

Date of Hearing: April 27, 2016

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1799 (Mayes) – As Amended April 4, 2016

**SUBJECT:** Common interest developments: association governance: elections

**SUMMARY:** Exempts homeowners associations (HOA) in a common interest development (CID) from election procedure requirements in uncontested elections. Specifically, **this bill:**

- 1) Exempts an election from the election requirements of the Davis-Stirling Common Interest Development Act if the election of directors is uncontested.
- 2) Provides that an election of directors is uncontested if:
  - a) The number of candidates for election, including write-in candidates, if applicable, does not exceed the number of directors to be elected at that election; and
  - b) The association has declared the election is uncontested.
- 3) Provides that an association may declare an election of directors is uncontested only if all of the following procedures have been satisfied:
  - a) The election rules required by Section 5105 have been adopted and complied with for the election.
  - b) All declared candidates were nominated before the deadline for nominations and in accordance with all lawful provisions of the association's governing documents.
  - c) The inspector of elections has informed the board that the number of candidates does not exceed the number of directors to be elected at that election.
  - d) The board votes in open session to declare the election is uncontested after a hearing during an open board meeting where members are able to make objections to the board making that declaration.
  - e) At least 20 days before the board meeting for the vote to declare the election is uncontested, the association provides general notice to all members as set forth in Section 4045 of all of the following:
    - i. The intention of the board to vote at a regular board meeting to declare the election of directors is uncontested, and giving date, time, and place of that board meeting.
    - ii. A disclosure to members of the names of all candidates, however nominated, including self-nomination, who will be declared elected if the board declares the election is uncontested.

- iii. The right of any member to appear at the board meeting and make an objection to the board declaring the election is uncontested before the board votes on the matter.
  - f) The names of all candidates, however nominated, the general notice required by subparagraph (E), any objection to the board making the declaration that the election of directors is uncontested, and the board vote declaring the election of directors is uncontested shall be recorded in the meeting minutes.
- 4) Requires, in cases where the association's governing documents provide for write-in votes on the ballot, the association to allow a write-in candidate to submit his or her name to the inspector of elections up to 15 days after the board meeting described in subparagraph (D) of paragraph (1).
  - 5) Requires a HOA to adopt a rule as part of the election procedure that do both of the following:
    - a) Ensure that an announcement of an election and notification of nomination procedures, including self-nomination, will be provided to all members by general notice at least 60 days before any election of the directors; and
    - b) Ensure a member in good standing, who satisfies any lawful requirements specified by the HOAs governing documents will not be denied the right to vote or the right to be a candidate for director.
  - 6) Provides that a member may bring a cause of action in small claims court for a violation of this Act.

**EXISTING LAW:**

- 1) Require elections for assessments, amendments to the governing documents, members of the board of directors, or the granting of exclusive use of common area must be conducted by secret ballot.
- 2) Require the inspector of election may be one or three individuals who have the following duties:
  - a) Determine the number of memberships entitled to vote and voting power;
  - b) Establish the authenticity, validity and effect of proxies;
  - c) Receive votes and ballots, hear and determine all challenges and questions;
  - d) Count and tabulate all votes;
  - e) Determine when polls close; and
  - f) Determine the results of the election.
- 3) Requires a home owners association to select one or 3 independent 3rd parties as an inspector or inspectors of elections.
- 4) Requires the association's elections to be conducted by the inspector or inspectors of elections in accordance with specified procedures.

**FISCAL EFFECT:** None

**COMMENTS:**

Background: There are over 50,220 CIDs in the state that comprise over 4.8 million housing units, or approximately one quarter of the state's housing stock. CIDs include condominiums, community apartment projects, housing cooperatives, and planned unit developments. They are characterized by a separate ownership of dwelling space coupled with an undivided interest in a common property, restricted by covenants and conditions that limit the use of common area and the separate ownership interests, and the management of common property and enforcement of restrictions by a HOA. CIDs are governed by the Davis Stirling Act (the Act) as well as the governing documents of the HOA, including bylaws, declaration, and operating rules. The Act requires elections to conform to an extensive process including double stuffed ballots and the HOA to select one or three independent third parties as an inspector or inspectors of elections. AB 569, Chau, Chapter 661, Statutes of 2014 exempted HOAs from these procedures in cases where their bylaws require all of the members to serve on the board of directors.

This bill would allow the board of directors of a HOA to declare an election uncontested if the number of candidates running for election does not exceed the number of directors to be elected at the election. In order to qualify, the election would have to comply with all properly adopted election rules, all candidates must be nominated before the deadline and in compliance with the governing documents, and the inspector of elections would have to declare that the number of candidates does not exceed the number of directors to be elected. Twenty days prior to declaring the election uncontested, the HOA would be required to notify the members that the board is planning to vote that the election is uncontested and the right of the members to object to the board declaring the election uncontested.

Write-in candidates: In some cases, the governing documents of a HOA allow for members to write-in candidates for an election. After the HOA declares that an election is uncontested at a board meeting, members would have 15 days to write-in a candidate for election. If one or more write-in candidates are received and the number of candidates exceeds the number of directors to be elected than AB 1799 requires an election to be held. If after 15 days the number of write-in candidates and the number of candidates does not exceed the number of open positions on the board then the election results will be sealed and the any write-in members will be added as members. It's possible that there may not be enough members running for the open positions on the board and if additional candidates write in their names this bill would add them to the board automatically.

Purpose of this bill: According to the author, "CID board elections are often uncontested, with the number of candidates does not exceeding the number of vacant seats. Current law requires such uncontested elections to follow the same election procedures as contested elections, including minimum vote thresholds and costly third-party verification of results. These costs are a burden on the budgets of CIDs, particularly lower-income communities. AB 1799 exempts homeowner associations from the costly election procedure requirements in current law, but only in instances where the requirements are unnecessary because the number of candidates does not exceed the number of open seats. AB 1799 will return these resources to the budgets of homeowner associations, allowing for additional improvements to shared community features."

Arguments in support: According to California Association of Community Managers, elections of board members are an important part of how CIDs come together to build and maintain healthy communities. In certain instances, the election of directors may be uncontested, even after

strict adherence to the CID bylaws and voting election rules that involve numerous attempts to solicit nominees. In these instances, AB 1799 allows CIDs the opportunity to save the costs of a protracted and costly election process and seat a new board of directors in a timely manner thereby making for a more production CID."

Arguments in opposition: According to the Center for California Homeowner Association Law, "Homeowners who buy a home in an association have no voice in its creation by local government and no choice in whether or not to join it: membership is mandatory and so are assessments. The only instrument for an owner to express choice is his individual vote: the homeowner's vote to choose the leadership for the association's governing board and the homeowner's decision to become a candidate for seat on the governing board...AB 1799 undermines the basic right and restores control of elections to incumbents."

Staff comments:

This bill would allow for write-in candidates if the governing documents provide a process for them. The committee may wish to allow for a process for write-in candidates regardless of whether the governing documents specifically allow for them.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Association of Community Managers  
Community Associations Institute  
Individuals (4)

**Opposition**

California Alliance for Retired Americans  
Center for California Homeowner Association Law  
Rutgers School of Law Constitutional Rights Clinic  
Individuals (1)

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