

Date of Hearing: June 15, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

SB 563 (Committee on Transportation and Housing) – As Amended: May 23, 2011

SENATE VOTE: 37-1

SUBJECT: Common interest developments: meetings

SUMMARY: Requires a homeowners association (HOA) to send notice to members two days prior to an executive session meeting and restricts how the board of directors (board) can communicate via electronic means. Specifically, this bill:

- 1) Defines an "item of business" is any action within the authority of the board, except those actions that the board has delegated to any other person or persons, managing agency, officer of the association or committee of the board made up of less than a majority of the directors.
- 2) Adds the following to the definition of "meeting", a teleconference in which a majority of the members of the board are in different locations and are connected by electronic means through audio or video or both.
- 3) Requires a teleconference meeting to be conducted in a manner that protects the rights of the members of the association and complies with the Common Interest Development Open Meeting Act.
- 4) Provides that except for meetings that are only in executive session, the notice of the meeting of the board must identify at least one physical location so that the members of the association may attend and at least one member of the board must be at the location.
- 5) Provides that participation of the board members in a teleconference meeting constitutes presence at the meeting as long as all the board members are able to hear one another and the members of the association.
- 6) Requires that except for emergency meetings, a homeowners association must notify the members of an executive session meeting at least two days roper to the meeting.
- 7) Allows notice of a regular meeting or an executive session meeting to be made by electronic means if the member agrees with that method of notice.
- 8) Prohibits a board of directors from taking action on any item of business outside of a meeting.
- 9) Prohibits the board from conducting a meeting via a series of electronic transmissions, including but not limited to email, except for an emergency meeting if all members of the board have consented in writing and have filed that consent with the minutes of the meetings of the board.

EXISTING LAW

- 1) Provides that members of the HOA may attend a board meeting of the HOA except with the board adjourns to executive session to consider, litigation, contracts, member discipline, personnel matters, or to meet with a member at the member's request regarding payments of assessments.
- 2) Requires that any matter discussed in executive session to be noted in the minutes of the immediately following meeting that is open to the entire membership.
- 3) Provides that unless the time and place of the meeting is fixed by the bylaws or the bylaws require a longer period of notice, the HOA must notify the members of a meeting four days prior to the meeting.
- 4) Requires notice of a meeting, including the agenda, to be posted in a prominent place or places in the common area and be mailed to any owner who has requested notification of the board meetings by mail.
- 5) Allows the board president or any two members other than the president, to call an emergency meeting of the board if there are circumstances that could not have been reasonably foresee that require the immediate attention and possible action of the board.
- 6) Defines a "meeting" as a congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate on any "item of business" within the board's authority except matters that may be discussed in executive session.

FISCAL EFFECT: None.

COMMENTS:

There are over 47,000 CIDs in the state that range in size from three to 27,000 units. CIDs make up over six million total housing units which represents approximately one quarter of the state's housing stock. In the 1990s, over 60% of all residential construction starts in the state were CIDs. CIDs include condominiums, community apartment projects, and 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, as well as the governing documents of the association including bylaws, declaration, and operating rules. CIDs are governed by volunteer boards of directors who are elected by the members of the HOA and are responsible for interpreting the governing documents and state law. Except when CIDs are first developed, no state agency provides ongoing oversight to these communities.

HOA Meetings: HOA's are governed by volunteer boards of directors (board), elected by the members. Many CIDs employ a managing agent to carry out the day-to-day operations of the HOA. The governing documents of the HOA typically direct how frequently the board is

required to meet. A meeting of the HOA is defined as a congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate on any item of business within the board's authority except matters that may be discussed in executive session. HOA's are required to provide four days' written notice, including an agenda, of a meeting of the board.

Executive session: Existing law allows members of the HOA to attend all meetings except when the board of an HOA meets in closed-door, executive session to discuss litigation, contracts with a third party, member discipline, personnel matters or to meet with a member to discuss delinquent assessments. Executive session meetings are exempt from the definition of "meeting" and therefore are not subject to the four-day notice requirement. Members are not permitted to attend executive session meetings unless they request the meeting to discuss delinquent assessments or are subject to a disciplinary matter.

