

2021 Legislative Update: New Laws for California Community Associations

The 2021 legislative session was one of the most active legislative years impacting California community association law. Pressures of the California affordable housing crisis continue to seep into several laws aimed at increasing housing density availability and rental properties.

All in all, California's community associations fared well with several pieces of legislation clarifying omissions and ambiguities in prior laws. New laws passed will also facilitate more efficient community association governance for board members conducting meetings and elections. The following legislative summary provides an overview of new laws that significantly impact community associations. All new laws take effect January 1, 2022 unless otherwise noted.

Please contact us if you need assistance while navigating through any of the following new law requirements.

AB 502 (DAVIES). ELECTION BY ACCLAMATION.



Bill Overview

AB 502 permits elections by acclamation for all associations, regardless of size, when the number of candidates is equal to or less than the number of open board seats.

New Requirements

AB 502 amends Section 5100 of the Civil Code and adds Section 5103, to provide long anticipated relief for smaller community associations from the costly secret written ballot process for director elections where there are more open seats than candidates. Starting in 2022, all associations will have the option of utilizing the acclamation procedures in Civil Code §§ 5100 and 5103 when “the number of qualified candidates is not more than the number of vacancies to be elected.” However, this process is subject to specific notice and related procedural requirements, including:

- First, associations are still required to hold a “regular election” at least once every three years, meaning one that follows the usual secret ballot process.
- Second, associations are required to provide additional individual notices to each of the members about the potential use of the acclamation procedure, including:
 - An initial notice at least 90 days before the deadline for submitting nominations; and
 - A reminder notice between 7 and 30 days before the deadline for submitting nominations.
- The association is also required to send a written or electronic communication notice within 7 business days of receipt of

any nomination confirming receipt to the member who submitted the nomination.

- The association must also provide notice to the nominee of whether he or she is a qualified candidate and, if not, the basis for disqualification and procedure for appeal.
- Thereafter, a special meeting with board members is held where the agenda must reflect the name of each qualified candidate proposed to be seated by acclamation. At that time, the Board votes whether to approve the election of the slate of candidates by acclamation.

The AB 502 acclamation procedure applies notwithstanding any contrary provision in the governing documents; meaning, that the provisions of AB 502 take precedence over associations whose governing documents mandate board elections solely by secret written ballot.

Another significant change in AB 502 is it resolves an inconsistency between candidate and director qualifications. Initially, Civil Code Section 5100 contained only candidate qualifications and was silent on whether directors also had to meet the same standards once elected as a candidate running for a director's seat. SB 502 adds in Civil Code 5103 that if an association requires a nominee to comply with any of the candidacy requirements in its election rules, it shall also require a director to comply with the same requirements.

Finally, SB 502 also includes in new Civil Code Section 5103 term limits as a permissible basis for disqualifying a candidate.

Recommendation

We recommend that associations amend their election rules to outline these acclamation procedures to facilitate the association's use of this somewhat cost

effective, streamlined director election procedure.

AB 1101 (IRWIN). ASSOCIATION FUNDS; INSURANCE.



Bill Overview

AB 1101 is an association financial wellness bill sponsored by Assembly Member Jacqui Irwin that improves upon or “cleans up” Ms. Irwin’s Assembly Bill 2912 from 2018. The bill covers issues such as financial transfers, fidelity coverage and management of association bank accounts.

New Requirements

AB 1101 amends Civil Code 5380 to require the managing agent deposit association funds into a bank, savings association or credit unit and that the deposited funds are insured by the Federal Deposit Insurance Corporation, National Credit Union Administration Insurance Fund, or a guaranty corporation subject to Section 14858 of the Financial Code. This bill further requires that funds are deposited in accounts that protect the principal, and prohibits such association funds from being invested in stocks or high-risk investment options.

AB 1101 puts an end to management’s ability to commingle funds, as the bill prohibits commingling of association funds with a managing agent’s funds, or with funds of other associations.

The key clarification provided by AB 1101 concerns fund transfers requiring board approval. The bill Amends Civil Code 5308 and 5502 requiring prior written approval for transfers as follows:

- For communities of 50 or less separate interest: the lesser of \$5000 or 5% of the operating budget.

- For communities of more than 50 separate interests: the lesser of \$10,000 or 5% of the operating budget.

Finally, AB 1101 amends Civil Code Section 5806 regarding fidelity bond requirements. An association must maintain: fidelity crime insurance, employee dishonesty coverage, or their equivalent, for directors, officers and employees. The coverage shall include coverage for dishonest acts by a managing agent (person or company) and the managing agent's employees. The amount of coverage shall be equal to or greater than the combined amount of reserves and the total of three months of assessments. The association cannot self-insure for these required coverages.

Recommendation

Note that this bill does not clarify which types of transfers (i.e. electronic, or check) are subject to the board approval requirement. Therefore, we recommend board approval for any and all transfers from an association account that meets the stated amounts.

