

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY MAY 3, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

AMENDED IN ASSEMBLY MARCH 18, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1726**

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**Introduced by Assembly Member Swanson**

February 3, 2010

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An act to amend ~~Section 1363.03~~ *Sections 1363.03 and 1363.05* of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1726, as amended, Swanson. Common interest developments: ballots: quorums.

The Davis-Stirling Common Interest Development Act governs the establishment and management of common interest developments. These provisions require that a common interest development be managed by an association and that elections related to the governance or administration of the common interest development conform to specified requirements, including the establishment of a quorum. Existing law provides for votes on specified matters to be held by secret ballot and requires the ballots to be sent, with 2 preaddressed envelopes, to each member of the association, in accordance with the model used by California counties for ensuring confidentiality of "vote by mail" ballots.

This bill would clarify that the ballots are mailed in accordance with the model used by California counties for ensuring confidentiality of

“voter absentee” ballots, and would specify that each ballot be placed into an inner envelope that is sealed and then placed into an outside mailing envelope addressed to the inspector for the election.

This bill would provide that, *notwithstanding governing documents to the contrary and* except for associations whose governing documents provide for a reduced quorum *for 2nd or subsequent elections*, as provided, the quorum required for purposes of a *2nd or* subsequent members’ meeting ~~scheduled for that particular election only or election of directors would require a quorum of~~ *be* 33% of the ~~association membership entitled to vote~~ *association’s voting power, as specified*. This bill would require that these provisions be disclosed in the members’ election materials mailed to the members, *including what the quorum for a 2nd or subsequent election of directors will be if there is a failure to obtain a quorum in the initial election*. This bill would also provide that these provisions do not apply to any ~~other part of the act~~ *election other than an election of directors*.

*The Common Interest Development Open Meeting Act provides that any member of the governing association of a common interest development may attend meetings of the board of directors of the association, except as specified.*

*This bill would allow the board of directors to participate in a meeting through the use of conference telephone or electronic video screen, if all participating board members are able to hear one another and members of the association speaking before the board.*

This bill would also make technical, clarifying changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1363.03 of the Civil Code is amended
- 2 to read:
- 3 1363.03. (a) An association shall adopt rules, in accordance
- 4 with the procedures prescribed by Article 4 (commencing with
- 5 Section 1357.100) of Chapter 2, that do all of the following:
- 6 (1) Ensure that if any candidate or member advocating a point
- 7 of view is provided access to association media, newsletters, or
- 8 Internet Web sites during a campaign, for purposes that are
- 9 reasonably related to that election, equal access shall be provided

1 to all candidates and members advocating a point of view,  
2 including those not endorsed by the board, for purposes that are  
3 reasonably related to the election. The association shall not edit  
4 or redact any content from these communications, but may include  
5 a statement specifying that the candidate or member, and not the  
6 association, is responsible for that content.

7 (2) Ensure access to the common area meeting space, if any  
8 exists, during a campaign, at no cost, to all candidates, including  
9 those who are not incumbents, and to all members advocating a  
10 point of view, including those not endorsed by the board, for  
11 purposes reasonably related to the election.

12 (3) Specify the qualifications for candidates for the board of  
13 directors and any other elected position, and procedures for the  
14 nomination of candidates, consistent with the governing documents.

15 (4) A nomination or election procedure shall not be deemed  
16 reasonable if it disallows any member of the association from  
17 nominating himself or herself for election to the board of directors.

18 (5) Specify the qualifications for voting, the voting power of  
19 each membership, the authenticity, validity, and effect of proxies,  
20 and the voting period for elections, including the times at which  
21 polls will open and close, consistent with the governing documents.

22 (6) Specify a method of selecting one or three independent third  
23 parties as inspector, or inspectors, of election utilizing one of the  
24 following methods:

25 (A) Appointment of the inspector or inspectors by the board.

26 (B) Election of the inspector or inspectors by the members of  
27 the association.

28 (C) Any other method for selecting the inspector or inspectors.

