

AMENDED IN ASSEMBLY MAY 3, 2016

AMENDED IN ASSEMBLY APRIL 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1799

Introduced by Assembly Member Mayes

February 8, 2016

An act to amend Sections 5100, 5105, and 5145 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1799, as amended, Mayes. Common interest developments: association governance: elections.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments that are not a commercial or industrial common interest development. The act requires a common interest development to be managed by an association, requires the association to select one or 3 independent 3rd parties as an inspector or inspectors of elections, and generally requires the association's elections regarding assessments legally requiring a vote, the election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area, to be conducted by the inspector or inspectors of elections in accordance with specified rules and procedures. The act excepts from these election requirements an election of directors if the governing documents of the association provide that one member from each separate interest is a director.

This bill would additionally except from those election requirements an election of directors if the election is uncontested, as defined, and would provide a procedure for an election to be declared as uncontested.

The bill adds 2 additional election requirements that would ensure an announcement of an election and notification of nomination procedures is provided in a specific manner and would ensure a member in good standing is not denied the right to vote or the right to be a candidate for director. The bill would authorize a cause of action alleging a violation of ~~the~~ *these and other specified* election requirements to be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

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 5100 of the Civil Code is amended to
2 read:

3 5100. (a) Notwithstanding any other law or provision of the
4 governing documents, elections regarding assessments legally
5 requiring a vote, the election and removal of directors, amendments
6 to the governing documents, or the grant of exclusive use of
7 common area pursuant to Section 4600 shall be held by secret
8 ballot in accordance with the procedures set forth in this article.

9 (b) This article also governs an election on any topic that is
10 expressly identified in the operating rules as being governed by
11 this article.

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

15 (d) The procedures set forth in this article 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 (e) In the event of a conflict between this article 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 article shall prevail.

23 (f) Directors shall not be required to be elected pursuant to this
24 article if the governing documents provide that one member from
25 each separate interest is a director, or if the election of directors
26 is uncontested. For purposes of this subdivision, an election of
27 directors is uncontested if the number of candidates for election,

1 including write-in candidates, if applicable, does not exceed the
2 number of directors to be elected at that election and the association
3 has declared the election is uncontested.

4 (1) An association may declare an election of directors is
5 uncontested only if all of the following procedures have been
6 satisfied:

7 (A) The election rules required by Section 5105 have been
8 adopted and complied with for the election.

9 (B) All declared candidates were nominated before the deadline
10 for nominations and in accordance with all lawful provisions of
11 the association's governing documents.

12 (C) The inspector of elections has informed the board that the
13 number of candidates does not exceed the number of directors to
14 be elected at that election.

15 (D) The board votes in open session to declare the election is
16 uncontested after a hearing during an open board meeting where
17 members are able to make objections to the board making that
18 declaration.

19 (E) At least 20 days before the board meeting for the vote to
20 declare the election is uncontested, the association provides general
21 notice to all members as set forth in Section 4045 of all of the
22 following:

23 (i) The intention of the board to vote at a regular board meeting
24 to declare the election of directors is uncontested, and giving date,
25 time, and place of that board meeting.

26 (ii) A disclosure to members of the names of all candidates,
27 however nominated, including self-nomination, who will be
28 declared elected if the board declares the election is uncontested.

29 (iii) The right of any member to appear at the board meeting
30 and make an objection to the board declaring the election is
31 uncontested before the board votes on the matter.

32 (F) The names of all candidates, however nominated, the general
33 notice required by subparagraph (E), any objection to the board
34 making the declaration that the election of directors is uncontested,
35 and the board vote declaring the election of directors is uncontested
36 shall be recorded in the meeting minutes.

37 (2) (A) If the ~~association's~~ *association's* governing documents
38 provide for write-in votes on the ballot, the association shall allow
39 15 days after the board meeting described in subparagraph (D) of
40 paragraph (1) for a write-in candidate to submit his or her name

1 to the inspector of elections. In the event one or more write-in
 2 candidates are timely submitted and additional candidates result
 3 in the total number of candidates exceeding the number of directors
 4 to be elected at that election, an election shall be held pursuant to
 5 general election rules as provided in this article. If after the 15-day
 6 period the total number of candidates, including the number of
 7 write-in candidates, does not exceed the number of directors to be
 8 elected at that election, the uncontested election results shall be
 9 sealed and become effective immediately, with any write-in
 10 candidates added as members. The new board shall take office
 11 immediately following the sealing of the election.

