Date of Hearing: June 19, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
SB 900 (Umberg) – As Amended June 5, 2024

SENATE VOTE: 39-0

SUBJECT: Common interest developments: repair and maintenance

SUMMARY: Makes a number of changes to the responsibilities of homeowners associations (HOAs) relating to utility service repairs and replacements that begin in common areas. Specifically, **this bill**:

1) Provides that, unless otherwise provided in the declaration of a Common Interest Development (CID), or unless the utility service failed to maintain, repair, or replace a public, private, or other utility service provider, the HOA is responsible for repairs and replacements necessary to restore interrupted 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.

2) Requires the board of an HOA to commence repairs or replacements to interrupted utility services within 14 days.

3) Provides that if a vote to commence repairs does not take place within this 14-day period, and there are insufficient reserve funds available, an HOA may obtain financing to pay for repair costs, as specified, without a vote of the membership. Provides that this vote may take place by electronic means, such as email.

4) Provides that nothing in this bill shall be construed to result in the personal liability of members of the HOA's board of directors.

5) Exempts HOAs from the provisions of this bill if they are located in an area affected by one or more of the following conditions:

   a) A state of disaster or emergency declared by the federal government;

   b) A state of emergency proclaimed by the Governor; or

   c) A local emergency proclaimed by a local governing body.

6) Adds gas, water, and electrical service components to the visual inspection that an HOA board must cause to be conducted every three years.

7) Expands assessment increases necessary for emergency situations to include operation, repairs, or maintenance of the CID or any part of it for which the HOA is responsible where a threat to personal health or safety or another hazardous condition or circumstance is discovered on the property.

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 homeowners and HOA members. (Civil Code (CIV) 4000 - 6150)

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). (CIV 4775)

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. (CIV 5550)

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. (CIV 5610)

FISCAL EFFECT: None.

COMMENTS:

Author's Statement: According to the Author: "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."

Background on CIDs: CIDs are a type of housing with separate ownership of housing units that share common areas and amenities. There are various 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 (Civil Code Section 4000 *et seq.*) as well as the governing documents of the homeowners association (HOA), including the bylaws, declaration, and operating rules. CIDs can also have Covenants, Conditions, and Restrictions (CC&Rs) which 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 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)

HOA Budgets and Assessments. HOAs typically operate on a budget funded by assessments collected from homeowners. The budget outlines the anticipated expenses for the HOA, including maintenance of common areas, insurance, utilities, management fees, and reserves for future repairs and improvements. HOA assessments fall into the following categories: regular assessments, special assessments, and emergency assessments.

HOA boards are required by law in California to prepare and distribute an annual budget to all members to increase regular assessments. These assessments are divided among homeowners based on the HOA's governing documents (usually based on the size or type of the unit). Special assessments are additional fees levied to cover unexpected or one-time expenses not covered by the regular budget. Boards cannot impose regular assessments over 20% higher than the preceding year's assessment, or impose special assessments exceeding 5% of the budgeted gross expenses of the HOA for that fiscal year, without taking a vote of the members. If a HOA needs to impose an assessment on its members larger than the respective 20% and 5% caps, approval through a vote of a majority of a quorum of the members is required. In addition to the provisions for regular and special assessments, HOAs are authorized to impose emergency assessments to cover unforeseen expenses not adequately covered by the HOA's reserves or operating budgets. These assessments can be levied in response to emergencies, including a court order, safety threat, or an unforeseen expense necessary to repair or maintain the development. These assessments do not require membership approval.

An assessment is considered delinquent if a homeowner in a CID does not make a payment within 15 days after the payment is due unless the HOA's governing documents (CC&Rs) provide for a longer amount of time. If a homeowner fails to pay their assessments, the HOA has the right to take legal action, including placing a lien on the property or pursuing foreclosure in extreme cases. There are strict guidelines and procedures that the HOA must follow before taking such actions. Homeowners have the right to dispute assessments or seek alternative payment arrangements, though the HOA is not required to accept the payment plan.

Substandard Buildings and HOA Disputes. In California, a building is considered substandard when it "endanger(s) the life, limb, health, property, safety, or welfare of the occupants of the public."[1] In a recent incident in La Veta Monterey Condominiums in Orange, a 200+ unit CID experienced a gas leak. In response to that gas leak, the local utility company cut off service to the CID, leaving residents without natural gas services for months. This resulted in a dispute over which party was responsible for fixing the problem – the HOA or the utility company. The utility service claimed that the HOA and property management company were responsible for fixing the gas lines as they were owned by the CID. The HOA maintained that the utility company was responsible for the repair. The residents of the CID remained without gas service while this dispute was ongoing. Ultimately, the HOA took out a loan and levied an emergency assessment on all of the HOA members to pay for the repair.

This bill is in direct response to the City of Orange case, and seeks to prevent future disputes between HOAs and utility companies from occurring at the expense of the residents of a CID, forcing those residents to live in substandard buildings while the dispute is ongoing. This bill would clarify that a HOA is responsible for any utility service repairs and replacements, and must commence the work within 14 days in the event of an interruption of utility services.

Arguments in Support: According to the City of Orange, "In June 2023, residents of the La Veta Monterey condominium complex in Orange, CA, notified SoCalGas of a possible natural gas leak. The company sent technicians to conduct an inspection, which resulted in an emergency shut-off of gas services at the master meter due to health and safety concerns. It was eventually determined that the complex's entire 51-year-old gas pipeline would have to be replaced with cost estimates in excess of $1 million. The HOA Management Company was not compelled by California law to make repair squickly, and the HOA itself did not have the required reserves to pay for new lines, forcing residents of the La Veta Monterey condominium complex, more than 600 residents, without hot water for approximately 4 months.

…

For the reasons listed above, the City of Orange is supportive of your SB 900"

Arguments in Opposition: According to the Center for California Homeowner Association Law, "We have grave concerns that, should SB900 become law, the La Veta outcomes would be replicated throughout the state. We urge that, instead of burdening homeowners with new costs and liabilities, the La Veta incident create the opportunity for the Legislature to direct ***utilities*** to carry out their duties."

Related Legislation:

SB 326 (Hill), Chapter 207, Statutes of 2019. Amended the Davis-Stirling Common Interest Development Act to require HOAs to inspect exterior elevated elements in CIDs, including balconies, decks, stairways, hallways, and railings. Prohibited a HOA's CC&Rs from limiting the board's ability to commence legal proceedings against a declarant, developer, or builder of a CID.

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[1] Health and Safety Code Section 17920.3

Double-Referred. This bill has also been referred to the Assembly Judiciary Committee, where it will be heard should it pass this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Orange

Opposition

California Center for Cooperative Development
Center for Homeowner Association Law
Habitat for Humanity Greater San Francisco

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