

Date of Hearing: May 1, 2013

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT  
Norma Torres, Chair

AB 1360 (Torres) – As Amended: April 25, 2013

SUBJECT: Common interest development: electronic voting

SUMMARY: Allows a homeowners' association (HOA) in a common interest development (CID) to conduct an election via electronic voting. Specifically, this bill:

- 1) Makes legislative findings.
- 2) Requires an HOA to give a member an opportunity to indicate if he or she wishes to vote electronically.
- 3) Requires an HOA to provide a ballot and any related material to a member voting electronically at least 30 days prior to the voting deadline by electronic transmission.
- 4) Requires the inspector of elections to receive the voting results from an electronic balloting services provider and to count and tabulate the electronic votes.
- 5) Requires an HOA to provide members who indicated that they will not be voting electronically a paper ballot pursuant to Civil Code Section 5115.
- 6) Defines an "electronic balloting service provider" as a business that:
  - a) Is an independent third party that is not affiliated with the HOA management or members;
  - b) Is insured for liability;
  - c) Protects the secrecy of the ballots;
  - d) Protects the anonymity of the voter by insuring that when the votes are tallied and submitted to the HOA the members names are not listed;
  - e) Produces a record verifying the dates and times that the votes were cast; and
  - f) Provides members a secure confirmation of their electronically cast vote.

EXISTING LAW

- 1) Permits members of a corporation, unless prohibited by the bylaws, to vote at a meeting held by electronic transmission or by electronic video screen communication if members are given a reasonable opportunity to participate in the meeting in person and a record of the electronic vote is kept by the corporation (Corporations Code Section 7510).

- 2) Requires an HOA to select an independent third party or parties for an election in a CID to do all of the following:
  - a) Determine the number of memberships entitled to vote and the voting power of each;
  - b) Determine the authenticity, validity, and effect of proxies, if any;
  - c) Receive ballots;
  - d) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
  - e) Count and tabulate all votes;
  - f) Determine when the polls close, consistent with the governing documents;
  - g) Determine the tabulated results of the election; and
  - h) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with the Davis Stirling Act (Act), the Corporations Code, and all applicable rules of the HOA.

(Civil Code Section 5110)

- 3) Requires an HOA to provide each owner of a separate interest with a ballot with two preaddressed envelopes and instructions on how to return the ballot (Civil Code Section 5115).
- 4) Requires ballots to be mailed by first-class mail or delivered by the HOA to every member not less than 30 days prior to the deadline for voting (Civil Code Section 5115).
- 5) Prohibits voters from being identified by name, address, lot, parcel, or unit number on the ballot (Civil Code Section 5115).
- 6) Requires the ballot to be inserted into the first envelope, which is then sealed. That envelope is inserted into a second envelope, which is then sealed. Requires the voter to sign his or her name and address in the upper left hand corner. Requires the second envelope to be addressed to the inspector or inspectors of elections who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery. (Civil Code Section 5115)
- 7) Requires the ballots in an election to be counted in public at a properly noticed meeting and allows any member or candidate for election to witness the counting and tabulating of votes (Civil Code Section 5120).
- 8) Prohibits any member of the association or employee of the management company from opening the ballots prior to the meeting at which they are counted (Civil Code Section 5120).

- 9) Makes a ballot irrevocable once it is received by the inspector of elections (Civil Code Section 5120).
- 10) Requires the results of the election to be reported to the board and recorded in the minutes of the next meeting of the board and made available for review by the members of the HOA (Civil Code Section 5120).
- 11) Requires the board to notify the members within 15 days of the results of the election (Civil Code Section 5120).
- 12) Requires the sealed ballots to be in the custody of the inspector of elections at all times or at a location designated by the inspector until the time limit for challenges for elections has expired (Civil Code Section 5125).
- 13) Requires the inspector of elections to make the ballots available upon written request if there is a request for a recount or challenge to the election. Requires a recount to be done in a manner that preserves the confidentiality of the vote. (Civil Code Section 5125)
- 14) Requires a quorum in an election in a CID only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum. (Civil Code 5130)

FISCAL EFFECT: None.

COMMENTS:

There are over 49,000 CIDs in the state that comprise over 4.9 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. CIDs range in size from three to 27,000 individual units. 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 an HOA. CIDs are governed by the Act as well as the governing documents of the association, including bylaws, declaration, and operating rules. CIDs are run by volunteer boards of directors, the members of which may have little or no experience managing real property or governing a nonprofit association and who must interpret the complex laws regulating CIDs. Boards must not only interpret the law, but enforce the restrictions and rules imposed by the governing documents and state law.

