

AMENDED IN SENATE JUNE 15, 2014

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

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

February 22, 2013

An act to amend Sections ~~5110~~ and *5110, 5120, 5125, and 5260* of, and to add Section ~~5117~~ *5116* 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 *electronically submitted* ballot data until the time allowed for challenging the election has expired.

This bill set forth minimum requirements of an electronic voting system for an association’s election. The bill would also authorize the Secretary of State to study and adopt regulations governing the use of electronic voting systems to determine whether the systems are capable of complying with these requirements.

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

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
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.

1 ~~(e) The statutorily prescribed paper ballot voting procedure~~
2 ~~failed to increase voter participation. Therefore, common interest~~
3 ~~development membership meetings often fail for lack of quorum.~~

4 ~~(d)~~

5 (c) Election quorums would be more easily achieved using
6 electronic balloting.

7 ~~(e)~~

8 (d) Under existing law, the entire election process must be
9 repeated until quorum is achieved, which costs the association
10 significantly more money.

11 ~~(f)~~

12 (e) Authority for the use of electronic voting would give
13 associations and their members an option that could save postage
14 and paper costs while preserving natural resources.

15 ~~(g)~~

16 (f) Electronic transactions are already commonly used in
17 California to conduct state voter registration, vehicle registration
18 and driver's license renewals, payment of local real property and
19 state income taxes, banking transactions, travel reservations, and
20 corporation elections, because they are technologically secure and
21 provide users with confirmation of their transaction.

22 ~~(h)~~

23 (g) Senate Bill 820 (Chapter 428 of the Statutes of 1999) created
24 the Uniform Electronic Transactions Act (Title 2.5 (commencing
25 with Section 1633.1) of Part 2 of Division 3 of the Civil Code),
26 which provides that a record or signature may not be denied legal
27 effect or enforceability solely because it is in electronic form, that
28 a contract may not be denied legal effect or enforceability solely
29 because an electronic record was used in its formation, and that if
30 a law requires a record to be in writing, or if a law requires a
31 signature, an electronic record satisfies the law.

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

33 5110. (a) The association shall select an independent third
34 party or parties as an inspector of elections. The number of
35 inspectors of elections shall be one or three.

36 (b) An independent third party may be a member, but shall not
37 be a director or a candidate for director or be related to a director
38 or to a candidate for director. An independent third party shall not
39 be a person, business entity, or subdivision of a business entity
40 who is currently employed or under contract to the association for

1 any compensable services, unless expressly authorized by rules of
2 the association adopted pursuant to paragraph (5) of subdivision
3 (a) of Section 5105.

4 (c) The inspector or inspectors of elections shall do all of the
5 following:

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

8 (2) Determine the authenticity, validity, and effect of proxies,
9 if any.

10 (3) Receive ballots, ~~or receive the voting results from an~~
11 ~~electronic balloting service provider~~ *including those submitted*
12 *through an electronic voting system pursuant to Section 5116.*

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

15 (5) Count and tabulate all votes, ~~including the voting results~~
16 ~~received pursuant to paragraph (3)~~ *those submitted through an*
17 *electronic voting system pursuant to Section 5116.*

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

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

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

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

33 (e) ~~As used in this section:~~ *section, an "independent third party"*
34 *includes, but is not limited to, a volunteer poll worker with the*
35 *county registrar of voters, a licensee of the California Board of*
36 *Accountancy, or a notary public.*

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

39 (A) ~~Is not affiliated with the association management or~~
40 ~~members.~~

1 ~~(B) Is insured for liability.~~

2 ~~(C) Protects the secrecy of the votes.~~

3 ~~(D) Protects the anonymity of the voter by ensuring that~~
4 ~~members' names are not associated with the votes when the votes~~
5 ~~are tallied and submitted to the association by the electronic~~
6 ~~balloting service provider.~~

7 ~~(E) Produces a record verifying dates and times that votes were~~
8 ~~cast.~~

9 ~~(F) Produces a list of members who voted electronically.~~

10 ~~(G) Provides to a member a secure confirmation of the member's~~
11 ~~electronically cast vote.~~

