
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: AB 572 **Hearing Date:** 6/20/2023
Author: Haney
Version: 5/26/2023
Urgency: No **Fiscal:** No
Consultant: Mehgie Tabar

SUBJECT: Common interest developments: imposition of assessments

DIGEST: This bill caps annual increases in regular assessments on deed-restricted affordable housing units in homeowners associations (HOAs) at 5% greater than the preceding regular assessment, for HOAs that record their original declaration on or after January 1, 2024.

ANALYSIS:

Existing law:

- 1) Establishes the Davis-Stirling CID Act, which provides rules and regulations governing the operation of residential CIDs and the rights and responsibilities of HOAs and HOA members.
- 2) Provides that for any conflict between the law and HOA governing documents, the law prevails over the governing documents.
- 3) Requires the owner of a separate interest to provide a prospective purchaser a written statement, as specified, from an authorized HOA representative with the amount of the HOA's current regular and special assessments and fees, any assessments levied upon the owner's interest in the CID that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement.
- 4) Requires a HOA to distribute an annual budget report 30 to 90 days before the end of its fiscal year, and requires the annual budget report to include certain specified information, unless the governing documents impose more stringent standards.
- 5) Requires an HOA to levy regular and special assessments sufficient to perform its obligations under the governing documents and the Davis-Stirling Act, and

prohibits a HOA from imposing or collecting an assessment or a fee that exceeds the amount necessary to defray the costs for which it is levied.

- 6) Prohibits an HOA board from imposing annual increases in regular assessments for any fiscal year unless the board has complied with the annual budget requirements in 1) with respect to that fiscal year, or has obtained the approval of a majority of a quorum of members at a member meeting or election.
- 7) Authorizes an HOA board, notwithstanding more restrictive limitations in governing documents, to impose a regular assessment up to 20% greater than the regular assessment for the HOA's preceding fiscal year. Prohibits a board from imposing regular assessments over 20% higher than the preceding year's regular assessment, or imposing special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the HOA for that fiscal year, without the approval of a majority of a quorum of the members at a member meeting or election.
- 8) Defines "quorum" for purposes of 6) and 7) above to mean more than 50% of the members.
- 9) Requires, via Department of Real Estate (DRE) regulations, that governing instruments for CIDs provide for a variety of items, including procedures for calculating and collecting regular assessments from owners, and procedures for establishing and collecting special assessments for capital improvements or for other purposes.
- 10) Requires, via DRE regulations, regular assessments to ordinarily be levied against each owner according to the ratio of the number of subdivision interests owned by the owner assessed to the total number of interests subject to assessments. In the case of a subdivision offering in which it is reasonable to anticipate that any owner will derive as much as 10% more than any other owner in the value of common services supplied by the HOA, the assessment against each owner may be determined according to a formula or schedule under which the assessments against the various subdivision interests bear a relationship which is equitably proportionate to the value of the common services furnished to the respective interests.
- 11) Provides that regular and special assessments are delinquent 15 days after they become due, unless the declaration provides a longer time period. If an assessment is delinquent, the HOA may recover, as specified, reasonable costs incurred in collecting the delinquent assessment, a late charge, and interest on all sums imposed.

- 12) Requires an HOA to notify the owner of record in writing, as specified, by certified mail at least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a past-due debt under 11).
- 13) Allows an owner to submit a written request to meet with the board to discuss a payment plan for past-due debt, and requires the board to meet with the owner pursuant to specified timelines. Requires the HOA to provide owners the standards for payment plans, as specified, if any exist.
- 14) Prior to initiating a foreclosure on an owner's separate interest, the HOA must offer the owner and, if so requested by the owner, participate in dispute resolution, as specified. The board must approve a decision to initiate a foreclosure of a lien for delinquent assessments by a majority vote of the directors in an executive session.
- 15) Prohibits an HOA that seeks to collect delinquent regular or special assessments of an amount less than \$1,800 from collecting that debt through judicial or nonjudicial foreclosure, but allows the HOA to attempt to collect or secure that debt by a civil action in small claims court, by recording a lien on the owner's separate interest upon which the HOA can foreclose after the debt reaches or exceeds \$1,800 or the debt is more than 12 months delinquent, or any other manner provided by law.
- 16) Provides that the covenants and restrictions in the declaration are enforceable equitable servitudes, unless unreasonable, and must inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the HOA.

