

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

AB 2159 (Maienschein)
Version: June 10, 2024
Hearing Date: July 2, 2024
Fiscal: No
Urgency: No
ID

SUBJECT

Common interest developments: association governance: elections

DIGEST

This bill provides a process by which the board of directors of a homeowners' association (HOA) in a common interest development (CID) may adopt electronic secret ballots for a homeowners' association election.

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 HOA. HOA elections must be by secret ballot, in which members of the HOA 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. Existing law also requires that the board of the HOA provide various notices to members of the HOA before the election. This bill aims to allow HOAs, upon adoption of a rule by the board, to conduct elections by electronic secret ballot. It specifies the provisions such a rule may include, and also sets various requirements on an HOA that adopts an election by electronic secret ballot. One of the permissive rules includes to require that HOA members opt out of voting electronically no later than 90 days before the election. AB 2159 is sponsored by the Community Associations Institute - California Legislative Action Committee, and is supported by the California Association of Community Managers, the Condominium Financial Management, Inc., Pro Elections LLC, Walters Management, and five individuals. It is opposed by five individuals, the Center for California Homeowner Law, Verified Voting Inc., and the California Alliance for Retired Americans. AB 2159 previously passed out of the Senate Housing Committee by a vote of 7 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, 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) Specifies that an HOA must adopt operating rules for elections that do the following:
 - a) ensure that any candidate and member advocating a point of view has equal access to association media, newsletters, or Web sites during a campaign, for purposes reasonably related to the election;
 - b) ensure access to common-area meeting space to all candidates at no cost;
 - c) specify the qualifications for candidates for the board and any other elected position, as well as procedures for the nomination of candidates, consistent with the governing documents. A rule shall not be deemed reasonable if it disallows any member from nominating himself or herself for election to the board;
 - d) specify the voting power of each member; the authenticity, validity, effect of proxies; and the voting period for elections. This includes the times at which polls will open and close, consistent with the governing documents;
 - e) specify a method for selecting one or three independent third parties as inspector or inspectors of elections. Inspectors may appoint or oversee additional independent third-party persons to verify signatures and to count and tabulate votes, as the inspector or inspectors deem appropriate;
 - f) require the retention of both a candidate registration list and voter list, including the name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both, and the mailing address for the ballot if the address differs from the physical address of the voter's separate interest or only the parcel number is used. The HOA must permit members to verify the accuracy of their individual

information on both lists at least 30 days before the ballots are distributed, and a member must report any errors or omissions to either list to the inspector or inspectors of the election, who must make corrections to the list within two business days. (Civ. Code § 5105.)

- 5) 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).)
- 6) 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(c).)
- 7) 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.)
- 8) 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).)
- 9) Requires HOAs, for an election or recall of a board of director, to provide a general notice of the procedure and deadline for submitting a nomination at least 30 days

before any deadline for submitting a nomination. Requires an individual notice must be delivered, as specified, if individual notice is requested by a member. (Civ. Code § 5115(a).)

- 10) Requires HOAs to provide general notice of all of the following at least 30 days before ballots are distributed for an election of directors and recall elections:
 - a) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections;
 - b) the date, time, and location of the meeting at which ballots will be counted;
 - c) the list of all candidates' names that will appear on the ballot;
 - d) individual notice of (a)-(c) must be delivered pursuant to existing law if individual notice is requested by a member; and
 - e) if a quorum for an election of directors is required, a statement that if a quorum is not met for the election, the board may call a subsequent meeting at least 20 days after a scheduled election, at which time the quorum will be 20% of the HOA's members voting in person, by proxy, or by secret ballot. (Civ. Code § 5115(b).)

- 11) Specifies that 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).)

- 12) 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).)

