

AMENDED IN SENATE JUNE 24, 2013

AMENDED IN ASSEMBLY MAY 2, 2013

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  
(Coauthor: Assembly Member Gordon)**

February 22, 2013

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An act to amend ~~Section 5110~~ *Sections 5110 and 5125* 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. *Existing law requires that the sealed ballots remain in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed for challenging the election has expired, when custody is required to be transferred to the association.*

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 require the electronic balloting service provider to retain the ballot data until the time allowed for challenging the election has expired.*

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.

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

4 (f) Authority for the use of electronic voting would give  
5 associations and their members an option that could save postage  
6 and paper costs while preserving natural resources.

7 (g) *Electronic transactions are already commonly used in*  
8 *California to conduct state voter registration, vehicle registration*  
9 *and driver's license renewals, payment of local real property and*  
10 *state income taxes, banking transactions, travel reservations, and*  
11 *corporation elections, because they are technologically secure*  
12 *and provide users with confirmation of their transaction.*

13 (h) *Senate Bill 820 (Chapter 428 of the Statutes of 1999) created*  
14 *the Uniform Electronic Transactions Act (Title 2.5 (commencing*  
15 *with Section 1633.1) of Part 2 of Division 3 of the Civil Code),*  
16 *which provides that a record or signature may not be denied legal*  
17 *effect or enforceability solely because it is in electronic form, that*  
18 *a contract may not be denied legal effect or enforceability solely*  
19 *because an electronic record was used in its formation, and that*  
20 *if a law requires a record to be in writing, or if a law requires a*  
21 *signature, an electronic record satisfies the law.*

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

23 5110. (a) The association shall select an independent third  
24 party or parties as an inspector of elections. The number of  
25 inspectors of elections shall be one or three.

26 (b) An independent third party may be a member, but shall not  
27 be a director or a candidate for director or be related to a director  
28 or to a candidate for director. An independent third party shall not  
29 be a person, business entity, or subdivision of a business entity  
30 who is currently employed or under contract to the association for  
31 any compensable services, unless expressly authorized by rules of  
32 the association adopted pursuant to paragraph (5) of subdivision  
33 (a) of Section 5105.

34 (c) The inspector or inspectors of elections shall do all of the  
35 following:

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

38 (2) Determine the authenticity, validity, and effect of proxies,  
39 if any.

- 1 (3) Receive ballots, or receive the voting results from an
- 2 electronic balloting service provider.
- 3 (4) Hear and determine all challenges and questions in any way
- 4 arising out of or in connection with the right to vote.
- 5 (5) Count and tabulate all votes, including the voting results
- 6 received pursuant to paragraph (3).
- 7 (6) Determine when the polls shall close, consistent with the
- 8 governing documents.
- 9 (7) Determine the tabulated results of the election.
- 10 (8) Perform any acts as may be proper to conduct the election
- 11 with fairness to all members in accordance with this article, the
- 12 Corporations Code, and all applicable rules of the association
- 13 regarding the conduct of the election that are not in conflict with
- 14 this article.
- 15 (d) An inspector of elections shall perform all duties impartially,
- 16 in good faith, to the best of the inspector of election’s ability, and
- 17 as expeditiously as is practical. If there are three inspectors of
- 18 elections, the decision or act of a majority shall be effective in all
- 19 respects as the decision or act of all. Any report made by the
- 20 inspector or inspectors of elections is prima facie evidence of the
- 21 facts stated in the report.
- 22 (e) As used in this section:
- 23 (1) “Electronic balloting service provider” means a business
- 24 that meets all of the following requirements:
- 25 (A) Is not affiliated with the association management or
- 26 members.
- 27 (B) Is insured for liability.
- 28 (C) Protects the secrecy of ~~ballots~~ *the votes*.
- 29 (D) Protects the anonymity of the voter by ensuring that
- 30 members’ names are not ~~listed~~ *associated with the votes* when the
- 31 votes are tallied and submitted to the association by the electronic
- 32 balloting service provider.
- 33 (E) Produces a record verifying dates and times that votes were
- 34 cast.
- 35 (F) *Produces a list of members who voted electronically.*
- 36 ~~(F)~~
- 37 (G) Provides to a member a secure confirmation of the member’s
- 38 electronically cast vote.

1 (2) “Independent third party” includes, but is not limited to, a  
2 volunteer poll worker with the county registrar of voters, a licensee  
3 of the California Board of Accountancy, or a notary public.

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

5 5117. Notwithstanding Section 5115, subdivision (a) of Section  
6 5120, or Section 5125, the association may conduct elections by  
7 electronic voting conducted pursuant to subdivision (a) of Section  
8 7510 of the Corporations Code. If electronic voting is to be  
9 conducted in accordance with this section, the association shall  
10 provide each member with an opportunity to indicate that he or  
11 she will be voting electronically. For a member who indicated that  
12 he or she will be voting electronically, not less than 30 days prior  
13 to the voting deadline, the association shall provide to the member  
14 the ballot and any related material by electronic transmission.  
15 Member responses shall be returned to the association by electronic  
16 transmission by the voting deadline. The association, for a member  
17 who did not indicate that he or she would be voting electronically,  
18 shall provide the member with a ballot pursuant to Section 5115.

19 SEC. 4. Section 5125 of the Civil Code is amended to read:

20 5125. The sealed ballots at all times shall be in the custody of  
21 the inspector or inspectors of elections or at a location designated  
22 by the inspector or inspectors until after the tabulation of the vote,  
23 and until the time allowed by Section 5145 for challenging the  
24 election has expired, at which time custody shall be transferred to  
25 the association. *The electronic balloting service provider, as*  
26 *defined in Section 5110, shall retain the ballot data until the time*  
27 *allowed by Section 5145 for challenging the election has expired.*  
28 If there is a recount or other challenge to the election process, the  
29 inspector or inspectors of elections shall, upon written request,  
30 make the ballots available for inspection and review by an  
31 association member or the member’s authorized representative.  
32 Any recount shall be conducted in a manner that preserves the  
33 confidentiality of the vote.