

## CONCURRENCE IN SENATE AMENDMENTS

AB 2460 (Ta)

As Amended August 27, 2024

Majority vote

**SUMMARY**

Adopts technical clarifications to the existing law governing delayed homeowner association (HOA) board elections resulting from the initial absence of a quorum.

**Senate Amendments**

Incorporate chaptering amendments.

**COMMENTS**

HOAs are corporate entities that govern housing units built within a common interest development (CID). A HOA is governed by a board elected among the homeowners within the development. Under existing law, for an election for new board members to take place, a quorum must be reached.

Given that HOA elections can be low-turnout affairs, last year this bill's author introduced AB 1458 (Ta), Chapter 303, Statutes of 2023, to provide for specialized procedures if a HOA fails to reach a voting quorum in a board election. This bill makes minor technical amendments to AB 1458 to address late technical advice from the Governor and the Department of Real Estate.

*Background on CIDs:* CIDs are a type of housing with separate ownership of housing units that also share common areas and amenities. There are a variety of CIDs, including condominium complexes, planned unit developments, and resident-owned mobilehome parks. In recent years CIDs have represented a growing share of California's housing stock. Data from 2019 indicates that there are an estimated 54,065 CIDs in the state that are made up of 5 million housing units, or about 35 percent of the state's total housing stock.

CIDs are regulated under the Davis-Stirling Act (Civil Code Section 4000 *et seq.*) as well as the governing documents of the homeowners association (HOA), including the bylaws, declaration, and operating rules. CIDs can also have Covenants, Conditions, and Restrictions (CC&Rs) which are filed with the county and recorded when they are established. Owners in a CID are contractually obligated to abide by the CC&Rs and the governing documents of a CID, which specify rules such as parking policies, allowable modifications to homes, and rental restrictions. Additionally, HOAs are governed by a board of directors elected by the membership in elections that closely resemble California's vote-by-mail process. In addition, many associations use a managing agent to assist with finances, logistics, and other services provided to homeowners.

HOA boards have a number of duties and powers. The board determines the annual assessments that members must pay in order to cover communal expenses. The board enforces the community rules and can propose as well as make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members and, if necessary, the power to foreclose upon the offending member's property. This combination of responsibilities and authority has led multiple courts to observe that HOAs function in many ways almost "as a second municipal government,

regulating many aspects of [the homeowners'] daily lives." (*Villa Milano Homeowners Ass'n v. Il Davorge* (2000) 84 Cal.App.4th 819, 836)

Existing law requires HOAs to communicate with their membership on a variety of topics, including general issues impacting the HOA. HOAs are also required to provide members with individual notice for issues related to their specific separate interests within the development. To facilitate the transmission of both general and individual notices, existing law requires the association to annually update contact information for all association members. If an association member has consented to electronic delivery of notices, then the members must also provide a valid e-mail address to the association to facilitate the proper delivery of critical association-related information to the homeowner.

*HOA elections and issues related to quorum:* HOAs must hold elections for board directors when a seat becomes vacant and at least every four years. The Davis-Stirling Act requires HOA elections to conform to certain procedures, including double-stuffed ballots and the selection of at least one independent third-party inspector of elections. Voting for board members is the fundamental way a homeowner in a CID can advocate to have their interests represented in the HOA's governance. Recent legislative actions related to HOA election rules have addressed qualifications for nominees to the board (SB 323 (Wieckowski), Chapter 858, Statutes of 2019), challenges with finding enough members who are willing to run for the board and procedures for election by acclamation (SB 754 (Moorlach), Chapter 858, Statutes of 2019, and AB 502 (Davies), Chapter 517, Statutes of 2021), and processes for authorizing a lower voting quorum requirement under certain circumstances AB 1458 (Ta), Chapters 303, Statutes of 2023.

Quorum is the minimum number of members of an association that must be "present" – either in person or via mailed ballots – in order to make the HOA election proceedings of a meeting legally valid. Quorum requirements differ depending on the type of HOA that has been formed and whether or not quorum is required in HOA governing documents. In most instances, if quorum is required by an HOA's governing documents, the quorum is a "50% + 1" threshold of members. If an HOA has chosen to incorporate as a nonprofit mutual benefit corporation, then state law establishes quorum at 33% of membership.

In the event a quorum is not reached for the election of HOA directors, several options exist. Until this year, typically, a homeowner association would rerun elections until a quorum was achieved. Not only was this method inefficient and costly to homeowner associations, but until new board members were elected, the existing board remained in place. This left "zombie" boards, with members serving well past their term, to operate associations until new board members could be elected. A second option, found in Corporations Code Section 7515 provides a legal process where members of the association may petition a court for an order lowering the quorum threshold for a single election to the number of votes cast. This too can be an expensive and time-consuming endeavor. Finally, the association can vote to lower the quorum threshold, however, if the association suffers from a lack of participation this too can be difficult, as that vote is also subject to quorum requirements.