- 13) 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) Allows an HOA, notwithstanding the governing documents, to adopt an election operating rule allowing the HOA to utilize an inspector or inspectors of elections to conduct an election by electronic secret ballot, except for an election regarding regular or special assessments.
- 2) Allows an election operating rule adopted pursuant to this bill to include, but not be limited to, the following purposes:
 - a) Allowing any member to opt out from voting by electronic secret ballot no later than 90 days before an election and to instead vote by written secret ballot;
 - b) requiring the electronic secret ballot and a written ballot in an election to contain the same list of items being voted on;
 - c) requiring the HOA to mail a written ballot only to a member who has opted out of voting by electronic secret ballot;

- d) requiring the HOA to maintain a voting list identifying which members will vote by electronic secret ballot and which members will vote by written ballot, and include information on the procedures to opt out of voting by electronic secret ballot in the annual statement required by existing law;
 - e) requiring a member who votes by electronic secret ballot to provide a valid email address to the HOA; and
 - f) prohibiting nomination of candidates from the floor of membership meetings.
- 3) Requires the HOA to deliver individual notice of the electronic secret ballot to each member 30 days prior to the election that includes instructions on both of the following:
 - a) how to obtain access to the internet-based voting system; and
 - b) how to vote by electronic secret ballot.
 - 4) Provides that delivery of the individual notice in 3) above may be accomplished by electronic submission to an address, location, or system designated by the HOA member.
 - 5) Provides that a vote made by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by an inspector or inspectors of elections.
 - 6) Provides that a vote made by electronic secret ballot shall not be revoked.
 - 7) Provides that, for purposes of determining a quorum, a member voting electronically shall be counted as a member in attendance at the meeting. Prohibits a substantive vote of the members from being taken on any issue other than the issues specifically identified in the electronic vote, once a quorum is established.
 - 8) Defines “electronic secret ballot” as a ballot conducted by an electronic voting system that ensures the secrecy and integrity of a ballot pursuant to the requirements of the Davis-Stirling Act provisions on member elections.
 - 9) Requires, the inspector or inspector of elections, for an election conducted by electronic secret ballot, to ensure compliance with all of the following:
 - a) that each member voting by electronic secret ballot is provided with all of the following:
 - i. a method to authenticate their identity to the internet-based voting system;

- ii. a method to transmit an electronic secret ballot to the online internet-based voting system that ensures the secrecy and integrity of each ballot;
 - iii. a method to confirm, at least 30 days prior to the voting deadline, that the member's electronic device can successfully communicate with the online voting system; and
 - b) that any internet-based voting system that is utilized shall have the ability to accomplish all of the following:
 - i. authenticate the member's identity;
 - ii. authenticate the validity of each electronic vote secret ballot to ensure the electronic secret ballot is not altered in transit;
 - iii. transmit a receipt from the internet-based voting system to each member who casts an electronic secret ballot;
 - iv. permanently separate any authentication or identifying information from the electronic secret ballot, rendering it impossible to connect an election ballot to a specific member; and
 - v. store and keep electronic secret ballots accessible to election officials or their authorized representatives for recount, inspection, and review purposes;
- 10) Requires the HOA, if conducting an electronic election, to include in its notice sent to members 30 days prior to the election, the date and time by which electronic secret ballots are to be transmitted to the internet-based voting system, and preliminary instructions on how to vote by electronic secret ballot upon commencement of the voting period.
- 11) Provides, notwithstanding any provision in the governing documents, and excluding the meeting to count votes as required by existing law, that any election may be conducted entirely by mail or electronic secret ballot as authorized under this bill.
- 12) Prohibits any individual, including a member of the HOA or an employee of the management company, from opening or otherwise reviewing any tally sheet of votes cast by electronic secret ballot prior to the time and place at which the ballots are counted and tabulated.
- 13) Updates references to votes and ballots in elections procedures requirements to include electronic secret ballots and the tally sheet of votes cast by electronic secret ballot.
- 14) Specifies that the tally sheet of votes cast by electronic secret ballot must be kept at all times in the custody of the inspector or inspectors of elections.

- 15) Updates references to HOA election materials to include electronic secret ballots and the tally sheet of votes cast by electronic secret ballot.
- 16) Requires that, to be effective, a request to opt out of electronically voting by electronic secret ballot must be delivered in writing to the HOA, as specified.

COMMENTS

1. Author's statement

According to the author:

AB 2159 bill would allow homeowner associations (HOAs) to use electronic voting systems for a narrow list of association measures to include; approving governing documents and electing board members. The Davis-Stirling Act sets the rules for how HOAs should operate and outlines the association's and its members' rights and responsibilities. Currently, HOAs conduct elections using a paper and mail-based system similar to California's vote-by-mail process. This bill aims to offer associations an alternative voting method, cut costs, and boost voter participation.

