

Date of Hearing: April 27, 2016

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1720 (Wagner) – As Introduced April 4, 2016

SUBJECT: Common interest developments: meetings

SUMMARY: Requires a homeowners association (HOA) in a common interest development (CID) to permit a person that represents a member to attend board meetings. Specifically, **this bill:**

- 1) Requires a HOA to permit a person who represents a member to attend any board meeting that the member is permitted to attend, regardless of whether the member attends.
- 2) Requires the member to give the board at least forty-eight hours advance written notice that a person representing the member will attend the board meeting.
- 3) Makes other technical amendments.

EXISTING LAW:

- 1) Provides that a HOA member may attend board meetings, except when the board adjourns to, or meets solely in, executive session.
- 2) Requires a HOA board of directors to permit any member to speak at any meeting of the association or the board, except for meetings of the board of directors held in executive session.
- 3) Requires a HOA to provide a fair, reasonable, and expeditious internal dispute resolution (IDR) procedure that at a minimum must include the following procedures:
 - a) May be invoked by either party to the dispute
 - b) A request to invoke IDR must be in writing;
 - c) Requires a HOA to participate if a member requests IDR;
 - d) Allows a member to elect not to participate if IDR is invoked by the HOA;
 - e) If a member participates but the dispute is resolved other than by the agreement of the member then the member has the right to appeal to the board of directors;
 - f) A written resolution or agreement that is signed by both parties of a dispute and is not in conflict with the law or governing documents binds the HOA and is judicially enforceable; and
 - g) Allows a member or the HOA to be assisted by an attorney or another person in explain their position at their own costs.

- 4) Defines "alternative dispute resolution" (ADR) to mean mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral third party in the decision making process. ADR may be binding or nonbinding with the voluntary consent of either party.
- 5) Requires a HOA or a member, prior to finalizing an enforcement action in the superior court to endeavor to submit their dispute to ADR.
- 6) Provides that either a HOA or a member may initiate ADR by serving the other party with a Request for Resolution that must include the following:
 - a) A brief description of the dispute between the parties;
 - b) A request for ADR;
 - c) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected; and
 - d) If the party to whom the request is served is member a copy of the article.
- 7) Requires service of the Request for Resolution to be made by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide a party to whom the request is served actual notice of the request.
- 8) Provides that a HOA or member has 30 days to respond to a request for ADR and if the party served with the Request for Resolution does not accept the request within that period that the request is deemed rejected.
- 9) Provides that if both a HOA and member agree to ADR, the ADR must be completed within 90 days after the party that initiated receives acceptance from the other party unless both parties agree to an extension.

FISCAL EFFECT: None.

COMMENTS:

There are over 50,000 CIDs in the state that range in size from three to 27,000 units. CIDs make up over 4.9 million housing units which represents approximately one quarter of the state's housing stock. CIDs include condominiums, community apartment projects, housing cooperatives, and planned unit developments. CIDs are governed by the Davis-Stirling Act as well as the governing documents of the association including bylaws, declaration, and operating rules.

Conflicts arise between members of an HOA and the board of directors regarding interpretation of the governing documents and operating rules. In 2004, AB 1836 (Harmon) (2004) Chapter 754, required that HOAs provide the members an IDR process at no cost. Either the member or the HOA can request IDR, however the HOA cannot compel the member to participate. Any agreement that is reached in IDR that is not in conflict with the law or the governing documents is judicially enforceable. If an HOA does not provide an IDR procedure then the bill created a statutory "meet and confer" process that HOAs must follow. The bill was sponsored by the California Law Revision Commission to give HOAs a standard, informal process to try to resolve disputes before they become serious. In addition to IDR, a HOA or a member may

request ADR to resolve a dispute. Before filing an enforcement action, a HOA and a member are required to request ADR in writing. ADR must be completed within 90 days of either party's request and the results can be binding or nonbinding.

