

AMENDED IN ASSEMBLY MAY 2, 2013

AMENDED IN ASSEMBLY APRIL 25, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1360

Introduced by Assembly Member Torres
(Coauthor: Assembly Member Gordon)

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 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 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 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 that 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.

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

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

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

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

15 (3) Receive ballots, or receive the voting results from an
16 electronic balloting service provider.

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

19 (5) Count and tabulate all votes, including the voting results
20 received pursuant to paragraph (3).

21 (6) Determine when the polls shall close, consistent with the
22 governing documents.

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

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

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

36 (e) As used in this section:

37 (1) "Electronic balloting service provider" means a business
38 that meets all of the following requirements:

39 (A) ~~Is an independent third party that is not affiliated with the~~
40 association management or members.

- 1 (B) Is insured for liability.
- 2 (C) Protects the secrecy of ballots.
- 3 (D) Protects the anonymity of the voter by ensuring that
- 4 members' names are not listed when the votes are tallied and
- 5 submitted to the association by the electronic balloting service
- 6 provider.
- 7 (E) Produces a record verifying dates and times that votes were
- 8 cast.
- 9 (F) Provides to a member a secure confirmation of the member's
- 10 electronically cast vote.

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

14 SEC. 3. Section 5117 is added to the Civil Code, to read:
 15 5117. Notwithstanding ~~subdivision (a) of~~ Section 5115,
 16 subdivision (a) of Section 5120, or Section 5125, the association
 17 may conduct elections by electronic voting conducted pursuant to
 18 subdivision (a) of Section 7510 of the Corporations Code. If
 19 electronic voting is to be conducted in accordance with this section,
 20 the association shall provide each member with an opportunity to
 21 indicate that he or she will be voting electronically. For a member
 22 who indicated that he or she will be voting electronically, not less
 23 than 30 days prior to the voting deadline, the association shall
 24 provide to the member the ballot and any related material by
 25 electronic transmission. Member responses shall be returned to
 26 the association by electronic transmission by the voting deadline.
 27 The association, for a member who did not indicate that he or she
 28 would be voting electronically, shall provide the member with a
 29 ballot pursuant to Section 5115.