

Date of Hearing: May 1, 2013

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Norma Torres, Chair

AB 968 (Gordon) – As Amended: April 22, 2013

SUBJECT: Common interest developments: elections

SUMMARY: Establishes an alternative voting process for electing the board of directors of a homeowners association (HOA) in a common interested development (CID) with 15 units or less. Specifically, this bill:

- 1) Prior to using this alternative voting process, requires an HOA to hold an election, using the procedure outlined in Civil Code Sections 5110, 5115, 5120, and 5125, in which a simple majority of the members approve using the alternative voting procedure created by this bill.
- 2) Requires an HOA to send a notice to each member at least 30 days prior to the meeting at which the election will be held that includes the time, place, and the matter that will be decided in the election.
- 3) Requires a quorum of the members to be present at the meeting.
- 4) Provides that if the governing documents of the CID allow the use of a proxy, a proxy may be counted in establishing a quorum.
- 5) Allows a candidate for elected office to be nominated prior to the election or at the meeting where the election is held.
- 6) Requires votes to be cast by secret ballot, except when a proxy is allowed.
- 7) Allows a vote to be cast for a write-in candidate.
- 8) Requires the ballots to be counted openly at the meeting at which they were cast.
- 9) Requires the vote totals and results of the election to be announced at the meeting.
- 10) Provides that if a vote to elect a director result in a tie and a quorum is still present when the tie is announced, the members present at the meeting may vote immediately to break the tie.
- 11) Allows a runoff election to be used to break the tie, unless the governing documents provide for another method.
- 12) Makes elections that use this alternative voting process subject to all of the provisions governing elections in the Davis Stirling Act except those in Civil Code Sections 5110, 5115, 5120, and 5125.

EXISTING LAW

- 1) 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)
- 2) Requires an HOA to provide each owner of a separate interest with a ballot with two preaddressed envelopes with instructions on how to return ballots (Civil Code Section 5115).
- 3) 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).
- 4) Prohibits voters from being identified by name, address, lot, parcel, or unit number on the ballot (Civil Code Section 5115).
- 5) Requires the ballot to be inserted into the first envelope that is sealed. That envelope is inserted into a second envelope that is 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)
- 6) 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).
- 7) 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).

- 8) Makes a ballot irrevocable once it is received by the inspector of elections (Civil Code Section 5120).
- 9) 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).
- 10) Requires the board to notify the members within 15 days of the results of the election (Civil Code Section 5120).
- 11) 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 and until the time limit for challenges for elections has expired (Civil Code Section 5125).
- 12) 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)
- 13) 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. 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 association, including bylaws, declaration, and operating rules. CIDs are run by volunteer boards of directors (boards) 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 and on unincorporated associations, and specific provisions of the Nonprofit Mutual Benefit Corporations Code.

Size of Associations: CIDs range in size from three to 27,000 individual units. Although some medium and large CIDs employ community managers who are responsible for handling the day-

to-day operations of the HOA, many smaller CIDs are self-managed. According to the 2012 California Community Associations Statistics Report prepared by Levy & Company, CPAs, close to two-thirds of CIDs are 50 units or less. Levy & Company estimates that 35% of CIDs in the state are 15 units or smaller. HOAs are funded entirely by the collection of assessments from homeowners, which are used to maintain the common area of the CID and fund the reserves. One-quarter of all associations have annual revenue of \$75,001 to \$100,000.

Purpose of this bill: This bill would allow a CID with 15 units or less to operate an election of the board of directors in a simplified manner. Elections would be performed in a meeting where a quorum of members is present, using secret written ballots. The ballots would be collected and read out loud and the winner would be declared at the meeting. Those CIDs that have 15 units or less make up about one-third of all CIDs in the state and would benefit from a simplified procedure for electing the board of directors.

Existing election process: All HOAs regardless of size are required to follow the existing election procedure. The existing process is intended to provide anonymity 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. For small HOAs, the cost and time associated with multiple mailings and hiring an elections inspector can be a burden to the election process. In most cases, the governing documents of an HOA set a quorum, or percentage of the members, that must vote in the election to make it valid. 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.

This bill would establish an alternative voting process for CIDs with 15 units or less that would allow members to vote in person at a properly noticed meeting. Small HOAs would not be required to use this alternative election process, but could opt in if a majority of the membership approves. Before an HOA could use the alternative voting process created by this bill, it would have to hold an election using the existing voting procedure and get the approval of a simple majority of the members.

This bill would exempt CIDs with 15 units or less from certain election-related provisions of the Act, listed in the bill. All other provisions of the Act would continue to apply. For example, homeowners could challenge an election in court within one year of the election and the court could void the results of the election, if they found them to violate the provisions of this bill (Civil Code Section 5145).

Arguments in opposition: The California Alliance for Retired Americans (CARA) and Center for California Homeowner Association Law are opposed to this bill. CARA states that election procedures in existing law are necessary to protect consumers because every year board directors collect millions of dollars in assessments from senior homeowners and then spend those dollars via contracts on property managers, lawyers, contractors, and other vendors. CARA believes that seniors living in small associations need greater protections because they "are more frequently pressured and intimidated into voting a certain way under threat of social ostracism."

Arguments in support: The Congress of California Seniors (CCS) supports the bill and argues that it does not negate the rights of homeowners to challenge the results of an election. CCS states, "There are real problems, especially for smaller HOAs, with the complicated procedures

and costs required in current law. AB 968 could save homeowners money, insures that elections are transparent, and does no harm to existing consumer protections."

Committee amendment:

It is unclear if a smaller HOA would be required to conduct an election, by the process in existing law, every time they want to hold an election using the alternative voting procedure created in this bill. The amendment below will clarify that an HOA must only vote once, by the existing procedure, to opt-in to the alternative procedure, created by this bill.

5126. (a) Notwithstanding Sections 5110, 5115, 5120, and 5125, a common interest development with not more than ~~fifteen~~ 15 separate interests may conduct an election of directors pursuant to this section. *However, in order for a common interest development to conduct its **subsequent** elections pursuant to this section, it shall first hold an election, pursuant to the procedures set forth in Sections 5110, 5115, 5120, and 5125, in which its members, by simple majority vote, agree to conduct its elections of directors under the provisions of this section.*

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Community Managers
Community Associations Institute
Congress of California Seniors
Executive Council of Homeowners

Opposition

California Alliance of Retired Americans
California Consumer Affairs Association
Center for California Homeowner Association Law

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