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 that must be completed and returned by a specified date in a separate envelope to preserve the secrecy of the ballots, and then the ballots are counted and tabulated by the election inspector at a public, open meeting of the board. (Civ. Code § 5120.) For elections of HOA board members, the board must provide HOA members with general notice of specified information, including the date, time, and location at which ballots are to be returned, at least 30 days before ballots are distributed. (Civ. Code § 5115.)

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 is the case if the HOA's governing documents or other law requires there be a quorum. (Civ. Code § 5115(d).) If there is not a quorum of the voting members present at the meeting to count ballots, present by proxy, or by mailed-in ballots, the HOA may adjourn the meeting and reconvene a meeting at least 20 days later at which meeting the quorum requirement will be 20 percent. (Civ. Code § 5115(d).)

3. AB 2159 proposes to allow HOAs to utilize electronic voting for board elections

AB 2159 proposes to allow HOA boards to adopt a rule allowing for electronic voting for any election other than elections regarding assessments. It specifies that, if an HOA board adopts such a rule, the rule may include: permitting a member to opt out of voting by electronic secret ballot no later than 90 days before an election and still vote by written ballot; requiring an electronic secret ballot and a written ballot to contain the same list of items to be voted on; requiring an HOA to mail a written ballot only to a member who has opted out of voting by electronic secret ballot; requiring an association to maintain a voting list identifying which members will vote by electronic secret ballot, and which will vote by written ballot; include information on the procedures to opt out

of voting by electronic secret ballot; requiring a member who votes by electronic secret ballot to provide a valid email address to the HOA; and prohibiting the nomination of candidates from the floor of membership meetings.

AB 2159 specifies a few requirements for electronic secret voting. The HOA must deliver individual notice, including by electronic means, to each voting HOA member with the electronic secret ballot and instructions for accessing the electronic system and voting electronically 30 days before the election. This notice may be delivered electronically. If the vote is for a board of directors, the HOA must also include in the required general notice to be sent 30 days prior to the distribution of ballots information on the date and time by which electronic secret ballots must be transmitted, and preliminary instructions on how to vote electronically. If a member wishes to opt out of voting electronically, they must deliver the request in writing to the HOA. If a quorum is required for the election, all electronic votes are to count as members present for the purposes of establishing a quorum, though AB 2159 also specifies that no vote of the members present at the meeting to count votes may be taken on any issues other than issues covered by the electronic election.

AB 2159 also requires the inspector or inspectors of the election to ensure the electronic election comply with a variety of standards meant to ensure the election's secrecy and integrity. This includes ensuring that there is a method to authenticate each member's identity and a method to transmit the electronic ballot that ensures the integrity and secrecy of the ballot. In addition, the inspector must confirm that any internet-based voting system utilized can transmit a receipt to each member who casts an electronic secret ballot. AB 2159 prohibits any person, including a member of the HOA or employee of the HOA's management company, from opening or otherwise reviewing any tally sheet of votes cast by electronic secret ballot before the time and place at which votes are to be counted and tabulated.

The author asserts that the regime it creates for electronic secret voting is necessary to cut the costs of elections for the HOA, and to increase HOA member participation in the election. They assert that HOA elections by mail-in voting are often quite expensive to run, and that low voter turnout is a serious issue. The author also points to the fact that 27 other states have passed laws allowing for electronic voting in HOA elections as evidence that such electronic voting is possible and secure. The opposition is mainly concerned with whether HOA members would be excluded or denied the opportunity to vote by an opt-out, electronic voting system. Opposition is also concerned with the ability for electronic voting systems to provide a truly secure, secret voting process.

4. Amendments

To address concerns regarding whether HOA members would have notice of their current voting method and how and by when they must opt out, the author has agreed to accept amendments that require an association to provide individual notice to voting

members of the association at least 30 days before a deadline to opt out. This notice must include: an explanation of the voter's current voting method and the email that will be used for electronic voting, if voting electronically; an explanation that they must opt out if they wish to vote by paper ballot; and an explanation of the required process to opt out, and the deadline for doing so. The amendments also specify that, if an HOA does not have a member's email address by the time that paper ballots are to be mailed, the HOA must mail a paper ballot to that member instead. A full mock-up of these amendments are attached at the end of this analysis.