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

15 *SEC. 3. Section 5116 is added to the Civil Code, to read:*

16 *5116. (a) Notwithstanding subdivision (a) of Section 5115,*
17 *the association may conduct elections by electronic voting*
18 *conducted pursuant to this section. If electronic voting is to be*
19 *conducted, the association shall provide each member with an*
20 *opportunity to indicate whether he or she will vote electronically.*
21 *For a member who indicates that he or she will vote electronically,*
22 *not less than 30 days before the voting deadline, the association*
23 *shall provide to the member the ballot and any related material*
24 *by electronic transmission. Member ballots shall be returned to*
25 *the association by electronic transmission by the voting deadline.*
26 *The association, for a member who did not indicate that he or she*
27 *would be voting electronically, shall provide the member with a*
28 *ballot pursuant to Section 5115. The inspector of elections, or the*
29 *designee of the inspector of elections, may verify the authenticity*
30 *of a member's request to vote electronically.*

31 *(b) The association may conduct elections by electronic voting*
32 *only if all of the following requirements are met:*

33 *(1) In accordance with subdivision (a), the association receives*
34 *confirmation from at least one member that he or she will be voting*
35 *electronically.*

36 *(2) The association, or an electronic balloting service provider*
37 *acting on behalf of the association, provides each member that*
38 *will be voting electronically with all of the following:*

39 *(A) A method to securely authenticate the member's identity to*
40 *the electronic voting system.*

1 (B) A method to secure a member's electronic voting platform
2 from, among other things, malicious software and the ability of
3 others to remotely monitor or control the electronic voting
4 platform.

5 (C) A method to securely communicate with the electronic voting
6 system.

7 (D) A method to securely review an electronic ballot prior to
8 its transmission to the electronic voting system.

9 (E) A method to securely transmit an electronic ballot to the
10 electronic voting system that ensures the secrecy and integrity of
11 each ballot.

12 (F) A method to allow members to verify the authenticity of
13 receipts sent from the electronic voting system.

14 (G) A method to confirm, at least 14 days before the voting
15 deadline, that a member's electronic voting platform can
16 successfully communicate with the electronic voting system.

17 (H) In the event of a disruption of the electronic voting system,
18 the ability to vote by mail pursuant to Section 5115 or to deliver
19 a ballot in-person, notwithstanding the 30-day requirement in
20 subdivision (a) of Section 5115.

21 (3) The association, or an electronic balloting service provider
22 acting on behalf of the association, ensures that the electronic
23 voting system meets all of the following requirements:

24 (A) The electronic voting system is accessible to members with
25 disabilities.

26 (B) The electronic voting system is secure from, among other
27 things, malicious software and the ability of others to remotely
28 monitor or control the system.

29 (C) The electronic voting system is able to securely authenticate
30 a member's identity.

31 (D) The electronic voting system is able to securely communicate
32 with each member's electronic voting platform.

33 (E) The electronic voting system is able to securely authenticate
34 the validity of each electronic ballot to ensure that the ballot has
35 not been altered in transit.

36 (F) The electronic voting system is able to securely transmit a
37 receipt from the electronic voting system to each member who
38 casts an electronic ballot.

39 (G) The electronic voting system is able to securely and
40 permanently separate any authentication or identifying information

1 from the electronic ballot, rendering it impossible to tie any ballot
2 to any specific member.

3 (H) The electronic voting system is able to securely allow
4 members to confirm that their ballot has been received and
5 counted.

6 (I) The electronic voting system is able to store electronic ballots
7 in a secure manner, keeping them accessible to election officials
8 for recount, inspection, and review purposes as required by Section
9 5125.

10 (4) The Secretary of State has approved the electronic voting
11 system in accordance with the procedures for certification of voting
12 systems in Article 1 (commencing with Section 19220) of Chapter
13 3 of Division 19 of the Elections Code. For purposes of this
14 subdivision, the prohibitions contained in Section 19205 of the
15 Elections Code shall not apply.

16 (c) An electronic balloting service provider shall not provide
17 electronic voting services to an association pursuant to this section
18 unless it is both insured for liability and is not affiliated with the
19 association management or members.

20 (d) The Secretary of State may study and adopt regulations
21 governing the use of electronic voting systems to determine whether
22 they are capable of complying with paragraphs (2) and (3) of
23 subdivision (b).

