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

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**Bill No:** AB 1458 **Hearing Date:** 6/20/2023  
**Author:** Ta  
**Version:** 5/3/2023  
**Urgency:** No **Fiscal:** No  
**Consultant:** Aiyana Cortez

**SUBJECT:** Common interest developments: association governance: member election

**DIGEST:** This bill authorizes a lower quorum requirement for common interest development (CID) association elections of directors under specified circumstances.

**ANALYSIS:**

*Existing law:*

- 1) Establishes the Davis-Stirling Common Interest Development Act, which provides rules and regulations governing the operation of residential CIDs and the rights and responsibilities of Homeownership Associations (HOAs) and HOA members.
- 2) Requires HOAs, in elections of directors and recall elections, to provide general notice of all of the following at least 30 days before ballots are distributed:
  - 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.
- 3) Requires ballots and two preaddressed envelopes with instructions on how to return ballots to be mailed by first-class mail or delivered by the association to every member no less than 30 days prior to the deadline for voting. Requires associations to use procedures used by California counties for ensuring confidentiality of vote by mail ballots, as specified.

- 4) Requires a quorum for elections of director and recall elections only if so stated in the governing documents of the association or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.
- 5) For incorporated associations, requires a quorum at a meeting of members to be one-third of the voting power, represented in person or by proxy. Authorizes corporation bylaws to set a different quorum subject to specified restrictions.
- 6) Provides that each director of a corporation, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, unless the director has been removed from office, and except as otherwise provided in the articles or bylaws.
- 7) Authorizes, under specified circumstances, a county superior court to order a meeting or vote of members in a manner the court finds fair and equitable, if for any reason it is impractical or unduly difficult for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, and a director, officer, delegate, or member petitions the court for such authorization.
- 8) In an order issued pursuant to 6), authorizes the court to dispense with any requirement related to the holding of and voting at meetings or obtaining votes, including any requirement as to quorums or as to the number of percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or existing law.

**This bill:**

- 1) Requires for elections of directors and for recall elections, an association to provide general notice at least 30 days before the ballots are distributed if the association's governing documents require a quorum for 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% of the association's members voting in person, by proxy, or by secret ballot.
- 2) Requires no less than 15 days prior to an election for the association to provide general notice of the membership meeting which shall include the date, time, location, list of all candidates, and statement that 20% of the association present

or voting by proxy or secret ballot will satisfy the quorum requirements for the election of directors.

### COMMENTS:

- 1) *Author's statement.* "California is home to more than 55,000 Community Associations, with more than 13 million residents. A community association is governed by its Covenants, Conditions, and Restrictions (CCR or governing documents), which are drafted by the developer and generally include a minimum quorum requirement for raising assessments, board of director elections and changes to the governing documents. Currently, there is no remedy in the Davis-Stirling Act for an association not able to achieve quorum in board members elections, other than conducting an additional election. Many associations are not able to achieve the quorum set forth in the governing documents, which then prevents new board members from being seated when they seek to challenge a sitting board member or prohibits vacant seats from being filled when more than one candidate is seeking the position. This legislation would remedy this situation."
- 2) *Common Interest Developments.* 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 made up of 5 million 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 homeowners association (HOA), including the bylaws, declaration, and operating rules. CIDs can also have CCRs which are filed with the county and recorded at the time they are established. Additionally, HOAs are governed by a board of directors elected by the membership in elections that closely resemble California's vote-by-mail process. In addition, many associations use a managing agent to assist with finances, logistics, and other services provided to homeowners.

HOA boards have a number of duties and powers. The board determines the annual assessments that members must pay in order to cover communal expenses. The board enforces the community rules and can propose as well as make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members and, if necessary, the power to foreclose upon the offending

member's property. This combination of responsibilities and authority has led multiple courts to observe that HOAs function in many ways almost "as a second municipal government, regulating many aspects of [the homeowners'] daily lives." (*Villa Milano Homeowners Ass'n v. Il Davorge* (2000) 84 Cal.App.4th 819, 836)

- 3) *HOA Elections and Issues Related to Quorum.* HOAs are required to hold elections for board directors when a seat becomes vacant and at least every four years. Quorum is the minimum number of members of an association that must be "present" – either in person or via mailed ballots – in order to make the proceedings of a meeting legally valid. Quorum requirements differ depending on the type of HOA that has been formed and whether or not quorum is required in HOA governing documents. In most instances, if quorum is required by an HOA's governing documents, the quorum is a "50 percent + 1" threshold of members. If an HOA has chosen to incorporate as a nonprofit mutual benefit corporation, then state law establishes quorum at 33 percent of membership.

According to the proponents of this bill, a significant amount of HOAs report having trouble meeting quorum requirements for board elections. Regardless of quorum rules, the law provides that the board directors remain in office "until a successor has been elected and qualified," meaning the board stays in place until the election is successful, or unless a director resigns. There are a variety of ways that current law allows HOAs to try and address this problem.

- a) If an HOA has the same number of candidates for board positions as it does vacancies, then the HOA may bypass a full election and perform an election by acclamation. However, an HOA must have had a regular election within the past three years in order to utilize election by acclamation, and if there are more candidates than there are vacancies on the board, then acclamation is not a viable option.
- b) One remedy to not meeting quorum is simply to abolish the quorum requirement from the board's governing documents entirely. If a board is successful at amending the governing documents to eliminate the quorum requirement, then a subsequent board election would be valid without having to meet any threshold of members present. However, like a board election, this action requires the membership of the HOA to vote on an amendment to those governing documents, which may run into the same quorum threshold challenge that caused the need for the amendment in the first place.
- c) Boards may also attempt to hold multiple elections and do more persistent member outreach in the hope that eventually they will receive enough ballots to achieve quorum. However, this can take many attempts, waste time and

financial resources for the HOA, and there is no guarantee that any of the subsequent election attempts will actually result in meeting quorum.

- d) Board members may also resign their seat, which creates a vacancy that a majority of the remaining board may then use to appoint a new director, though the appointed director will assume the remainder of the term of office. If an entire board resigns or is left vacant all at once, there may be nobody available to appoint replacements, which can leave the HOA without governance and in a dangerous legal quagmire.
- e) Lastly, there is a legal process by which HOAs or any member may petition a court for an order lowering the quorum threshold for a single election to the number of votes cast. Supporters of the bill note that this petition process can take between 45 and 90 days to complete and can cost an association somewhere between roughly \$10,000-\$20,000 in legal services and fees, making it an unattractive alternative for many HOAs. Additionally, this begs the question of whether intervention in HOA quorum cases is the best use of court resources and capacity.

This bill attempts to find a better solution to the issues outlined above by providing a lower-cost and timelier method to reduce the quorum-threshold.

- 4) *Double-referral*. This bill has also been referred to the Senate Judiciary Committee.

#### **RELATED LEGISLATION:**

**AB 502 (Davies, Chapter 517, Statutes of 2021)** — removed the requirement that a homeowner association (HOA) must have 6,000 or more units in order to use an election by acclamation procedure which 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 323 (Wieckowski, Chapter 848, Statutes of 2019)** — enacted a series of reforms to the laws governing board of director elections in common interest developments, commonly referred to as homeowners associations or HOAs that seek to increase the regularity, fairness, formality, and transparency associated with such elections.

**SB 754 (Moore, Chapter 858, Statutes of 2019)** — provided that if nominees to a homeowner association (HOA) board in a common interest development (CID) shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board.

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

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

**SUPPORT:**

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

**OPPOSITION:**

None received.

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