In addition to interpreting an HOA's individual governing documents, boards and homeowners must also follow the state law governing CIDs. The governing law has two main sources, the Corporations Code and the Act. If an HOA is incorporated it is typically governed by the Nonprofit Mutual Benefit Corporation Law. An unincorporated HOA is subject to both the general law on unincorporated associations and specific provisions of the Nonprofit Mutual Benefit Corporations Code. Although the Department of Real Estate oversees the early stages of the development of a CID, once a majority of the units are sold there is no entity that oversees

HOA governance. To enforce state law governing CIDs and the governing documents, members must pursue remedies in the courts.

Election procedures in CIDs: The existing CID election procedure is intended to provide secrecy to members and involves an extensive process, including the provision of double stuffed ballots. HOAs are required to secure an inspector of elections to open and tally all ballots received in an election. A problem reported by CIDs, regardless of size, is the challenge of getting enough members of the HOA to participate in an election to achieve a quorum. For an election to be valid, the governing documents of an HOA generally require that a quorum of the members vote. In some cases HOAs are not able to achieve a quorum in the first election and must conduct subsequent elections, which they report is a costly endeavor. Ultimately this cost, like all costs to operate the CID, is borne by the members through their assessments.

Purpose of this bill: This bill would allow members of an HOA to opt in to electronic voting as an alternative to voting by paper ballot. According to the author, AB 1360 seeks to increase voter participation in HOA elections while contributing to reductions in the use of paper and providing cost-saving opportunities for HOAs in the administration of elections.

Electronic balloting companies: It is unclear how many companies are available to provide electronic balloting to CIDs. A Google search generated a list of over twenty companies that appear to provide online voting for corporations. It is unclear if electronic balloting providers that are currently operating in the market are regulated or must comply with best practices or licensing. This bill provides a list of the qualifications an electronic balloting provider must comply with, including maintaining liability insurance, protecting the secrecy of ballots, and providing members a confirmation of their vote. It is unclear if this list is exhaustive or should be expanded to include other requirements that would further preserve the integrity of the voting process in CIDs.

Secrecy of ballots: One of the main goals of the existing election procedure for CIDs is to maintain secrecy. The double stuffed ballots and independent third party inspector of elections are intended to insure that members are confident that they can freely vote without reprisal. At the same time, some HOAs contend that the existing process is cumbersome and costly and that apathetic members do not vote in elections, both of which mean HOAs incur extra costs for multiple elections. The challenge to shifting to allowing electronic balloting is balancing the desire for secrecy with the goal of greater voter participation.

Role of inspector of elections: This bill still maintains a role for the inspector of elections to receive, count, and tabulate the voting results from the electronic balloting service provider. In the case of paper ballots this role is clear. With electronic voting, it is not entirely clear what type of record the electronic voting service provider would provide of the votes or how the inspector of elections would count and certify them. The author may wish to examine how this process can be addressed in the bill.

Arguments in support: The board of directors of Laguna Woods Village supports this bill. Laguna Woods Village is made up of 18,000 senior citizens residing in 12,736 homes in three housing non-profit mutual benefit corporations, two condominium associations, and one cooperative housing corporation. The board of directors of Laguna Woods Village writes, "This bill would provide an option for an association such as ours to offer an opt-in electronic voting option that would afford an opportunity for increased convenience thereby increasing voter

participation as well as reducing the cost of conducting elections which cost approximately \$15,000 annually."

Arguments in opposition: The Center for California Homeowner Association Law (CCHAL) opposes this bill and raises concerns that the bill could jeopardize the secrecy of the ballots. CCHAL contends the bill does not address several key questions, including how secrecy of the ballots will be maintained, how electronic ballots can be audited, and what the chain of custody is for ballots in electronic balloting. CCHAL maintains that the rationale for the bill is that electronic balloting increases voter participation, but that no research from a neutral third party establishes that this outcome will be achieved.

Committee amendments:

On page 2, restore lines 27 -29 and line 1 on page 3.

On page 3, line 2 delete "shall" and replace with "may"

On page 3, line 4 delete "shall" and replace with "may"

On page 4, line 1 delete "an independent third party that is"

On page 4, delete lines 13 through 15

On page 4, line 17 delete "subdivision (a) of"

REGISTERED SUPPORT / OPPOSITION:

Support

Community Associations Institute (sponsor)  
California Association of Realtors  
Executive Council of Homeowners  
Laguna Woods Village

Opposition

Center for California Homeowner Association Law

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