5. Arguments in support

According to the Communities Associations Institute - California Legislative Action Committee, which is the sponsor of AB 2159:

Under existing law, HOAs conduct elections through a paper, mail based balloting system that resembles California's vote-by-mail process. Associations use these elections to identify members to serve on an associations' board of directors, amend governing documents, such as bylaws, and levy assessments for specific purposes.

While vote-by-mail is an appropriate tool for voting, the cost of this process is significant for most associations. And, if quorum is not achieved, even under the reduced quorum standards recently authorized by legislation, the election must be repeated. This cost is born by homeowners through monthly assessments.

Currently, many associations have adapted to use videoconferencing for meetings, electronic notification, and other technologies. These technologies have been shown to increase participation. Electronic voting, which is currently authorized in 27 other states, is another tool that could help increase access.

6. Arguments in opposition

According to the Center for California Homeowner Association Law, which is opposed to AB 2159:

These election events are of such public policy importance that the Legislature has designed detailed laws to ensure their integrity. [See Civil Code §§5100 et seq.] These laws were the result of two years of negotiations among homeowner, consumer, and senior advocates and the homeowner association industry itself. The legislation comprised SB61, AB1098, and SB1560 (2005-2006) and brought the standards of association elections into line with those of the California Elections Code. These were updated to address further challenges to election integrity in SB323 (2019-2020).

HOA elections must conform to the standards of public elections because the California Legislature and its courts have made clear that HOAs are quasi-governmental entities – much like special districts -- that impact the lives and property of millions of Californians living in them. The statutes protect both homeowners and associations during election events and establish that during association elections:

- The ballots shall be secret
- A neutral third party, an Inspector of Elections, will manage elections
- Owners may witness the tabulation of ballots
- Owners may challenge election procedures and outcomes in small claims court.

The Center for California Homeowner Association Law (CCHAL) regrets that it must Oppose AB2159, because it voids all these protections of existing law and substitutes all the risks inherent in voting over the internet. AB2159 essentially eliminates the security, privacy, transparency, the detection of problems, verification, and auditability of the secret ballot.

[...]

SUPPORT

Community Associations Institute - California Legislative Action Committee (sponsor)
California Association of Community Managers (CACM)
Condominium Financial Management, Inc.
Pro Elections LLC
Walters Management
Five individuals

OPPOSITION

California Alliance for Retired Americans
Center for Homeowner Association Law
Verified Voting
Verifiedvoting.org
Five individuals

RELATED LEGISLATION

Pending Legislation: AB 2460 (Ta, 2024) clarifies the requirements for CID board of director elections that are reconvened due to failure to achieve a quorum. AB 2460 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 392 (Archuleta, Ch. 640, Stats. 2021) required CIDs to deliver specified documents to their members in the manner requested by the member, or by paper copy if the member has not indicated a preferred delivery mechanism.

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 passed the Legislature, but was vetoed by then-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 "bill would interfere with the basic democratic principle of CIDs."

PRIOR VOTES:

Senate Housing Committee (Ayes 7, Noes 1)

Assembly Floor (Ayes 73, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)

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

Mock-up Amendments to AB 2159 (Maienschein)

(Amendments may be subject to technical or corrective changes by Legislative Counsel.)

Mock-up based on Version Number 95 - Amended Senate 6/10/24

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5105 of the Civil Code is amended to read:

5105. (a) An association shall adopt operating rules in accordance with the procedures prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the board and any other elected position, subject to subdivision (b), and procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member from nominating themselves for election to the board.

(4) Specify the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.

(5) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods:

(A) Appointment of the inspector or inspectors by the board.

(B) Election of the inspector or inspectors by the members of the association.

(C) Any other method for selecting the inspector or inspectors.

(6) Allow the inspector or inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties who meet the requirements in subdivision (b) of Section 5110.

(7) Require retention of, as association election materials, both a candidate registration list and a voter list. The candidate list shall include names and addresses of individuals nominated as a candidate for election to the board of directors. The voter list shall include the name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used. The association shall permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The association or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.

(b) An association shall disqualify a person from a nomination as a candidate for not being a member of the association at the time of the nomination. An association shall disqualify a nominee if that person has served the maximum number of terms or sequential terms allowed by the association. A director who ceases to be a member shall be disqualified from continuing to serve as a director.

(1) This subdivision does not restrict a developer from making a nomination of a nonmember candidate consistent with the voting power of the developer as set forth in the regulations of the Department of Real Estate and the association's governing documents.