This bill:

- 1) Prohibits HOA boards that record their original declaration on or after January 1, 2024, notwithstanding more restrictive limitations in governing documents, from imposing a regular assessment against an owner of a deed-restricted affordable housing unit that is more than 5% greater than the preceding regular assessment.
- 2) Authorizes HOA boards that record their original declaration on or after January 1, 2024 to impose an assessment against an owner of a deed-restricted affordable housing unit that is lower than the assessment imposed against other owners according to the proportional ownership of total subdivision interests subject to assessments.

- 3) Exempts developments with 100% of units available to lower income and moderate-income households from 1) and 2) above.

COMMENTS:

1) *Author's statement.* “The Below Market Rate Homeownership programs are one of the best tools we have to provide homeownership opportunities to low-income Californians – but the rapidly increasing HOA fees are defeating the purpose of these programs. BMR homeowners are foreclosing on their homes faster than ever because their HOA fees are becoming more expensive than their mortgage. A foreclosure impacts people’s credit scores for years to come. So instead of helping low-income people build generational wealth through homeownership, the HOA fee increases are pushing them into more debt. AB 572 addresses this issue by capping annual HOA fee increases at 5% for BMR homeowners to make sure that low-income Californians are not forced into foreclosing on their homes.”

2) *Background on CIDs.* CIDs are a type of housing with separate ownership of housing units that also share common areas and amenities. There are a variety of different types of CIDs, including condominium complexes, planned unit developments, and resident-owned mobilehome parks. In recent years CIDs have represented a growing share of California’s housing stock. Data from 2019 indicates that there are an estimated 54,065 CIDs in the state that are made up of 5 million housing units, or about 35% of the state’s total housing stock.

CIDs are regulated under the Davis-Stirling Act as well as the governing documents of the HOA, including the bylaws, declaration, and operating rules. CIDs can also have Covenants, Conditions, and Restrictions (CC&Rs) that are filed with the county and recorded at the time they are established. Owners in a CID are contractually obligated to abide by the CC&Rs and the governing documents of a CID, which specify rules such as parking policies, allowable modifications to homes, and rental restrictions. Additionally, HOAs are governed by a board of directors elected by the membership, which have a number of powers and duties, including determining the annual assessments that members must pay in order to cover communal expenses. Many associations use a managing agent to assist with finances, logistics, and other services provided to homeowners.

3) *Affordable Ownership Units in CIDs.* Affordable ownership units in CIDs generally come about as a result of local inclusionary ordinance requirements, via density bonus projects to create for-sale housing, in 100% affordable homeownership projects, or where they were created by redevelopment

agencies and have had their initial term of affordability extended or are subject to local statutes that keep the homes deed-restricted in perpetuity. Affordable ownership units operate on 45-year deed restriction timeframes, as opposed to affordable rental units, which are usually protected for 55 years. Affordable ownership units are targeted to lower income and moderate-income households, making up to 120% of area median income (AMI).

Ownership programs are generally operated by a local government or a nonprofit housing manager (*i.e.*, Habitat for Humanity or a local community land trust network or housing trust). For new Below Market Rate (BMR) unit purchasers, they must meet the following: requirements to comply with income and asset restrictions, the ability to make a down payment and obtain a mortgage on the property, requirements to use the home as their principal place of residence (no renting), and be subject to an equity sharing arrangement or first right of resale to the entity to retake ownership of the property and sell it to a new BMR buyer in the event the owner sells the property before a deed restriction expires. A feature of these arrangements is the BMR owner's resale proceeds are capped at a below-market price or the equity from the home sale must be split between the BMR owner and the local government or nonprofit with a senior lien or deed of trust on the property.

Where any of these ownership units are constructed or exist within a condominium, planned unit development, or cooperative, they will also be subject to the Davis-Stirling Act and any CC&Rs and governing documents of the CID.

- 4) *HOA Budgets and Assessments.* HOAs must collect assessments from members to fund a variety of budgeted costs, including reserves for maintenance and repair projects for major components of common areas and shared structures, amenities, shared services, taxes, different types of insurance the HOA is required to maintain, and other general operating expenses like legal fees, accounting fees, and more. There are three types of assessments HOAs levy on members in order to fund their obligations: regular assessments, special assessments, and emergency assessments.