SB 563 would require the board of directors to notice executive session meetings of the board two days prior to the meeting, unless the meeting is for an emergency, in which case no notice is required. Members cannot attend the executive session meetings, but the author reasons the notice will create an opportunity to keep members informed about what is going on in the CID and a chance to weigh in with board members prior to the meeting.

Electronic communications: CID can be formed as either a corporation or a non-profit and those that are incorporated are subject to the Corporations Code. Corporations Code Section 7211 (b) allows a board to take an action, that it is required or permitted to take without a meeting, if all board members agree in writing to the action. The written consent is required to be filed with the minutes and has the same force and effect as a unanimous vote of the board. According to the author, this provision is used to allow boards to make decisions via e-mail outside of a board meeting; as a result, members are not privy to the discussion surrounding the decisions and cannot participate in the decision-making process. SB 563 prohibits a board of directors from taking action on any item of business outside of a meeting and prohibits the board from conducting a meeting via electronic transmissions except in the case of an emergency meeting.

Purpose of the bill: According to the author, committee staff has received a number of complaints that CIDs have used the provision of the Corporations Code to conduct regular board meetings via e-mail and without the participation of member of the association. In order to ensure open meetings and the ability for members to participate, this bill clarifies that no CID, whether incorporated or unincorporated, may conduct a meeting via e-mail except in emergency situation. The bill also clarifies that a CID board member may participate in a meeting by telephone or video conference if at least one board member is present at a physical location where members may attend and speak and if the connection allows any participates in the meeting to hear and be heard.

Item of business: SB 563 prohibits a board from taking action on any "item of business" outside of a meeting of the board. "Item of business" is defined as any action, within the authority of the board, except those actions that the board has validly delegated to any other person, managing agent, and officer of the association or a committee of the board made up of less than a majority of the members. State law details situations in which a board is directed to take specific actions in a meeting including, for example, voting to foreclose on an owner's unit requires specific board action. It stands to reason, that the addition of this section may provide boards flexibility

in delegating authority to a manager, committee or individual board member to make decisions outside of a board meeting if the action does not require a vote of the entire board.

Arguments in opposition: Opponents argue that there are actions that do not rise to the level of an emergency that require board action in between scheduled board meetings and eliminating the option to make decisions over e-mail will make the operations of the CID more difficult. Opponents contend that requiring notice of executive session meetings could create confusion for homeowners who will receive the notice but cannot attend the meeting and may create conflict between homeowners and boards. They also contend that additional notices will increase cost during a time when HOAs are struggling financially as a result of the down real estate market.

California Association of Community Managers has requested the bill be amended to allow board members to continue to meet and make decisions by unanimous consent under Corporations Code 7211 but require those actions to be ratified in the subsequent board meeting. They believe that the amendment will achieve the author's goal of transparency without creating additional costs required by the notice.

Double referred: The Assembly Committee on Rules referred SB 563 to the Committee on Housing and Community Development and Judiciary. If SB 563 passes this committee, the bill must be referred to the Committee on Judiciary.

Staff comments: There are generally two schools of thought regarding CIDs. Some view them as mini-governments with all of the powers and obligations as local governments. Other's view them as corporate entities which rely upon volunteer boards that should not be subject to the same scrutiny as local government. This bill would apply greater transparency standards similar to those applied to local governments.

The Committee may wish to consider if it would be appropriate to require HOAs that maintain a web site to post notice of executive session meetings on their website prior to the meeting rather than requiring notice be sent to all members.

REGISTERED SUPPORT / OPPOSITION:

Support

California Alliance for Consumer Protection
California Alliance for Retired Americans
Californians Aware
Executive Council of Homeowners
Three homeowners' associations board members (Auburn, Morgan Hill, and San Diego)

Opposition

Association for Common Sense CID Laws
California Association of Community Managers
Community Associations Institute
Four homeowners' associations (Irvine, Laguna Woods, Mission Viejo, and Roseville)

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