

AMENDED IN ASSEMBLY APRIL 25, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1360**

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**Introduced by Assembly Member Torres**

February 22, 2013

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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 amended, 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, *if electronic voting is to be conducted*, 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~~ *ballots*, 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~~ *that* could save  
22 postage 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~~

1 ~~Accountancy, or a notary public.~~ An independent third party may  
2 be a member, but ~~may~~ *shall* not be a director or a candidate for  
3 director or be related to a director or to a candidate for director.  
4 An independent third party ~~may~~ *shall* not be a person, business  
5 entity, or subdivision of a business entity who is currently  
6 employed or under contract to the association for any compensable  
7 services, unless expressly authorized by rules of the association  
8 adopted pursuant to paragraph (5) of subdivision (a) of Section  
9 5105.

10 (c) The inspector or inspectors of elections shall do all of the  
11 following:

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

14 (2) Determine the authenticity, validity, and effect of proxies,  
15 if any.

16 (3) Receive ballots, or receive the ~~tally report~~ *voting results*  
17 from an electronic balloting service provider.

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

20 (5) Count and tabulate all votes, including the ~~votes indicated~~  
21 ~~on the tally report~~ *voting results* received pursuant to paragraph  
22 (3).

23 (6) Determine when the polls shall close, consistent with the  
24 governing documents.

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

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

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

38 (e) *As used in this section:*

39 (1) *"Electronic balloting service provider" means a business*  
40 *that meets all of the following requirements:*

1 (A) *Is an independent third party that is not affiliated with the*  
2 *association management or members.*

3 (B) *Is insured for liability.*

4 (C) *Protects the secrecy of ballots.*

5 (D) *Protects the anonymity of the voter by ensuring that*  
6 *members' names are not listed when the votes are tallied and*  
7 *submitted to the association by the electronic balloting service*  
8 *provider.*

9 (E) *Produces a record verifying dates and times that votes were*  
10 *cast.*

11 (F) *Provides to a member a secure confirmation of the member's*  
12 *electronically cast vote.*

13 (2) *"Independent third party" includes, but is not limited to, a*  
14 *volunteer poll worker with the county registrar of voters, a licensee*  
15 *of the California Board of Accountancy, or a notary public.*

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

17 5117. Notwithstanding subdivision (a) of Section 5115,  
18 subdivision (a) of Section 5120, or Section 5125, the association  
19 may conduct elections ~~or other membership balloting~~ by electronic  
20 voting conducted pursuant to *subdivision (a) of Section 7510 of*  
21 *the Corporations Code.* ~~The~~ *If electronic voting is to be conducted*  
22 *in accordance with this section, the association shall provide each*  
23 *member with an opportunity to indicate that he or she will be voting*  
24 *electronically. For a member who indicated that he or she will be*  
25 *voting electronically, not less than 30 days prior to the voting*  
26 *deadline, the association shall provide to the member the ballot*  
27 *and any related material by electronic transmission. Member*  
28 *responses shall be returned to the association by electronic*  
29 *transmission by the voting deadline.* ~~The association shall provide,~~  
30 ~~for a member who did not indicate that he or she would be voting~~  
31 ~~electronically, shall provide the member with a paper ballot, which~~  
32 ~~shall be submitted by the member directly to the inspector or~~  
33 ~~inspectors of elections at the meeting at which the votes will be~~  
34 ~~counted pursuant to Section 5115.~~