(2) If title to a separate interest parcel is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a member for purposes of this article.

(c) Through its bylaws or election operating rules adopted pursuant to subdivision (a) only, an association may disqualify a person from nomination as a candidate pursuant to any of the following:

(1) Subject to paragraph (2) of subdivision (d), an association may require a nominee for a board seat, and a director during their board tenure, to be current in the payment of regular and special assessments, which are consumer debts subject to validation. If an association requires a nominee to be current in the payment of regular and special assessments, it shall also require a director to be current in the payment of regular and special assessments.

(2) An association may disqualify a person from nomination as a candidate if the person, if elected, would be serving on the board at the same time as another person who holds 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.

(3) An association may disqualify a nominee if that person has been a member of the association for less than one year.

(4) An association may disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the association from purchasing the insurance required by Section 5806 or terminate the association's existing insurance coverage required by Section 5806 as to that person should the person be elected.

(d) An association may disqualify a person from nomination for nonpayment of regular and special assessments, but may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:

(1) The person has paid the regular or special assessment under protest pursuant to Section 5658.

(2) The person has entered into and is in compliance with a payment plan pursuant to Section 5665.

(e) An association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.

(f) If an association disqualifies a nominee pursuant to this section, an association in its election rules shall also require a director to comply with the same requirements.

(g) Except as provided in subdivision (i), notwithstanding any other law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots.

(h) Notwithstanding any other law, the rules adopted pursuant to this section shall do all of the following:

(1) Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.

(2) Prohibit the denial of a ballot to a person with general power of attorney for a member.

(3) Require the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner.

(4) Require the inspector or inspectors of elections to deliver, or cause to be delivered, at least 30 days before an election, to each member both of the following documents:

(A) The ballot or ballots.

(B) A copy of the election operating rules. Delivery of the election operating rules may be accomplished by any of the following methods:

(i) Posting the election operating rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point type: "The rules governing this election may be found here:"

(ii) Individual delivery.

(iii) Election operating rules adopted pursuant to this section shall not be amended less than 90 days prior to an election.

(i) Notwithstanding an association's governing documents, the association may adopt an election operating rule that allows an association to utilize an inspector or inspectors of elections, as specified in Section 5110, to conduct an election by electronic secret ballot, except for an election regarding regular or special assessments, as provided for in Chapter 8 (commencing with Section 5600).

(1) An election operating rule adopted pursuant to this subdivision may include, but not be limited to, all of the following purposes:

(A) Permitting a member to opt out of voting by electronic secret ballot no later than 90 days before an election and vote by written secret ballot.

(B) Requiring an electronic secret ballot and a written ballot to contain the same list of items being voted on.

(C) Requiring the association to mail a written ballot only to a member who has opted out of voting by electronic secret ballot, *or for whom the association does not have an email address required to vote by electronic secret ballot.*

(D) Requiring the association to maintain a voting list identifying which members will vote by electronic secret ballot and which members will vote by written ballot, and

include information on the procedures to opt out of voting by electronic secret ballot in the annual statement prepared pursuant to Section 5310.

(E) Requiring a member who votes by electronic secret ballot to provide a valid email address to the association.

(F) Prohibiting nomination of candidates from the floor of membership meetings, notwithstanding subdivision (g).

(2) An electronic secret ballot may be accompanied by or contained in an electronic individual notice in accordance with paragraph (2) of subdivision (a) of Section 4040.

(3) (A) The association shall deliver individual notice of the electronic secret ballot to each member 30 days before the election and shall contain instructions on both of the following:

(i) How to obtain access to that internet-based voting system.

(ii) How to vote by electronic secret ballot.

(B) Delivery of the individual notice described in subparagraph (A) may be accomplished by electronic submission to an address, location, or system designated by the member.

(4) The association shall provide individual notice, delivered pursuant to Section 4040, at least 30 days before any deadline to opt out of voting by electronic secret ballot, of the following:

(A) the member's current voting method.

(B) the email address of the member that will be used for voting by electronic secret ballot, if the member's voting method is by electronic secret ballot and the association has an email address for the member.

(C) An explanation that the member must opt out of voting by electronic secret ballot if they wish to vote by written secret ballot.

(D) An explanation of how a member may opt out of voting by electronic secret ballot.