29 (7) Allow the inspector, or inspectors, to appoint and oversee  
30 additional persons to verify signatures and to count and tabulate  
31 votes as the inspector or inspectors deem appropriate, provided  
32 that the persons are independent third parties.

33 (b) Notwithstanding any other law or provision of the governing  
34 documents, elections regarding assessments legally requiring a  
35 vote, election and removal of members of the association board  
36 of directors, amendments to the governing documents, or the grant  
37 of exclusive use of common area property pursuant to Section  
38 1363.07 shall be held by secret ballot in accordance with the  
39 procedures set forth in this section. A quorum shall be required  
40 only if so stated in the governing documents of the association or

1 other provisions of law. If a quorum is required by the governing  
2 documents, each outside mailing envelope completed pursuant to  
3 subdivision (f) received by the inspector of elections shall be  
4 treated as a member present at a meeting for purposes of  
5 establishing a quorum. An association shall allow for cumulative  
6 voting using the secret ballot procedures provided in this section,  
7 if cumulative voting is provided for in the governing documents.

8 (c) (1) The association shall select an independent third party  
9 or parties as an inspector of election. The number of inspectors of  
10 election shall be one or three.

11 (2) For the purposes of this section, an independent third party  
12 includes, but is not limited to, a volunteer poll worker with the  
13 county registrar of voters, a licensee of the California Board of  
14 Accountancy, or a notary public. An independent third party may  
15 be a member of the association, but may not be a member of the  
16 board of directors or a candidate for the board of directors or related  
17 to a member of the board of directors or a candidate for the board  
18 of directors. An independent third party may not be a person,  
19 business entity, or subdivision of a business entity that is currently  
20 employed by or under contract with the association for any  
21 compensable services unless expressly authorized by rules of the  
22 association adopted pursuant to paragraph (6) of subdivision (a).

23 (3) The inspector or inspectors of election shall do all of the  
24 following:

25 (A) Determine the number of memberships entitled to vote and  
26 the voting power of each.

27 (B) Determine the authenticity, validity, and effect of proxies,  
28 if any.

29 (C) Receive ballots.

30 (D) Hear and determine all challenges and questions in any way  
31 arising out of or in connection with the right to vote.

32 (E) Count and tabulate all votes.

33 (F) Determine when the polls shall close, consistent with the  
34 governing documents.

35 (G) Determine the tabulated results of the election.

36 (H) Perform any acts as may be proper to conduct the election  
37 with fairness to all members in accordance with this section, the  
38 Corporations Code, and all applicable rules of the association  
39 regarding the conduct of the election that are not in conflict with  
40 this section.

1 (4) An inspector of election shall perform his or her duties  
2 impartially, in good faith, to the best of his or her ability, and as  
3 expeditiously as is practical. If there are three inspectors of election,  
4 the decision or act of a majority shall be effective in all respects  
5 as the decision or act of all. Any report made by the inspector or  
6 inspectors of election is prima facie evidence of the facts stated in  
7 the report.

8 (d) For purposes of this section, the following definitions shall  
9 apply:

10 (1) “Proxy” means a written authorization signed by a member  
11 or the authorized representative of the member that gives another  
12 member or members the power to vote on behalf of that member.

13 (2) “Sign or signed” means the placing of the member’s name  
14 on the proxy (whether by manual signature, typewriting, telegraphic  
15 transmission, or otherwise) by the member or authorized  
16 representative of the member.

17 (e) Proxies shall not be construed or used in lieu of a ballot. An  
18 association may use proxies if permitted or required by the bylaws  
19 of the association and if those proxies meet the requirements of  
20 this article, other laws, and the association’s governing documents,  
21 but the association shall not be required to prepare or distribute  
22 proxies pursuant to this section. Any instruction given in a proxy  
23 issued for an election that directs the manner in which the proxy  
24 holder is to cast the vote shall be set forth on a separate page of  
25 the proxy that can be detached and given to the proxy holder to  
26 retain. The proxy holder shall cast the member’s vote by secret  
27 ballot. The proxy may be revoked by the member prior to the  
28 receipt of the ballot by the inspector of elections as described in  
29 Section 7613 of the Corporations Code.

