



OPEN MEETING

REGULAR MEETING OF THE UNITED LAGUNA WOODS MUTUAL
GOVERNING DOCUMENTS REVIEW COMMITTEE

Wednesday May 30, 2018 – 1:30 p.m.
Laguna Woods Village Community Center, Willow Room
24351 El Toro Road, Laguna Woods, CA 92637

NOTICE & AGENDA

1. Call to Order
2. Acknowledgment of Media
3. Approval of the Agenda
4. Approval of the Report from April 23, 2018
5. Chair's Remarks
6. Member Comments (Items Not on the Agenda)
7. Department Head Update

Consent:

All matters listed under the Consent Calendar are considered routine and/or informational and will be enacted by the Committee by one motion. In the event that an item is removed from the Consent Calendar by members of the Committee, such item(s) shall be the subject of further discussion and action by the Committee.

None

Reports:

Items for Discussion and Consideration:

8. Review Draft of the Resolution to Accompany Updated Resale Documents to Board
9. Review and Discuss Status of Senate Bill 1128 – Elections by Acclamation
10. Review and Discuss Director Qualifications - Senate Bill 1265
11. Review and Discuss the Financial Qualifications Policy – Single Person vs. Couple

Concluding Business:

12. Committee Member Comments
13. Future Agenda Items
14. Date of next meeting - June 25, 2018
15. Adjournment

Juanita Skillman, Chair
Betty Parker, Staff Officer



UNITED LAGUNA WOODS
MUTUAL

OPEN MEETING

REGULAR MEETING OF THE UNITED LAGUNA WOODS MUTUAL
GOVERNING DOCUMENTS REVIEW COMMITTEE

Monday, April 23, 2018 – 2:00 PM
Laguna Woods Village Community Center, Sycamore Room
24351 El Toro Road, Laguna Woods, CA 92637

- MEMBERS PRESENT:** Juanita Skillman – Chair; Gary Morrison, Maggie Blackwell, and Advisors Bevan Strom and Mary Stone
- MEMBERS ABSENT:** Betty Parker
- OTHERS PRESENT:** Directors Cash Achrekar, Janey Dorrell, Carl Randazzo, VMS Director Dick Rader, and Attorney Jeff Beaumont via phone
- STAFF PRESENT:** Pamela Bashline and Eve Morton

REPORT

1. Call to Order

Chair Skillman called the meeting to order at 2:00 p.m.

2. Acknowledgement of Press

No press was present.

3. Approval of the Agenda

Director Blackwell made a motion to approve the agenda. There were no objections.

4. Approval of Report from the March 26, 2018 meeting

Director Morrison moved to approve the report. There were no objections.

5. Chair's Remarks

Chair Skillman informed the committee that there is Realtor Roundtable tomorrow in the Board Room. It will be a question and answer format rather than a presentation format.

6. Member Comments (Items not on the agenda)

There were no Member comments.

7. Department Head Update

None

Consent Calendar:

All matters listed under the Consent Calendar are considered routine and will be enacted by the Committee by one motion. In the event that an item is removed from the Consent Calendar by members of the Committee, such item(s) shall be the subject of further discussion and action by the Committee.

None

Reports:

Items for Discussion and Consideration:

8. Review and Discuss a Proposed Stock Certificate and Envelope

Discussion ensued regarding wording on the draft of an updated Membership Stock certificate and wording on an envelope to house it.

Some updates were made.

Director Morrison made a motion to approve the revised Membership Stock Certificate and wording for an envelope to house it, with the amendments from the committee, and to send both items to the Board for consideration. Director Blackwell seconded. There were no objections.

9. Review a resolution for a Corporate Members Meeting regarding allowing Non-Members to use GRF facilities and Clarification of Termination of Directors

Attorney Beaumont stated the GRF Bylaws are unclear regarding whether the maximum number of meetings a Director may miss is in the Director's current term or in a twelve month period.

Discussion ensued regarding if maximum meetings missed should result in automatic removal or a vote of the Board and if Corporation Code should be included in the GRF bylaws.

Director Blackwell made a Motion to make a recommendation from this committee to United Board to call a Special Corporate Members meeting to discuss and consider the current version of 6.4.5 in the GRF bylaws regarding automatic vacancy of a Director. Director Morrison seconded. There were no objections.