(E) The deadline by which the member must opt out of voting by electronic secret ballot if they wish to do so.

~~(4)-(5)~~ A vote made by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by an inspector or inspectors of elections.

~~(5)-(6)~~ A vote made by electronic secret ballot shall not be revoked.

(7) If the association does not have a member's email address required to vote by electronic secret ballot by the time at which ballots are to be distributed, the association must send the member a written secret ballot.

~~(6)~~(7) For purposes of determining a quorum, a member voting electronically pursuant to this subdivision shall be counted as a member in attendance at the meeting. Once the quorum is established, a substantive vote of the members shall not be taken on any issue other than the issues specifically identified in the electronic vote.

(7) As used in this subdivision, "electronic secret ballot" means a ballot conducted by an electronic voting system that ensures the secrecy and integrity of a ballot pursuant to the requirements of this article.

SEC. 2. Section 5110 of the Civil Code is amended to read:

5110. (a) The association shall select an independent third party or parties as an inspector of elections. The number of inspectors of elections shall be one or three.

(b) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services other than serving as an inspector of elections.

(c) The inspector or inspectors of elections shall do all of the following:

(1) Determine the number of memberships entitled to vote and the voting power of each.

(2) Determine the authenticity, validity, and effect of proxies, if any.

(3) Receive ballots.

(4) Ensure compliance with all of the following, if the inspector or inspectors of elections conducts an election by electronic secret ballot pursuant to Section 5105:

(A) Each member voting by electronic secret ballot shall be provided with all of the following:

(i) A method to authenticate the member's identity to the internet-based voting system.

(ii) A method to transmit an electronic secret ballot to the internet-based voting system that ensures the secrecy and integrity of each ballot.

(iii) A method to confirm, at least 30 days before the voting deadline, that the member's electronic device can successfully communicate with the internet-based voting system.

(B) Any internet-based voting system that is utilized shall have the ability to accomplish all of the following:

(i) Authenticate the member's identity.

(ii) Authenticate the validity of each electronic secret ballot to ensure that the electronic secret ballot is not altered in transit.

(iii) Transmit a receipt from the internet-based voting system to each member who casts an electronic secret ballot.

(iv) Permanently separate any authenticating or identifying information from the electronic secret ballot, rendering it impossible to connect an election ballot to a specific member.

(v) Store and keep electronic secret ballots accessible to elections officials or their authorized representatives for recount, inspection, and review purposes.

(5) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(6) Count and tabulate all votes.

(7) Determine when the polls shall close, consistent with the governing documents.

(8) Determine the tabulated results of the election.

(9) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

(d) An inspector or inspectors of elections shall perform all duties impartially, in good faith, to the best of the inspector or inspectors of election's ability, as expeditiously as is practical, and in a manner that protects the interest of all members of the association. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

SEC. 3. Section 5115 of the Civil Code is amended to read:

5115. (a) An association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Section 4040 if individual notice is requested by a member. This subdivision shall only apply to elections of directors and to recall elections.

(b) For elections of directors and for recall elections, an association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

(1) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections.

(2) If the association conducts the election by electronic secret ballot as provided for in Section 5105, the date and time by which electronic secret ballots are to be transmitted to the internet-based voting system and preliminary instructions on how to vote by electronic secret ballot upon commencement of the voting period.

(3) The date, time, and location of the meeting at which a quorum will be determined, if the association's governing documents require a quorum, and at which ballots will be counted.

(4) The list of all candidates' names that will appear on the ballot.

(5) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

(6) If the association's governing documents require a quorum for an election of directors, a statement that the board of directors may call a subsequent meeting at least 20 days after a scheduled election if the required 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.

(c) 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, unless an association conducts an election by electronic secret ballot as provided for in Section 5105, in which case only members who have opted out of voting by electronic secret ballot pursuant to Section 5105 shall be mailed or delivered the ballots and envelopes. In order to preserve confidentiality, a voter may not be identified by name, address, or 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:

(1) 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.

(2) 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.

(d) (1) A quorum shall be required only if so 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 or inspectors of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.

(2) For an election of directors of a corporation that is a common interest development, and in the absence of meeting quorum as required by the association's governing documents or Section 7512 of the Corporations Code, unless a lower quorum is authorized by the association's governing documents, 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.

