by the HOA board when it prepared the annual budget. (Civ. Code § 5610.) Thus, in such circumstances, the board of the HOA may impose a special assessment or increase in the regular assessments that exceed the statutory limits without a vote by the membership of the HOA. 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.)

While the Davis-Sterling Act does not require that an HOA maintain any certain amount of reserve funds, it does specify a variety of limitations on the use and transfer of an HOA's reserve funds, and requires regular reserves planning. It requires that the HOA complete a reserve study at least every three years. (Civ. Code § 5550.) The study must include: an identification of the major components that the HOA is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years; identification of the probable remaining useful life of the components with less than 30 years remaining, as identified; an estimate of the cost to repair, replace, restore, or maintain the identified aging components; an estimate of the total annual contributions necessary to defray the cost to repair, replace, restore, or maintain the identified aging components at the end of their useful life, beyond the

current total reserves; and a reserve funding plan that indicates how the HOA plans to fund the contributions required to repair, restore, replace, or maintain the identified aging components. (Civ. Code § 5550.) To complete this reserve study, the HOA board must arrange for a visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain. The HOA board must also obtain an inspection by a licensed structural engineer or architect of the CID's exterior balconies for which the association is responsible every nine years. (Civ. Code § 5551.) This obligation, while not requiring any specific amount be maintained by the HOA as reserves, requires the HOA to conduct planning and studies regarding the reserves that the HOA needs, and how it will raise the funds to meet future repair or maintenance needs of the HOA.

3. SB 900 proposes to ensure the HOA adequately and swiftly addresses an interruption in utilities

In response to the months-long incident at the La Veta Monterey Condominium complex, SB 900 makes various changes to the laws that regulate HOAs to ensure that HOAs will address issues with their gas lines and utilities promptly. It does so by placing requirements on HOA boards for the initiating of repairs, by amending the rules related to an HOAs reserves study, and by allowing an HOA to impose emergency assessments in more scenarios.

Specifically, SB 900 specifies that the HOA is responsible for repairs and replacements relating to an interruption of gas, heat, water, or electrical services that begin in the CID's common area, even if the issue extends into an owner's separate interest or exclusive use common area. By this clarification, SB 900 makes clear that the HOA is responsible for addressing and fixing an issue with the complex's utilities that begins in the common area of the complex, even if the issue affects individual units or extends into an individual unit. Thus, the individual owner of the unit affected would not be responsible for the repair, if the issue began in or under the common area.

SB 900 also provides a timeline for the completion of repairs related to the interruption of gas, heat, water, or electrical services, and provides specified procedures for doing so. It requires that the HOA commence the process of making repairs or replacements for an issue causing an interruption of gas, heat, water, or electrical services to the complex within 10 days. It provides that, if the HOA board must vote to initiate any repairs under this 10-day requirement, the voting may occur electronically, including by email. If a vote does not take place to commence repairs within the 10-day period, and there are not enough reserve funds for the HOA to cover the costs of the repairs, the HOA may obtain a loan to pay for the costs of the repairs without obtaining a vote of the HOA membership. To obtain such a loan, however, the HOA board must pass a resolution to be given to all HOA members providing information and findings regarding the issue and how the HOA's reserves do not cover the necessary costs. Lastly, if the repairs needed are substantial repairs, this bill requires a representative of

the utility company to address the HOA in person to provide a description of the problem, suggested solutions, and expected timelines for completion of the repairs.

In addition to these changes, SB 900 makes changes to the reserves study and inspections that an HOA must conduct every three years. It provides that the major components which must be inspected for the study include gas lines to the extent that the HOA is responsible for their repair or replacement. These gas lines would be those in or underneath the common areas and exclusive use common areas, if the HOA is responsible for the lines. Generally, if the CID obtains gas from a utility company, and utilizes a master-meter and sub-meter system to manage and distribute the gas to individual units within the CID itself, then the HOA would be responsible for all gas lines on the property until they enter owners' individual units. (Pub. Utilities § 12821.5.) This would be consistent with SB 900's requirement that the HOA be responsible for all gas line issues that begin in the common area. However, if the utilities are provided by the utility company directly to each individual unit, then the utility would likely be responsible for the gas lines up to each unit's individual meter, even if those lines go under the CID's common area. SB 900's provisions relating to the reserves study thus requires that the reserves study include the CIDs gas lines, if the HOA is responsible for their repair and replacement. This requirement would make the gas lines part of the reserves study, such that the HOA must consider if the lines will need to be repaired within 30 years and must factor in the cost of this repair in its reserves funding. It also applies the requirement that the HOA conduct a reasonably competent and diligent visual inspection of the accessible areas of the gas lines.

Through these requirements, SB 900 strives to require that HOAs inspect their gas lines and plan for any future costs that may be required to repair or replace the gas lines before any issues with the gas lines develop. Such a measure aims to proactively prevent the kind of gas interruption that occurred at La Veta and ensure HOAs plan for and have the reserves necessary to repair or replace aging gas lines in the HOA.

Lastly, SB 900 expands the availability of emergency assessments to instances where a condition in the HOA poses a threat to personal health on the property. Currently, emergency special assessments are only allowed to address threats to personal safety in the HOA. Where a lack of gas for cooking or heating water may be determined by an HOA board to not constitute a threat to personal safety, it could also be considered a threat to personal health under SB 900 such that an emergency assessment to cover the costs of repairs to the gas line would be warranted. As emergency assessments do not require a vote of the HOA membership, SB 900 would allow the HOA board to impose an emergency assessment to address a threat to personal health.

4. Arguments made by the opposition

According to the Center for California Homeowner Association Law, which is opposed to SB 900:

[SB 900] imposes new housing costs on owners who can least afford them: low-moderate-income homeowners -- mainly persons of color -- who have gotten a foothold in the housing market by buying a home in one of the state's 55,000 homeowners associations (HOAs).

[SB 900] is a huge gift to every utility company in California by relieving them of untold costs of repair and maintenance of utility lines. Simultaneously it shifts liability for repair and maintenance onto homeowners. SB900 exempts board directors from liability, but not homeowners.

Adding the words "threat to health" as another reason for levying an emergency assessment puts new housing cost burdens on homeowners. Neither SB900 itself nor the fact sheet explains how a "health threat" is identified - or by whom.

SB900 takes no notice that utilities are among the most highly regulated in the state. The Public Utilities Commission (PUC) has established countless regulations governing a utility's duties and liabilities for maintenance, repair, and replacement of its infrastructure and delivery systems.

A set of baffling amendments from April 18 apparently make homeowners permanently responsible to maintain and repair of all utility lines: first, by restating (Civil Code 4775) that HOAs are responsible for breaks in all utility lines in the common areas; but second by embedding the duty to maintain in the association's tri-annual reserve study. It re-defines "major components" of an association's tri-annual reserve study to include only "gas line."

SUPPORT

None received

OPPOSITION

Center for California Homeowner Association Law

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 572 (Haney, Ch. 745, Stats. 2023) prohibited, with certain exceptions, an association that records its original declaration on or after January 1, 2025, from imposing an increase of regular assessments that is more than five percent plus the percentage

change in the cost of living, not to exceed 10 percent, of the regular assessment of the preceding fiscal year on the owner of a deed-restricted affordable housing unit.

AB 648 (Valencia, Ch. 203, Stats. 2023) authorized an HOA board to conduct a board meeting entirely by teleconference if specified conditions are met.
