SENATE COMMITTEE ON HOUSING
Senator Nancy Skinner, Chair
2023 - 2024 Regular

Bill No:	SB 900	**Hearing Date:**	4/2/2024
Author:	Umberg		
Version:	2/27/2024		
Urgency:	No	**Fiscal:**	No
Consultant:	Mehgie Tabar		

SUBJECT: Common interest developments: repair and maintenance

DIGEST: This bill: (1) provides that homeowners' associations (HOA) are responsible for utility service repairs and replacements that begin in common areas, even if the matter extends into an individual unit, as specified, within 30 days; (2) awards reasonable attorney's fees to a prevailing owner who enforces this provision against an HOA; and (3) expands assessment increases for emergency situations to include repairs or maintenance where a threat to personal health is discovered on the property, as specified.

ANALYSIS:

Existing law:

1) Establishes the Davis-Stirling Common Interest Development Act, which provides rules and regulations governing the operation of residential Common Interest Developments (CIDs) and the rights and responsibilities of homeowners and homeowners' associations (HOA) members.

2) Provides that, unless otherwise provided in the declaration of a CID, the HOA is responsible for repairing, replacing, and maintaining the common area, as defined, while the individual members are responsible for repairing, replacing, and maintaining their separate interest (*e.g.,* their individual unit).

3) Requires an HOA board to conduct, at least once every three years, a reasonably competent and diligent visual inspection of the accessible areas of all the major components the HOA is obligated to repair, replace, restore, or maintain as part of a study of the triannual inspection reserve requirements of the CID, when the current replacement value of the major components meets a specified threshold.

4) Imposes limits on increases on HOA assessments, except those increases necessary for specified emergency situations, including repairs or maintenance of the CID or any part of it for which the HOA is responsible where a threat to "personal safety" is discovered on the property.

This bill:

1) Provides that, unless otherwise provided in the declaration of a CID, the HOA is responsible for repairs and replacements for matters relating to the interruption of utility services (*i.e.*, gas, heat, water, or electrical) that begin in the common area even if the matter extends into a separate interest (*e.g.*, their individual unit), as specified.

   a) Requires an HOA to complete repairs or replacements to interrupted utility services within 30 days.
   b) Requires an award of reasonable attorney's fees to a prevailing owner who enforces this provision against an HOA.

2) Expands assessment increases necessary for emergency situations to include repairs or maintenance of the CID or any part of it for which the HOA is responsible where a threat to "personal health" is discovered on the property.

COMMENTS:

1) *Author's Statement.* "For several months last year, my district office worked to organize relief and remediation for a condominium complex in Orange, CA that experienced a sizeable natural gas leak in which 600 homeowners and tenants were left without gas to cook or hot water to shower. Our office worked vertically and multi-jurisdictionally to try and mediate this issue in a timely manner, and it still took the HOA and property manager months to restore gas. Families were left with a substandard level of living for over three months.

   SB 900 will make an HOA 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 those repairs and expand the definition of "emergency situations" to include threats to personal health or safety.

   This was an issue that impacted hundreds of people in an instant and yet it is not unique. 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) *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. In 2019, there were an estimated 54,065 CIDs in the state which contain five million housing units, or about 35% of the state's total housing stock.

   CIDs are regulated under the Davis-Stirling Act (Civil Code Section 4000 et seq.) as well as the governing documents of the CID, including the bylaws, declaration, and operating rules. CIDs can also have Covenants, Conditions, and Restrictions (CC&Rs) which are filed with the county recorder 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 how an owner can modify their home. Additionally, CIDs include HOAs which are run by an elected board of directors and HOAs must follow specific voting procedures when considering board votes.