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

25 ~~5117. Notwithstanding Section 5115, subdivision (a) of Section~~
26 ~~5120, or Section 5125, the association may conduct elections by~~
27 ~~electronic voting conducted pursuant to subdivision (a) of Section~~
28 ~~7510 of the Corporations Code. If electronic voting is to be~~
29 ~~conducted in accordance with this section, the association shall~~
30 ~~provide each member with an opportunity to indicate that he or~~
31 ~~she will be voting electronically. For a member who indicated that~~
32 ~~he or she will be voting electronically, not less than 30 days prior~~
33 ~~to the voting deadline, the association shall provide to the member~~
34 ~~the ballot and any related material by electronic transmission.~~
35 ~~Member responses shall be returned to the association by electronic~~
36 ~~transmission by the voting deadline. The association, for a member~~
37 ~~who did not indicate that he or she would be voting electronically,~~
38 ~~shall provide the member with a ballot pursuant to Section 5115.~~

39 ~~SEC. 4. Section 5120 of the Civil Code is amended to read:~~

1 5120. (a) All votes, *including votes submitted through an*
 2 *electronic voting system, if any*, shall be counted and tabulated by
 3 the inspector or inspectors of elections, or the designee of the
 4 inspector of elections, in public at a properly noticed open meeting
 5 of the board or members. Any candidate or other member of the
 6 association may witness the counting and tabulation of the votes.
 7 No person, including a member of the association or an employee
 8 of the management company, shall open or otherwise review any
 9 ballot prior to the time and place at which the ballots are counted
 10 and tabulated. The inspector of elections, or the designee of the
 11 inspector of elections, may verify the member’s information and
 12 signature on the outer envelope prior to the meeting at which
 13 ballots are tabulated. Once a secret ballot is received by the
 14 inspector of elections, it shall be irrevocable.

15 (b) The tabulated results of the election shall be promptly
 16 reported to the board and shall be recorded in the minutes of the
 17 next meeting of the board and shall be available for review by
 18 members of the association. Within 15 days of the election, the
 19 board shall give general notice pursuant to Section 4045 of the
 20 tabulated results of the election.

21 ~~SEC. 4.~~

22 SEC. 5. Section 5125 of the Civil Code is amended to read:

23 5125. (a) The sealed ballots at all times shall be in the custody
 24 of the inspector or inspectors of elections or at a location designated
 25 by the inspector or inspectors until after the tabulation of the vote,
 26 and until the time allowed by Section 5145 for challenging the
 27 election has expired, at which time custody shall be transferred to
 28 the association. ~~The~~

29 (b) *If an* electronic balloting service provider, as defined in
 30 Section 5110, *is used in the course of an election, this provider*
 31 shall retain the *electronically submitted* ballot data until the time
 32 allowed by Section 5145 for challenging the election has expired.
 33 ~~If~~

34 (c) *If there is a recount or other challenge to the election process,*
 35 the inspector or inspectors of elections shall, upon written request,
 36 make the ballots available for inspection and review by an
 37 association member or the member’s authorized representative.
 38 Any recount shall be conducted in a manner that preserves the
 39 confidentiality of the vote.

40 SEC. 6. Section 5260 of the Civil Code is amended to read:

- 1 5260. To be effective, any of the following requests shall be
2 delivered in writing to the association, pursuant to Section 4035:
3 (a) A request to change the member's information in the
4 association membership list.
5 (b) A request to add or remove a second address for delivery of
6 individual notices to the member, pursuant to subdivision (b) of
7 Section 4040.
8 (c) A request for individual delivery of general notices to the
9 member, pursuant to subdivision (b) of Section 4045, or a request
10 to cancel a prior request for individual delivery of general notices.
11 (d) A request to opt out of the membership list pursuant to
12 Section 5220, or a request to cancel a prior request to opt out of
13 the membership list.
14 (e) A request to receive a full copy of a specified annual budget
15 report or annual policy statement pursuant to Section 5320.
16 (f) A request to receive all reports in full, pursuant to subdivision
17 (b) of Section 5320, or a request to cancel a prior request to receive
18 all reports in full.
19 (g) *A request to vote in an association election using an*
20 *electronic voting system pursuant to Section 5116.*