Discussion ensued regarding the Trust Agreement and the GRF Bylaws and the wording in them regarding who may use GRF facilities

Director Blackwell made a Motion to make a recommendation from this committee to United Board to call a Special Corporate Members meeting to discuss the discrepancy between the Trust agreement, the GRF bylaws, and the current practice of allowing non-members to use GRF facilities. Director Morrison seconded. There were no objections.

10. Review Directors' Code of Conduct in Conflict with Bylaws

President Skillman stated that it should be clarified that if a Director misses three consecutive Board meetings, not committee meetings, they may be subject to removal from the Board, per the United Directors Code of Conduct.

Mr. Beaumont clarified that an Agenda Prep meeting is considered a Board meeting.

Director Blackwell moved to recommend to the United Board to discuss and review, in Closed Session, the United Code of Conduct in regards to what constitutes a violation as it pertains to missed meetings. Director Morrison seconded. There were no objections.

11. Continue Review of Updated Resale Documents

Additional updates were made to the resale documents.

Director Skillman requested that Staff ask Mr. Beaumont if the updates made to the resale documents need to be approved by the Board.

Concluding Business:

12. Committee Member Comments

None

13. Future Agenda Items

- Investors as Purchasers – May
- Review Financial Qualifications Policy- May
- Review and Update of Election Procedures

14. Discuss date of next meeting scheduled for Memorial Day, May 28.

The committee agreed that the next meeting would take place on Wednesday, May 30, at 1:30 p.m.

15. Adjournment at 4:55 p.m.


Juanita Skillman, Chair



Amending United Resale Documents

Resolution 01-18-XX

WHEREAS, under the United Laguna Woods Mutual (“United”) Bylaws, the purpose of United is to provide housing to its members on a mutual nonprofit basis;

WHEREAS, United is a stock cooperative corporation and, as such, each Member is issued a membership/stock certificate in United and granted the exclusive right to occupy a specific Unit under the terms and conditions of an Occupancy Agreement;

WHEREAS, pursuant to the Bylaws, Articles of Incorporation and rules, regulations and Board resolutions, Members must meet various requirements and qualifications prior to acquiring a membership/stock certificate and obtaining Membership;

WHEREAS, Article III of the Bylaws requires membership applications and related documents to be presented on forms approved by the Board;

WHEREAS, Article III of the Bylaws further provides various qualifications for membership and occupancy of units in United, including, among others, age and financial requirements;

WHEREAS, United, by and through its Board of Directors, uses various forms and documents for the resale of memberships in United, including forms and documents used by Members and prospective members for purposes of transferring memberships and the right to exclusively occupy units (hereinafter “Resale Documents”);

WHEREAS, the Board of Directors, through the Governing Documents Review Committee, has identified modifications needed to the Resale Documents to meet United’s current needs, especially modifications necessary: to address current rules, regulations and resolutions; to update terminology; to allow alterations to units to be identified; to update staff names and contact information; etc.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of United hereby adopts the Resale Documents in their amended form, as attached hereto as EXHIBIT A;

BE IT FURTHER RESOLVED that the officers, directors and agents of United are authorized to carry out the purpose of this Resolution.

AMENDED IN SENATE MAY 15, 2018
AMENDED IN SENATE APRIL 5, 2018
AMENDED IN SENATE MARCH 22, 2018

SENATE BILL

No. 1128

Introduced by Senator Roth

February 13, 2018

An act to amend Sections 4040, 4360, and 5100 of the Civil Code, and to amend Section 7522 of the Corporations Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 1128, as amended, Roth. Common interest developments: governance.

Existing law, the Davis-Stirling Common Interest Development Act, governs the management and operation of common interest developments by an association. Under existing law, an association that is required to deliver a document by "individual delivery" or "individual notice" is authorized to deliver the document by email facsimile, or other electronic means, if the recipient has consented in writing, unless the consent is revoked in writing.

This bill would authorize the recipient to consent to that delivery and revoke that consent by email.

Existing law requires the board of an association to provide general notice of a proposed rule change at least 30 days before making the rule change.

This bill would instead require at least 28 days general notice before making the rule change.

Existing law requires the election of directors who serve on the association board, except if the governing documents provide that one member from each separate interest is a director. Existing law requires the association to adopt rules regarding qualifications for candidates for the board and any other elected position, and procedures for the nomination of candidates, consistent with the governing documents. Existing law requires these rules to specify a method for selecting independent 3rd parties as inspectors of elections and authorizes the rules to provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner.