30 (f) Ballots and two preaddressed envelopes with instructions  
31 on how to return ballots shall be mailed by first-class mail or  
32 delivered by the association to every member not less than 30 days  
33 prior to the deadline for voting. In order to preserve confidentiality,  
34 a voter may not be identified by name, address, or lot, parcel, or  
35 unit number on the ballot. The association shall use as a model  
36 those procedures used by California counties for ensuring  
37 confidentiality of voter absentee ballots, including all of the  
38 following:

39 (1) The ballot itself is not signed by the voter, but is inserted  
40 into an inner envelope that is sealed. The envelope is inserted into

1 an outside mailing envelope that is sealed. In the upper left-hand  
2 corner of the outside mailing envelope, the voter shall ~~sign~~ *indicate*  
3 his or her name and ~~indicate~~ the address or separate interest  
4 identifier that entitles him or her to vote.

5 (2) The outside mailing envelope is addressed to the inspector  
6 or inspectors of election, who will be tallying the votes. The  
7 envelope may be mailed or delivered by hand to a location  
8 specified by the inspector or inspectors of election. The member  
9 may request a receipt for delivery.

10 (g) All votes shall be counted and tabulated by the inspector or  
11 inspectors of election or his or her designee in public at a properly  
12 noticed open meeting of the board of directors or members. Any  
13 candidate or other member of the association may witness the  
14 counting and tabulation of the votes. No person, including a  
15 member of the association or an employee of the management  
16 company, shall open or otherwise review any ballot prior to the  
17 time and place at which the ballots are counted and tabulated. The  
18 inspector of election, or his or her designee, may verify the  
19 member's information and signature on the outside mailing  
20 envelope prior to the meeting at which ballots are tabulated. Once  
21 a secret ballot is received by the inspector of elections, it shall be  
22 irrevocable.

23 (h) The tabulated results of the election shall be promptly  
24 reported to the board of directors of the association and shall be  
25 recorded in the minutes of the next meeting of the board of  
26 directors and shall be available for review by members of the  
27 association. Within 15 days of the election, the board shall  
28 publicize the tabulated results of the election in a communication  
29 directed to all members.

30 (i) The sealed ballots at all times shall be in the custody of the  
31 inspector or inspectors of election or at a location designated by  
32 the inspector or inspectors until after the tabulation of the vote,  
33 and until the time allowed by Section 7527 of the Corporations  
34 Code for challenging the election has expired, at which time  
35 custody shall be transferred to the association. If there is a recount  
36 or other challenge to the election process, the inspector or  
37 inspectors of election shall, upon written request, make the ballots  
38 available for inspection and review by an association member or  
39 his or her authorized representative. Any recount shall be conducted  
40 in a manner that preserves the confidentiality of the vote.

1 (j) After the transfer of the ballots to the association, the ballots  
2 shall be stored by the association in a secure place for no less than  
3 one year after the date of the election.

4 (k) Notwithstanding any other provision of law, the rules  
5 adopted pursuant to this section may provide for the nomination  
6 of candidates from the floor of membership meetings or nomination  
7 by any other manner. Those rules may permit write-in candidates  
8 for ballots.

9 (l) Except for the meeting to count the votes required in  
10 subdivision (f), an election may be conducted entirely by mail  
11 unless otherwise specified in the governing documents.

12 (m) The provisions of this section apply to both incorporated  
13 and unincorporated associations, notwithstanding any contrary  
14 provision of the governing documents.

15 (n) The procedures set forth in this section shall apply to votes  
16 cast directly by the membership, but do not apply to votes cast by  
17 delegates or other elected representatives.