(3) No less than 15 days prior to an election authorized pursuant to paragraph (2), the association shall provide general notice of the membership meeting, which shall include:

(A) The date, time, and location of the meeting.

(B) The list of all candidates.

(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.

(e) An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

(f) Notwithstanding any contrary provision in the governing documents, except for the meeting to count the votes required in subdivision (a) of Section 5120, an election may be conducted entirely by mail or electronic secret ballot pursuant to Section 5105.

(g) In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.

SEC. 4. Section 5120 of the Civil Code is amended to read:

5120. (a) All votes shall be counted and tabulated by the inspector or inspectors of elections, or the designee of 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. A person, including a member of the association or an employee of the management company, shall not open or otherwise review any ballot before the time and place at which the ballots are counted and tabulated. The inspector or inspectors of elections, or the designee of the inspector or inspectors of elections, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector or inspectors of elections, it shall be irrevocable.

(b) The tabulated results of the election shall be promptly reported to the board and shall be recorded in the minutes of the next meeting of the board and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Section 4045 of the tabulated results of the election.

(c) A person, including a member of the association or an employee of the management company, shall not open or otherwise review any tally sheet of votes cast by electronic secret ballots before the time and place at which the ballots are counted and tabulated.

SEC. 5. Section 5125 of the Civil Code is amended to read:

5125. The sealed ballots, signed voter envelopes, voter list, proxies, candidate registration list, and tally sheet of votes cast by electronic secret ballot shall at all times be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 5145 for challenging the election has expired, at which time custody shall be transferred to the association. If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written request, make the ballots and the tally sheet of votes cast by electronic secret ballot available for inspection and review by an association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

SEC. 6. Section 5200 of the Civil Code is amended to read:

5200. For the purposes of this article, the following definitions shall apply:

(a) "Association records" means all of the following:

(1) Any financial document required to be provided to a member in Article 7 (commencing with Section 5300) or in Sections 5565 and 5810.

(2) Any financial document or statement required to be provided in Article 2 (commencing with Section 4525) of Chapter 4.

(3) Interim financial statements, periodic or as compiled, containing any of the following:

(A) Balance sheet.

(B) Income and expense statement.

(C) Budget comparison.

(D) General ledger. A "general ledger" is a report that shows all transactions that occurred in an association account over a specified period of time.

The records described in this paragraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

(4) Executed contracts not otherwise privileged under law.

(5) Written board approval of vendor or contractor proposals or invoices.

(6) State and federal tax returns.

(7) Reserve account balances and records of payments made from reserve accounts.

(8) Agendas and minutes of meetings of the members, the board, and any committees appointed by the board pursuant to Section 7212 of the Corporations Code; excluding, however, minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900).

(9) Membership lists, including name, property address, mailing address, email address, as collected by the association in accordance with Section 4041 where applicable, but not including information for members who have opted out pursuant to Section 5220.

(10) Check registers.

(11) The governing documents.

(12) An accounting prepared pursuant to subdivision (b) of Section 5520.

(13) An “enhanced association record” as defined in subdivision (b).

(14) “Association election materials” as defined in subdivision (c).

(b) “Enhanced association records” means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, bank account statements for bank accounts in which assessments are deposited or withdrawn, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.

(c) “Association election materials” means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, the candidate registration list, and the tally sheet of votes cast by electronic secret ballot. Signed voter envelopes may be inspected but may not be copied. An association shall maintain association election materials for one year after the date of the election.

SEC. 7. Section 5260 of the Civil Code is amended to read:

5260. To be effective, any of the following requests shall be delivered in writing to the association, pursuant to Section 4035:

(a) A request to change the member’s information in the association membership list.

(b) A request to add or remove a second email or mailing address for delivery of individual notices to the member, pursuant to Section 4040.

(c) A request for individual delivery of general notices to the member, pursuant to subdivision (b) of Section 4045, or a request to cancel a prior request for individual delivery of general notices.

(d) A request to opt out of the membership list pursuant to Section 5220, or a request to cancel a prior request to opt out of the membership list.

(e) A request to receive a full copy of a specified annual budget report or annual policy statement pursuant to Section 5320.

(f) A request to receive all reports in full, pursuant to subdivision (b) of Section 5320, or a request to cancel a prior request to receive all reports in full.

(g) A request to opt out of electronically voting by electronic secret ballot pursuant to Section 5105.