

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2912 (Irwin) – As Introduced February 16, 2018

SUBJECT: Association finances

SUMMARY: Requires common interest development (CID) board of directors (board) to review specified financial documents on a monthly basis, and prohibits electronic transfers of funds from homeowner association (HOA) accounts without prior board approval. Specifically, **this bill:**

- 1) Prohibits a managing agent of a CID from making electronic transfers of funds in or out of a HOA account without prior approval from the board of the HOA.
- 2) Requires, unless the governing documents of the HOA impose more stringent standards, the board to review the following on a monthly basis:
 - a) A current financial institution reconciliation of the HOA's operating and reserve accounts;
 - b) The current year's actual operating revenues and expenses compared to the current year's budget;
 - c) The latest account statements prepared by the financial institutions where the HOA has its operating and reserve accounts;
 - d) An income and expense statement for the HOA's operating and reserve accounts; and
 - e) The check register, monthly general ledger, and delinquent assessment receivable reports.
- 3) Allows these review requirements to be met when an individual member of the board reviews those documents and statements independent of a board meeting, if the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting.
- 4) Prohibits any electronic transfers of funds to be made from the HOA's reserve or operating accounts without prior board approval.
- 5) Requires the HOA to maintain fidelity bond coverage in an amount equal to or more than the combined amount of the reserves of the HOA and total assessments for three months, unless the governing documents require greater coverage amounts.
- 6) Requires bond coverage to include dishonest acts by the managing agent or management company, computer fraud, and funds transfer fraud.

EXISTING LAW:

- 1) Defines CID as a community apartment project, a condominium project, a planned development, or a stock cooperative.
- 2) Defines HOA as a nonprofit corporation or unincorporated association created for the purpose of managing a CID.
- 3) Requires a managing agent of a CID who accepts or receives funds belonging to the HOA to deposit those funds that are not placed into an escrow account into an account under control of the HOA.
- 4) Requires, at the written request of the board, the funds the managing agent accepts or receives on behalf of the HOA to be deposited into an interest-bearing account if certain requirements are met, including that the account is in the name of the managing agent as trustee for the HOA or in the name of the HOA.
- 5) Requires, unless the governing documents impose more stringent standards, the board to review the following on at least a quarterly basis:
 - a) A current reconciliation of the HOA's operating accounts and reserve accounts;
 - b) The current year's actual reserve revenues and expenses compared to the current year's budget;
 - c) The latest account statements prepared by the financial institutions where the HOA has its operating and reserve accounts; and
 - d) An income and expense statement for the HOA's operating and reserve accounts.
- 6) Requires the signatures of at least two specified board members for the withdrawal of money from the HOA's reserve accounts.

FISCAL EFFECT: None.

COMMENTS:

Background: 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 a quarter of the state's housing stock. CIDs include condominiums, community apartment projects, and housing cooperatives, and planned unit developments. They are characterized by the following: 1) a separate ownership of dwelling space coupled with an undivided interest in a common property, 2) covenants and conditions that limit the use of common areas, and 3) management of common property and enforcement of restrictions by a HOA.

CIDs are governed by the Davis-Stirling Act as well as the governing documents of the HOA, including bylaws, declaration, and operating rules. CIDs are run by volunteer board who are elected by the members of the HOA and who are responsible for interpreting the governing documents and state law.

Existing law requires the HOA board to review financial documents and statements related to the HOA's accounts on at least a quarterly basis, unless the HOA's governing documents require more frequent review. This bill changes the frequency of review required by law from at least once a quarter to once a month, and adds a requirement to review the check register, monthly general ledger, and delinquent assessment receivable reports.

This bill also provides some flexibility in this monthly review requirement by allowing an individual board member—for example, the treasurer—to review these financial documents so long as the board ratifies that review at the next board meeting.

Existing law also sets out specific requirements for managing agents of CIDs and board members to follow when handling money belonging to the HOA. This bill prohibits any electronic transfers of funds from being made from the HOA's reserve or operating accounts without prior board approval, including transfers by a managing agent. Lastly, this bill requires the HOA to maintain fidelity bond coverage in specified amounts.

Purpose of the bill: According to the author, "there has been an increase in fraudulent activities related to the finances of HOAs. One example from a retirement community describes \$110,000 discrepancies in HOA finances related to their management company. Current law provides some board actions intended to reduce fraudulent activity, but it is time for those laws to be updated. More regular review of an HOA board's financial records, and fidelity insurance to cover potential liability, will help protect HOAs from financial mismanagement. AB 2912 provides financial security to these volunteer boards that represent thousands of homeowners across California without placing overly burdensome requirements on their workloads."

Related legislation:

AB 690 (Quirk-Silva), Chapter 127, Statutes of 2017: Required a CID manager or management company to disclose certain information before entering into a management agreement with a HOA, and required the HOA annual budget to contain information relating to charges for certain documents.

AB 805 (Torres), Chapter 180, Statutes of 2012: Revised and recast the Davis-Stirling CID Act.

Double-referred: This bill was also referred to the Committee on Judiciary, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Community Associations Institute of California (sponsor)
California Association of Community Managers

Opposition

None on file

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