18 (o) In the event of a conflict between this section and the  
19 provisions of the Nonprofit Mutual Benefit Corporation Law (Part  
20 3 (commencing with Section 7110) of Division 2 of Title 1 of the  
21 Corporations Code) relating to elections, the provisions of this  
22 section shall prevail.

23 (p) (1) ~~Except~~ *Notwithstanding governing documents to the*  
24 *contrary and except* for associations whose governing documents  
25 provide for a reduced quorum for ~~an adjourned members' meeting~~  
26 ~~or~~ *second or subsequent elections, if an* election of directors ~~that~~  
27 could not be held due to the failure to obtain a quorum, the quorum  
28 required for purposes of a *second or* subsequent ~~members' meeting~~  
29 ~~scheduled for that particular election only~~ or election of directors  
30 shall be 33 percent of the ~~association membership entitled to vote~~  
31 *association's voting power. In those cases in which the governing*  
32 *documents provide for a reduced quorum for second or subsequent*  
33 *elections, the quorum provisions of the governing documents shall*  
34 *control.*

35 (2) The association shall disclose ~~the provisions of paragraph~~  
36 ~~(4)~~ *in the members' election materials that are mailed to the*  
37 *members what the quorum for a second or subsequent election of*  
38 *directors will be if the initial election cannot be held due to the*  
39 *failure to obtain a quorum.*

1 (3) The provisions of ~~paragraph (1) shall only apply to this~~  
2 ~~section and are not applicable to any other provision in this title.~~  
3 *this subdivision shall not apply to any election other than an*  
4 *election of directors.*

5 *SEC. 2. Section 1363.05 of the Civil Code is amended to read:*

6 1363.05. (a) This section shall be known and may be cited as  
7 the Common Interest Development Open Meeting Act.

8 (b) Any member of the association may attend meetings of the  
9 board of directors of the association, except when the board  
10 adjourns to executive session to consider litigation, matters relating  
11 to the formation of contracts with third parties, member discipline,  
12 personnel matters, or to meet with a member, upon the member's  
13 request, regarding the member's payment of assessments, as  
14 specified in Section 1367 or 1367.1. The board of directors of the  
15 association shall meet in executive session, if requested by a  
16 member who may be subject to a fine, penalty, or other form of  
17 discipline, and the member shall be entitled to attend the executive  
18 session.

19 (c) Any matter discussed in executive session shall be generally  
20 noted in the minutes of the immediately following meeting that is  
21 open to the entire membership.

22 (d) The minutes, minutes proposed for adoption that are marked  
23 to indicate draft status, or a summary of the minutes, of any  
24 meeting of the board of directors of an association, other than an  
25 executive session, shall be available to members within 30 days  
26 of the meeting. The minutes, proposed minutes, or summary  
27 minutes shall be distributed to any member of the association upon  
28 request and upon reimbursement of the association's costs for  
29 making that distribution.

30 (e) Members of the association shall be notified in writing at  
31 the time that the pro forma budget required in Section 1365 is  
32 distributed, or at the time of any general mailing to the entire  
33 membership of the association, of their right to have copies of the  
34 minutes of meetings of the board of directors, and how and where  
35 those minutes may be obtained.

36 (f) Unless the time and place of meeting is fixed by the bylaws,  
37 or unless the bylaws provide for a longer period of notice, members  
38 shall be given notice of the time and place of a meeting as defined  
39 in subdivision (j), except for an emergency meeting, at least four  
40 days prior to the meeting. Notice shall be given by posting the

1 notice in a prominent place or places within the common area and  
2 by mail to any owner who had requested notification of board  
3 meetings by mail, at the address requested by the owner. Notice  
4 may also be given, by mail or delivery of the notice to each unit  
5 in the development or by newsletter or similar means of  
6 communication. The notice shall contain the agenda for the  
7 meeting.

8 (g) An emergency meeting of the board may be called by the  
9 president of the association, or by any two members of the  
10 governing body other than the president, if there are circumstances  
11 that could not have been reasonably foreseen which require  
12 immediate attention and possible action by the board, and which  
13 of necessity make it impracticable to provide notice as required  
14 by this section.