   This means that HOAs operate within a unique self-governance structure, leaving the state with minimal oversight of HOA activities. This self-governance structure grants HOAs the authority to establish and enforce rules, manage common areas, and collect dues from homeowners within their communities. While there are state laws that regulate certain aspects of HOA operations, such as financial disclosures and election procedures, the day-to-day management and decision-making processes are primarily handled by the HOAs themselves. This setup can lead to variations in HOA practices and policies across different communities, highlighting the importance of homeowners understanding their rights and responsibilities within these associations.

   Many issues experienced by homeowners in HOAs (*e.g.*, the inability to secure affordable homeowner insurance or the increasingly high cost of utilities) are not unique to HOAs but are exacerbated by their self-regulating nature—*i.e.*, HOA members have diverse needs and preferences, making it challenging to find solutions that satisfy everyone while maintaining financial sustainability for the association.

   This bill proposes to make a number of changes to laws on HOAs.

3) *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.

4) *What's the penalty for delinquent assessments*? 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.

5) *Substandard buildings.* State law defines a substandard building as any building or any part of a building with specified problems that endanger the life,

limb, health, property, safety, or welfare of the public or the buildings occupants. Examples of substandard building conditions include sanitation deficiencies (*e.g.*, pests, lack of water or heat, the presence of mold, etc.), structural problems, fire hazards, and lack of sufficient exits. Substandard conditions can sometimes lead to serious health and safety risks for the people living in a building and for the larger community, but do not always require tenants to vacate the property. Buildings are generally not "red-tagged"—requiring a tenant to vacate—unless a code enforcement officer finds an "imminent threat" to health and safety. Some examples of "imminent threats" include exposed and sparking wires near a water leak, foundational issues, and caving roofs. When violations are so severe that an order to vacate the property is issued, the property owner is required to pay relocation costs for tenants while remediation or demolition occurs.

6) *Case study: Orange County residents without gas for months*. In 2023, a gas leak in a 200+ unit condominium building in Orange County was discovered and, citing safety reasons, the local gas company shut off service (*i.e.*, residents had no access to hot water or cooking and laundry facilities for months). The gas company claimed the gas lines were owned by the condo, therefore the HOA and management company were responsible for fixing the problem. There were concerns that the building would be red-tagged by local building officials because of health and safety code violations, and hundreds of residents would be displaced. After weeks of disputes on who was responsible and where the leak originated, the HOA took out a loan to address the costly emergency assessment, splitting the cost among all of the building's HOA members.

   This bill attempts to prevent a situation like the one in Orange County from happening again—residents living in substandard housing for months. If this bill were in law today (*i.e.*, clearly stating that HOAs are responsible for utility service repairs and replacements that begin in common areas within 30 days), the HOA in the Orange County case would have had to address the problems much sooner.

   This bill also expands assessment increases necessary for emergency situations to include repairs or maintenance of the CID or any part of it for which the HOA is responsible where a threat to "personal health" (in addition to "personal safety") is discovered on the property. Some argued in the Orange County case that the gas shut off issue was regarding "health" and not "safety", and not covered under current law. Therefore, this bill ensures coverage for both threats to personal health and safety when assessment increases are necessary for emergency situations.

7) *Opposition.* The California Association of Community Managers (CACM) and the Center for Homeowner Association Law write in opposition to the bill, stating it, "…imposes new housing costs on owners who can least afford them…it is a huge gift to every utility company in California…[and] puts new housing cost burdens on homeowners." The author's office indicated it is working with key stakeholders, including the opposition, to address concerns and wants to avoid any unintended consequences with the bill language.

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

RELATED LEGISLATION:

SB 326 (Hill, Chapter 207, Statutes of 2019) — established a mandatory inspection regime for exterior elevated elements such as balconies, decks, walkways, stairways, and railings, within HOAs. Also nullified any provision in an HOA's governing documents that purports to condition or limit the ability of the HOA to bring construction defect litigation against the developer or builder of the HOA.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, March 27, 2024.)

SUPPORT:

None received.

OPPOSITION:

California Association of Community Managers (CACM)
Center for Homeowner Association Law

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