In 2014, AB 1738 (Chau) Chapter 411, Statutes of 2014 revised the IDR process to allow a HOA or a member to bring an attorney or another person to participate in informal dispute resolution (IDR) at their own cost. The bill also made it clear that an agreement reached as part of an IDR must be in writing. The sponsor of AB 1738 is sponsoring this measure to require a HOA to allow any person representing a member to attend a board meeting regardless of whether the member is in attendance. A member would be required to provide the board of director's forty-eight hours written notice that a person representing a member will attend the board meeting.

In addition to the meet and confer process, IDR, and ADR, a member of an HOA can pursue a claim against a HOA in small claims or civil court

Arguments in support: According to the sponsor of this bill, "AB 1720 would reaffirm in the law that a member of a common interest development (homeowner) may be accompanied by legal counsel at any meeting of the homeowners' association (HOA) board the member is permitted to attend, and may also designate counsel to speak on the member's behalf, whether or not the member is present at the meeting. It also provides that where possible, the member shall give the board at least 48 hours advance written notice that his or her attorney will attend the board meeting. For years, case law strongly inferred that, because HOA boards are quasi-public entities akin to local governmental bodies, homeowners appearing before the boards had a right to be represented by counsel and the member's own expense (See *Cohen v. Kite Hill Community Association* (1983)142 Cal. App. 3d 642; *Damon v. Ocean Hills Journalism Club* (2000)85 Cal. App.4th 468; and *Cabrera v. Alam* (2011)197 Cal. App. 4th1077). This changed in 2013, however, with the decision in *SB Liberty, LLC v. Isla Verde Association, Inc.* (2013) 217 Cal.App.4th 272, which held that the statutory provision permitting members of an HOA to attend open board meetings applied to the owners only, and that a community association may bar attorneys representing those homeowners from attending any and all meetings - even when the association is represented by its own attorney. The decision in *SB Liberty* denies homeowners in need - who may be elderly, ill, disabled, unsophisticated or otherwise unable to fully defend their interests - to have the benefit of counsel at a time when critical decisions affecting their legal rights are being made. AB 1720 will correct this injustice, ensuring that homeowners are not denied the presence of or representation by counsel at what could be a very intimidating and critical time."

Arguments in opposition: According to the California Association of Community Managers, "in addition to the IDR process, there are other mechanisms that serve to ensure homeowners have the ability to obtain counsel prior to board decisions. For instance, for significant assessments increases, laws are in place that requires member approval through a secret ballot process. For changes to Rules and Regulations, there must be a 30-day comment period, adoption at an open meeting and notice of adoption and implementation. In all of these scenarios, a member already has the ability to have an attorney or other person review proposals and provide input to the Board within the already established Open Meeting Act for Common Interest Developments. AB 1790 would almost certainly force HOA boards to have attorneys present at all HOA meetings. This would dramatically increase HOA budget costs and, as a result, would likely force HOA's to increase member assessments to make up for these unanticipated increased costs. The bill is of particular concern to small-to-mid size HOAs who typically cannot afford a to

have attorneys present at all meetings. All the HOA members would, in the end bare the weight of increases costs that result from individual members' desires to have his or her attorney present."

Staff comments:

Existing law provides several different avenues for resolving disputes between a member and a HOA including: a meet and confer process, IDR, and ADR, and the courts. Under this bill, anyone that a member selected could attend a board meeting on their behalf, including their attorney. The IDR process was amended last year to allow an attorney or any other person to attend on behalf of either a member of the HOA. The committee may wish to consider if disputes between an HOA and member would better be handled through the existing dispute resolution options.

Double referred: If AB 1720 passes this committee, the bill will be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations (Sponsor)
Center for California Homeowner Association Law

Opposition

California Association of Community Managers
Community Associations Institute
Larry Stirling
Iger Wankel & Bonkowski, LLP
Lake Forest II Master Homeowners Association
Sun City Roseville Community Association, Inc.
Management Professionals, Inc.
Packard Management Group
Individuals (565)

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