A board must have adopted a budget for the year in order to be able to entertain an increase in regular assessments, and boards can only raise regular assessments up to 20% over the regular assessment for the preceding fiscal year. Boards cannot impose regular assessments over 20% higher than the preceding year's assessment, or impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the HOA for that fiscal year, without taking a vote of the members. Approval of a majority of a

quorum of the members is required to legally impose assessments larger than the caps.

Emergency assessments do not require membership approval. These are only allowed to be levied to cover extraordinary expenses required by a court order, to repair or maintain CID property where there is a threat to personal safety, or that otherwise could not have been anticipated.

Assessments can be equal or, in some instances, might differ depending on what DRE regulations call "unequal access to common services provided by the HOA". These are called variable assessments.

This bill affects the process for raising regular assessments in CIDs created after January 1, 2024 where BMR units are present in the development. As such, it may have the effect of incentivizing future boards to rely more heavily on special assessments, which are not affected by the cap in this bill. Emergency assessments are reserved for court orders and unanticipated safety repairs and would also not be affected by the bill's cap.

- 5) *Delinquent Assessments and Foreclosure Procedures.* Assessments become delinquent 15 days after they are due, unless the governing documents provide a longer time. Failure to pay assessments may result in the loss of an owner's property through foreclosure. When using judicial or nonjudicial foreclosure, the HOA records a lien on the owner's property, which may be sold to satisfy the lien if the amounts secured by the lien are not paid. For liens recorded on and after January 1, 2006, an HOA may not foreclose if the amount of the delinquent assessments – not including any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection – is less than \$1,800. For delinquent assessments in excess of \$1,800 or more than 12 months delinquent, the HOA can foreclose. An owner may request the HOA to consider a payment plan to satisfy a delinquent assessment, and the board must meet with that owner to discuss the payment plan, but is not required to accept the payment plan.
- 6) *Prospective.* This bill would impose the 5% increase cap on regular assessments for any HOA with BMR units where the original declaration to DRE is recorded on or after January 1, 2024. The bill would also explicitly authorize the establishment of variable assessment rates in future CIDs based on the presence of BMR units. The effect of making the bill prospective – only applying to newly created CIDs – is that all owners who purchase homes in the development will have the opportunity to review the assessment rate schedule laid out in the governing documents and be informed that there will be more

modest rates of increases on the BMR units in the community, or if there will be variable assessments at the outset. The growth in the actual gap between assessments will vary depending on a variety of factors, including percentage of BMR units in the CID, assessment rates at the time the development is completed and units are for sale, and percentage of increases boards would seek for BMR and non-BMR owners. Not surprisingly, the gap will be larger in circumstances where actual assessment rates are higher at the inception of the new caps, where there are more BMR units overall in a development, and where boards seek the highest possible increases on non-BMR owners without a vote of membership (20%).

CC&Rs are enforceable equitable servitudes, unless unreasonable, and must inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the HOA.

In passing this bill, the Legislature would be establishing, as a matter of public policy, that assessments on BMR units should grow more slowly than assessments on market-rate units in all future CIDs.

RELATED LEGISLATION:

AB 648 (Valencia, 2023) — authorizes an HOA to hold board meetings or member meetings entirely by teleconference without any physical location if certain conditions are met. *This bill recently passed this committee on a vote of 11-0.*

AB 1458 (Ta, 2023) — authorizes a lower quorum requirement for HOA elections of directors under specified circumstances. *This bill is also being heard at this same hearing.*

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, June 14, 2023.)

SUPPORT:

Nonprofit Housing Association of Northern California (Co-Sponsor)
San Francisco Housing Development Corporation (Co-Sponsor)
California Association of Local Housing Finance Agencies
California Reinvestment Coalition

Council of Community Housing Organizations, San Francisco
Devine & Gong, INC.
East Bay YIMBY
Generation Housing
Grow the Richmond
Homeownership San Francisco
Housing Leadership Council of San Mateo County
How to ADU
Mission Economic Development Agency (MEDA)
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing Orange County
Progress Noe Valley
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
Ventura County YIMBY
YIMBY Action

OPPOSITION:

None received.

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