15 (h) The board of directors of the association shall permit any  
16 member of the association to speak at any meeting of the  
17 association or the board of directors, except for meetings of the  
18 board held in executive session. A reasonable time limit for all  
19 members of the association to speak to the board of directors or  
20 before a meeting of the association shall be established by the  
21 board of directors.

22 (i) (1) Except as described in paragraphs (2) to (4), inclusive,  
23 the board of directors of the association may not discuss or take  
24 action on any item at a nonemergency meeting unless the item was  
25 placed on the agenda included in the notice that was posted and  
26 distributed pursuant to subdivision (f). This subdivision does not  
27 prohibit a resident who is not a member of the board from speaking  
28 on issues not on the agenda.

29 (2) Notwithstanding paragraph (1), a member of the board of  
30 directors, a managing agent or other agent of the board of directors,  
31 or a member of the staff of the board of directors, may do any of  
32 the following:

33 (A) Briefly respond to statements made or questions posed by  
34 a person speaking at a meeting as described in subdivision (h).

35 (B) Ask a question for clarification, make a brief announcement,  
36 or make a brief report on his or her own activities, whether in  
37 response to questions posed by a member of the association or  
38 based upon his or her own initiative.

1 (3) Notwithstanding paragraph (1), the board of directors or a  
2 member of the board of directors, subject to rules or procedures  
3 of the board of directors, may do any of the following:

4 (A) Provide a reference to, or provide other resources for factual  
5 information to, its managing agent or other agents or staff.

6 (B) Request its managing agent or other agents or staff to report  
7 back to the board of directors at a subsequent meeting concerning  
8 any matter, or take action to direct its managing agent or other  
9 agents or staff to place a matter of business on a future agenda.

10 (C) Direct its managing agent or other agents or staff to perform  
11 administrative tasks that are necessary to carry out this subdivision.

12 (4) (A) Notwithstanding paragraph (1), the board of directors  
13 may take action on any item of business not appearing on the  
14 agenda posted and distributed pursuant to subdivision (f) under  
15 any of the following conditions:

16 (i) Upon a determination made by a majority of the board of  
17 directors present at the meeting that an emergency situation exists.  
18 An emergency situation exists if there are circumstances that could  
19 not have been reasonably foreseen by the board, that require  
20 immediate attention and possible action by the board, and that, of  
21 necessity, make it impracticable to provide notice.

22 (ii) Upon a determination made by the board by a vote of  
23 two-thirds of the members present at the meeting, or, if less than  
24 two-thirds of total membership of the board is present at the  
25 meeting, by a unanimous vote of the members present, that there  
26 is a need to take immediate action and that the need for action  
27 came to the attention of the board after the agenda was posted and  
28 distributed pursuant to subdivision (f).

29 (iii) The item appeared on an agenda that was posted and  
30 distributed pursuant to subdivision (f) for a prior meeting of the  
31 board of directors that occurred not more than 30 calendar days  
32 before the date that action is taken on the item and, at the prior  
33 meeting, action on the item was continued to the meeting at which  
34 the action is taken.

35 (B) Before discussing any item pursuant to this paragraph, the  
36 board of directors shall openly identify the item to the members  
37 in attendance at the meeting.

38 (5) *Members of the board of directors may participate in a*  
39 *meeting through use of a conference telephone or electronic video*  
40 *screen communication. Participation in a meeting through use of*

1 *a conference telephone or electronic video screen communication*  
2 *constitutes presence in person at that meeting if all board members*  
3 *participating in the meeting are able to hear one another and*  
4 *members of the association speaking on matters before the board.*

5 (j) As used in this section, “meeting” ~~includes~~ *means* any  
6 congregation of a majority of the members of the board at the same  
7 time and place to hear, discuss, or deliberate upon any item of  
8 business scheduled to be heard by the board, ~~except those matters~~  
9 ~~that may be discussed in executive session.~~

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