

ASSEMBLY BILL

No. 1360

Introduced by Assembly Member Torres

February 22, 2013

An act to amend Section 5110 of, and to add Section 5117 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1360, as introduced, Torres. Common interest developments: electronic voting.

Existing law, the Davis-Stirling Common Interest Development Act, defines and regulates common interest developments, which include community apartment projects, condominium projects, planned developments, and stock cooperatives. 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, among other things, the requirement that the association adopt rules to allow one or more inspectors to appoint or oversee independent 3rd parties to verify signatures and count and tabulate votes. Existing law authorizes a secret paper ballot to be distributed and voted upon by the membership without a meeting, and imposes other requirements relating to proxies and secret ballots. Existing law authorizes a member of an association to bring a civil action to enforce his or her rights and authorizes a court to impose a civil penalty of up to \$500 for a violation of the provisions governing elections.

This bill would authorize an association to conduct elections or other membership balloting by electronic voting, as specified, and would enact related provisions. The bill would require an association to provide

each member with an opportunity to indicate that he or she will be voting electronically and to provide a member who did not indicate so with a paper ballot for submission, as specified.

The bill would also declare the Legislature’s intent in this regard.

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. The Legislature finds and declares all of the
2 following:

3 (a) Common interest development association elections are
4 subject to specific procedures which are more restrictive than the
5 procedures for other nonprofit corporations that may conduct
6 balloting by electronic means under Section 7510 of the
7 Corporations Code.

8 (b) The procedures set forth in the Davis-Stirling Common
9 Interest Development Act do not permit the use of electronic
10 voting. The act requires the use of paper ballots and double
11 envelopes enclosing those ballots.

12 (c) The statutorily prescribed paper ballot voting procedure
13 failed to increase voter participation. Therefore, common interest
14 development membership meetings often fail for lack of quorum.

15 (d) Election quorums would be more easily achieved using
16 electronic balloting.

17 (e) Under existing law, the entire election process must be
18 repeated until quorum is achieved, which costs the association
19 significantly more money.

20 (f) Authority for the use of electronic voting would give
21 associations and their members an option which could save postage
22 and paper costs while preserving natural resources.

23 SEC. 2. Section 5110 of the Civil Code is amended to read:

24 5110. (a) The association shall select an independent third
25 party or parties as an inspector of elections. The number of
26 inspectors of elections shall be one or three.

27 (b) For the purposes of this section, an independent third party
28 includes, but is not limited to, a volunteer poll worker with the
29 county registrar of voters, a licensee of the California Board of
30 Accountancy, or a notary public. An independent third party may
31 be a member, but may not be a director or a candidate for director

1 or be related to a director or to a candidate for director. An
2 independent third party may not be a person, business entity, or
3 subdivision of a business entity who is currently employed or under
4 contract to the association for any compensable services unless
5 expressly authorized by rules of the association adopted pursuant
6 to paragraph (5) of subdivision (a) of Section 5105.

7 (c) The inspector or inspectors of elections shall do all of the
8 following:

9 (1) Determine the number of memberships entitled to vote and
10 the voting power of each.

11 (2) Determine the authenticity, validity, and effect of proxies,
12 if any.

13 (3) Receive ballots, *or receive the tally report from an electronic*
14 *balloting service provider.*

15 (4) Hear and determine all challenges and questions in any way
16 arising out of or in connection with the right to vote.

17 (5) Count and tabulate all votes, *including the votes indicated*
18 *on the tally report received pursuant to paragraph (3).*

19 (6) Determine when the polls shall close, consistent with the
20 governing documents.

21 (7) Determine the tabulated results of the election.

22 (8) Perform any acts as may be proper to conduct the election
23 with fairness to all members in accordance with this article, the
24 Corporations Code, and all applicable rules of the association
25 regarding the conduct of the election that are not in conflict with
26 this article.

27 (d) An inspector of elections shall perform all duties impartially,
28 in good faith, to the best of the inspector of election's ability, and
29 as expeditiously as is practical. If there are three inspectors of
30 elections, the decision or act of a majority shall be effective in all
31 respects as the decision or act of all. Any report made by the
32 inspector or inspectors of elections is prima facie evidence of the
33 facts stated in the report.

34 SEC. 3. Section 5117 is added to the Civil Code, to read:

35 5117. Notwithstanding subdivision (a) of Section 5115,
36 subdivision (a) of Section 5120, or Section 5125, the association
37 may conduct elections or other membership balloting by electronic
38 voting conducted pursuant to Section 7510 of the Corporations
39 Code. The association shall provide each member with an
40 opportunity to indicate that he or she will be voting electronically.

1 The association shall provide a member who did not indicate that
2 he or she would be voting electronically with a paper ballot, which
3 shall be submitted by the member directly to the inspector or
4 inspectors of elections at the meeting at which the votes will be
5 counted.

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