As a result of these difficulties, last year, this measure's author successfully authored AB 1458 (Ta), Chapter 303, Statutes of 2023. AB 1458 provided that an election of HOA directors, and in the absence of meeting quorum unless a lower quorum is authorized by the association's governing documents, the association may adjourn the proceeding to a subsequent date at least

20 days after the initial election date, at which time the quorum required will be 20% of the association's voting members present in person, by proxy, or by secret written ballot received.

This bill represents minor technical clean-up to AB 1458. It clarifies that the election may be reconvened to a later date if a quorum is not met, rather than requiring the HOA to call a separate subsequent election. This bill replaces the terms "board of directors" and "common interest development" with the term "association" to ensure greater clarity in the law. The bill also ensures the consistent use of the terms, "in person," "by proxy," or "by secret ballot" for consistency with the rest of the Davis-Sterling Act. Finally, the bill clarifies that AB 1458 and its quorum requirements do not apply to homeowner associations that currently provide for voting quorums below 20% of the membership in their governing documents.

This measure is opposed by the Center for California Homeowner Association Law. The same organization opposed AB 1458 contending that the bill did not give homeowners proper notice of the reconvened election. Nothing in this bill changes the processes adopted by AB 1458, with the minor exception of exempting HOAs with preexisting governing documents with lower quorum requirements from the provisions of that bill. As such, even if this bill does not advance, the opposition's issues with AB 1458 would not be addressed as that measure remains law.

#### **According to the Author**

"AB 2460 would clarify the correct vocabulary as defined by the California Department of Real Estate when it comes to proceeding with a Board of Directors election for a Homeowners Association."

#### **Arguments in Support**

According to the Community Associations Institute's Legislative Action Committee (CAI-CLAC), AB 2460 "clarifies existing law in providing for reduced quorum for Board member elections.

In 2023, the legislature approved AB 1458 (Ta), which authorizes an association that fails to reach quorum for an election of the Board, to call another meeting within 30 days where the quorum requirement will be reduced to 20% of the association's members voting in person, proxy, or secret written ballot.

AB 1458 states the Board shall call for the reconvened meeting which results in some confusion because many associations hold their election during the Annual Members Meeting. In this situation, it would be the Association's responsibility to call for the reconvened meeting.

AB 2460 would clarify who has the responsibility to call for the reconvened meeting, require a reconvened meeting to be called when quorum is not reached, and clean up language describing how quorum is counted."

#### **Arguments in Opposition**

According to the Center for California Homeowners Association Law, "AB2460/Ta...amends certain quorum requirements and procedures in association elections. Assembly Member Ta's bill AB1458 enacted last year set forth a procedure for dealing with an election of members of a Board of Directors where a required quorum is not met. The bill contained some inaccuracies and issues needing clarification that this year's AB 2460 tries to address.

However, the continuing flaws in these two bills that we see include our belief that they

- 1) leave the procedure open to challenge,
- 2) do not provide guidance for the safeguarding of unopened ballots
- 3) and fail to address the fundamental problem of a lack of participation of members in voting. CCHAL has offered specific amendments to address these issues and received commitments in previous hearings from the author to try to address these flaws,"

## **FISCAL COMMENTS**

None.

## **VOTES:**

### **ASM HOUSING AND COMMUNITY DEVELOPMENT: 7-1-1**

**YES:** Ward, Joe Patterson, Grayson, Kalra, Quirk-Silva, Reyes, Wilson

**NO:** Lee

**ABS, ABST OR NV:** Sanchez

### **ASM JUDICIARY: 12-0-0**

**YES:** Kalra, Dixon, Bauer-Kahan, Bryan, Connolly, Essayli, Haney, Maienschein, McKinnor, Pacheco, Reyes, Sanchez

### **ASSEMBLY FLOOR: 58-1-21**

**YES:** Addis, Aguiar-Curry, Alanis, Arambula, Bains, Bennett, Berman, Boerner, Calderon, Juan Carrillo, Wendy Carrillo, Chen, Connolly, Davies, Dixon, Flora, Mike Fong, Vince Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Hoover, Irwin, Kalra, Lackey, Low, Lowenthal, Maienschein, McCarty, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Ramos, Reyes, Rodriguez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Zbur, Robert Rivas

**NO:** Lee

**ABS, ABST OR NV:** Alvarez, Bauer-Kahan, Bonta, Bryan, Cervantes, Megan Dahle, Essayli, Holden, Jackson, Jones-Sawyer, Mathis, McKinnor, Muratsuchi, Quirk-Silva, Rendon, Luz Rivas, Blanca Rubio, Sanchez, Wicks, Wilson, Wood

## **UPDATED**

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