AB 1584. HOUSING OMNIBUS.



Bill Overview

AB 1584 addresses amendments to the governing documents required by Civil Code Section 4741 regarding the rental of a separate interest. In January 2021, Civil Code Section 4741 was added to the Davis Stirling Common Interest Development Act voiding governing document provisions that prohibit or unreasonably restrict the rental, or leasing of a separate interest, or an accessory dwelling unit. Current Civil Code Section 4741 mandates that an association amend its governing document to conform that code section on or before January 1, 2022.

New Requirements

AB 1584 recognizes the challenges of obtaining membership votes to amend governing documents at all, let alone by December 31, 2021. To ease this burden of complying, AB 1584 amends Civil Code Section 4741 to allow a board to amend the governing document containing the impermissible rental restriction, without a membership vote, and extends the deadline for doing so to July 1, 2022.

The 28-day member notification and comment period for adoption of operating rules in Civil Code Section 4045 apply to this Governing Document amendment process. Any governing document amendment pursuant to this section shall be made at an open board meeting, after considering members comments.

Recommendation

Associations are advised to have legal counsel review their existing governing documents for compliance with the short term rental laws now to determine what amendments are required or advisable by the July 1, 2022 compliance deadline.

SB 9 (ATKINS). HOUSING DEVELOPMENT.



Bill Overview

SB 9 is another piece of legislation aimed at addressing the State's affordable housing shortage.

New Requirements

SB 9 allows a single family Lot owner to split their Lot into two and construct up to two residences units on each of those Lots. Naturally, SB 9 would also allow a Lot owner to add a second residence on their existing Lot.

The ability to significantly increase housing density in planned development communities would undoubtedly negatively impact community association design, infrastructure, common areas and recreational facilities – not to mention the operating budgets and reserve funds. We understand that the author of this legislation, Senator Toni Atkins, has indicated in writing that the law does not contain provisions that supersede associations’ Governing Documents. Meaning, a planned development’s CC&Rs that prohibit lot splitting or further subdivision of a Lot would take precedence over SB 9.

What remains to be seen is whether SB 9 would allow an Owner to Lot split and build multiple residences if the association’s Governing Documents were silent on further subdivision or Lot splitting. As written, SB 9 would allow for Lot splitting in such a circumstance.

Recommendation

Associations are advised to review their governing documents for restrictions on further subdividing of Lots, and, to consider amending to add a Lot splitting prohibition.

SB 60 (GLAZER). RESIDENTIAL SHORT- TERM RENTAL ORDINANCES: LOCAL GOVERNMENTAL FINES FOR SHORT TERM RENTALS.



Bill Overview

SB 60 authorizes local governments to increase penalties for individuals who violate short-term rental ordinances and create health and safety issues.

New Requirements

The new law, with certain exceptions, raises the maximum fines for violation of an

ordinance relating to a residential short-term rental, as defined, that is an infraction and poses a threat to health or safety, to \$1,500 for a first violation, \$3,000 for a 2nd violation of the same ordinance within one year, and \$5,000 for each additional violation of the same ordinance within one year of the first violation. The bill would make these violations subject to the process for granting a hardship waiver.

Recommendation

While not directly related to community associations, the new law provides some basis for associations to support higher fine amounts for owners who violate association Governing Documents related to short-term rentals.

The bill is an urgency statute, meaning it takes effect immediately.

SB 391 (MIN). VIRTUAL MEETINGS IN TIMES OF EMERGENCY.



Bill Overview

One of the most dramatic changes due to the pandemic is the widespread adoption of virtual meetings. As associations adopted virtual meetings, they saw widespread increase in member participation due to the ease of which they could log into a meeting from any location. SB 391 eliminates the need to provide a physical location if gathering in person is unsafe or impossible because an association is in an area affected by a federal, state or local emergency.

New Requirements

SB 391 provides a board meeting may be held completely virtually, i.e., without any physical location being provided for the meeting, if the following conditions are met:

Gathering in person is unsafe or impossible because the association is in an area affected by: 1) a disaster or emergency declared by the federal government; 2) a state of emergency proclaimed by the Governor; an emergency proclaimed by local governing body.

Notice of the first virtual meeting for a particular disaster or emergency affecting the association must be delivered to members by individual delivery (i.e. personal delivery or mailing). Notices for each virtual meeting must include:

- Clear technical instructions on how to participate by teleconference
- A telephone number and e-mail address of a person who can provide technical assistance with the teleconference process, both before and during the meeting; and
- A reminder that a member may request individual delivery of meeting notices, with instructions on how to do so.

Additional requirements for virtual meetings include:

- Directors and members must have the ability to participate in the meeting in the same manner as if the meeting were held in person.
- Director resolutions must be made by roll call vote.
- If the meeting is conducted by videoconference, attendees must be given the option of participating by phone.
- If ballots are to be open and counted at a meeting conducted solely via teleconference, the camera must be placed in a location such that members

can observe the inspector of elections counting and tabulating the votes.