12 (B) ~~An association that provides~~ *If an association's governing*
 13 *documents do not provide for write-in votes on the ballot, as*
 14 *provided by subparagraph (A), then the association must provide*
 15 *at least 15 days' general notice of a self-nomination process*
 16 ~~shall not be required to comply with subparagraph (A).~~ *following*
 17 *the board determination described in subparagraph (D) of*
 18 *paragraph (1).*

19 SEC. 2. Section 5105 of the Civil Code is amended to read:

20 5105. (a) An association shall adopt rules, in accordance with
 21 the procedures prescribed by Article 5 (commencing with Section
 22 4340) of Chapter 3, that do all of the following:

23 (1) Ensure that if any candidate or member advocating a point
 24 of view is provided access to association media, newsletters, or
 25 Internet Web sites during a campaign, for purposes that are
 26 reasonably related to that election, equal access shall be provided
 27 to all candidates and members advocating a point of view,
 28 including those not endorsed by the board, for purposes that are
 29 reasonably related to the election. The association shall not edit
 30 or redact any content from these communications, but may include
 31 a statement specifying that the candidate or member, and not the
 32 association, is responsible for that content.

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

38 (3) Specify the qualifications for candidates for the board and
 39 any other elected position, and procedures for the nomination of
 40 candidates, consistent with the governing documents. A nomination

1 or election procedure shall not be deemed reasonable if it disallows
2 any member from nominating himself or herself for election to the
3 board.

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

8 (5) Specify a method of selecting one or three independent third
9 parties as inspector or inspectors of elections utilizing one of the
10 following methods:

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

12 (B) Election of the inspector or inspectors by the members of
13 the association.

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

15 (6) Allow the inspector or inspectors to appoint and oversee
16 additional persons to verify signatures and to count and tabulate
17 votes as the inspector or inspectors deem appropriate, provided
18 that the persons are independent third parties.

19 (7) Ensure that an announcement of an election and notification
20 of nomination procedures, including self-nomination, shall be
21 provided to all members by general notice as set forth in Section
22 4045 at least 60 days before any election for directors.

23 (8) Ensure a member in good standing, who satisfies any lawful
24 requirements specified by the association's governing documents,
25 shall not be denied the right to vote or the right to be a candidate
26 for director.

27 (b) Notwithstanding any other law, the rules adopted pursuant
28 to this section may provide for the nomination of candidates from
29 the floor of membership meetings or nomination by any other
30 manner. Those rules may permit write-in candidates for ballots.

31 SEC. 3. Section 5145 of the Civil Code is amended to read:

32 5145. (a) A member of an association may bring a civil action
33 for declaratory or equitable relief for a violation of this article by
34 the association, including, but not limited to, injunctive relief,
35 restitution, or a combination thereof, within one year of the date
36 the cause of action accrues. Upon a finding that the election
37 procedures of this article, or the adoption of and adherence to rules
38 provided by Article 5 (commencing with Section 4340) of Chapter
39 3, were not followed, a court may void any results of the election.

1 (b) A member who prevails in a civil action to enforce the
2 member's rights pursuant to this article shall be entitled to
3 reasonable attorney's fees and court costs, and the court may
4 impose a civil penalty of up to five hundred dollars (\$500) for each
5 violation, except that each identical violation shall be subject to
6 only one penalty if the violation affects each member of the
7 association equally. A prevailing association shall not recover any
8 costs, unless the court finds the action to be frivolous,
9 unreasonable, or without foundation.

10 (c) A cause of action under Sections 5100 to 5130, inclusive,
11 with respect to access to association resources by a candidate or
12 member advocating a point of view, the receipt of a ballot by a
13 member, the counting, tabulation, or reporting of, or access to,
14 ballots for inspection and review after tabulation, or a violation of
15 a rule required by Section 5105 may be brought in small claims
16 court if the amount of the demand does not exceed the jurisdiction
17 of that court.