Any association that meets without either providing a physical location where members may attend to watch or listen to the meeting, or without complying with the new requirements for completely virtual meetings, are subject to member lawsuits in which attorney's fees, costs, and penalties of \$500 for each violation may be awarded by the court.

Recommendation

Given the burden placed on associations that wish to meet via teleconference, associations that wish to meet via teleconference should consider complying with the requirement to provide a location with a single person designated by the board present so that any member who wishes can attend in person to watch or listen to the meeting. With that condition met, the rest of the attendees, including the community manager, directors and members are free to meet from the comfort of their homes, offices or even cars.

In considering this option, associations should check their governing documents to determine if there are any requirements as to the location of the meeting. Management companies may wish to create specific teleconference centers to meet the physical location criteria for meetings in which most meeting attendees are expected to participate virtually, and select one person to monitor and assist all virtual meetings.

The law does not specify who determines whether it is "unsafe" to gather. ROD LLP recommends that boards invoking the emergency virtual meeting statute prepare a resolution documenting its findings as to why it has determined it is unsafe to meet to guard against an Open Meeting Act challenge.

The bill takes effect immediately as an urgency statute.

**SB 392 (ARCHULETA).
DOCUMENT DELIVERY.**



BILL OVERVIEW

SB 392 requires members provide the association with their preferred method of individual notifications from the association, either by mail or by email. Existing law specifies the methods by which an association may provide a document when a provision of the act requires “general delivery” or “general notice,” including posting the printed document in a prominent location accessible to all members (if designated for the posting of general notices by the association in its annual policy statement).

New Requirements

Beginning January 1, 2023, an association shall deliver a document in accordance with the member’s specified method of delivery. This bill allows an association, which maintains an internet website for the purpose of distributing information on association business to its members, to post general notice on the association’s internet website in a prominent location that is accessible to all members so long as the association’s website is designated as a location for posting general notices in the annual policy statement prepared pursuant to Section 5310.

SB 392 amends Civil Code Section 4041 to require that members annually provide the association with written notice of 1) the member’s specified method of receiving notices from the association by mail or by email, or both; 2) an alternative or secondary method of receiving notices from the association by mail, by email, or both; a valid email address, as well as the name, address and email of the owner’s legal

representative, or other person who can be contacted in the event of the member’s extended absence from the separate interest.

Note that SB 392 prohibits an association, or its managing agent, from selling or transmitting a member’s personal information to a third party without the consent of the member unless required by law.

Recommendation

SB 392 requires that the association request the above required information from the member at least 30 days prior to the association distributing its Annual Budget Report. Associations are advised to prepare and distribute a form to each member annually requesting the above information, and requiring it be returned to the association by a specified date. If a member fails to provide this required information, the last mailing address provided or the property address shall be deemed the address to be used by the association.

**SB 432
(WIECKOWSKI).
ELECTIONS.**



Bill Overview

SB 432 is another “clean-up” bill sponsored by Senator Bob Wieckowski in effort to address the holes left in Senate Bill 323, which took effect January 2020.

New Requirements

With respect to the authority of an inspector of elections, SB 432 amends Civil Code Section 5105 authorizing an inspector to appoint and oversee additional persons to verify signatures and to count and tabulate votes, as the inspector or inspectors deem appropriate, provided that such appointed persons meet the same requirements of an

independent third party required of the inspector of elections.

Furthermore, SB 432 addresses a timing conflict between the notice requirements in Civil Code Section 5115 and Corporations Code Section 7511 in the event of a recall election. Corporations Code Section 7511 mandated that a special meeting be scheduled no more than 90 days after the board received the request for the special meeting. Where a special meeting is requested to remove the entire board, a new board must be immediately elected triggering the notice requirements of Civil Code Section 5115 – making compliance with the Corporations Code’s 90-day special meeting deadline impossible. SB 432 eliminates this “no-win situation” by extending the special meeting deadline to 150 days from the date of the request.

SB 432 also amends Civil Code Section 5105 to clarify that the “candidates list” includes the names and addresses of the individuals nominated for election to the board of directors.

Finally, SB 432 amends Civil Code Section 5200 (c), regarding records available for inspection by a member and clarifies that an association shall only maintain association elections materials for one (1) year after the election. This is consistent with Civil Code Section 5145, which requires a civil action for violation of the Elections Procedures be brought within one (1) year.

Recommendation

Associations are advised to update their elections rules now to prepare for their 2022 director elections. Particular attention must be paid to ensuring consistency between candidate and director qualifications, and that their elections rules reflect only the qualifications allowed by Civil Code Section 5100, regardless of what the bylaws may provide.

LOOKING AHEAD

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