This bill would require, when the number of director nominees at the close of the nomination period is not more than the number of vacant director positions on the board, as determined by an inspector or inspectors of elections, the director nominees to be considered elected by acclamation. *The bill would also prohibit the election by acclamation unless the association provided individual notice of the election and the procedure for nominating candidates, as specified.*

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 4040 of the Civil Code is amended to
- 2 read:
- 3 4040. (a) If a provision of this act requires that an association
- 4 deliver a document by “individual delivery” or “individual notice,”
- 5 the document shall be delivered by one of the following methods:
- 6 (1) First-class mail, postage prepaid, registered or certified mail,
- 7 express mail, or overnight delivery by an express service carrier.
- 8 The document shall be addressed to the recipient at the address
- 9 last shown on the books of the association.
- 10 (2) E-mail, facsimile, or other electronic means, if the recipient
- 11 has consented, in writing or by e-mail, to that method of delivery.
- 12 The consent may be revoked, in writing or by e-mail, by the
- 13 recipient.
- 14 (b) Upon receipt of a request by a member, pursuant to Section
- 15 5260, identifying a secondary address for delivery of notices of
- 16 the following types, the association shall deliver an additional copy
- 17 of those notices to the secondary address identified in the request:

1 (1) The documents to be delivered to the member pursuant to
2 Article 7 (commencing with Section 5300) of Chapter 6.

3 (2) The documents to be delivered to the member pursuant to
4 Article 2 (commencing with Section 5650) of Chapter 8, and
5 Section 5710.

6 (c) For the purposes of this section, an unrecorded provision of
7 the governing documents providing for a particular method of
8 delivery does not constitute agreement by a member to that method
9 of delivery.

10 SEC. 2. Section 4360 of the Civil Code is amended to read:

11 4360. (a) The board shall provide general notice pursuant to
12 Section 4045 of a proposed rule change at least 28 days before
13 making the rule change. The notice shall include the text of the
14 proposed rule change and a description of the purpose and effect
15 of the proposed rule change. Notice is not required under this
16 subdivision if the board determines that an immediate rule change
17 is necessary to address an imminent threat to public health or safety
18 or imminent risk of substantial economic loss to the association.

19 (b) A decision on a proposed rule change shall be made at a
20 board meeting, after consideration of any comments made by
21 association members.

22 (c) As soon as possible after making a rule change, but not more
23 than 15 days after making the rule change, the board shall deliver
24 general notice pursuant to Section 4045 of the rule change. If the
25 rule change was an emergency rule change made under subdivision
26 (d), the notice shall include the text of the rule change, a description
27 of the purpose and effect of the rule change, and the date that the
28 rule change expires.

29 (d) If the board determines that an immediate rule change is
30 required to address an imminent threat to public health or safety,
31 or an imminent risk of substantial economic loss to the association,
32 it may make an emergency rule change, and no notice is required,
33 as specified in subdivision (a). An emergency rule change is
34 effective for 120 days, unless the rule change provides for a shorter
35 effective period. A rule change made under this subdivision may
36 not be readopted under this subdivision.

37 SEC. 3. Section 5100 of the Civil Code is amended to read:

38 5100. (a) Notwithstanding any other law or provision of the
39 governing documents, except as provided in this section, elections
40 regarding assessments legally requiring a vote, election and

1 removal of directors, amendments to the governing documents, or
2 the grant of exclusive use of common area pursuant to Section
3 4600 shall be held by secret ballot in accordance with the
4 procedures set forth in this article.

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

8 (c) This article applies to both incorporated and unincorporated
9 associations, notwithstanding any contrary provision of the
10 governing documents.

11 (d) The procedures set forth in this article shall apply to votes
12 cast directly by the membership, but do not apply to votes cast by
13 delegates or other elected representatives.

14 (e) In the event of a conflict between this article and the
15 Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing
16 with Section 7110) of Division 2 of Title 1 of the Corporations
17 Code) relating to elections, the provisions of this article shall
18 prevail.

19 (f) Directors shall not be required to be elected pursuant to this
20 article if the governing documents provide that one member from
21 each separate interest is a director.

22 (g) When, as of the close of nominations for directors on the
23 board, the number of director nominees is not more than the
24 number of vacancies to be elected, as determined by the inspector
25 or inspectors of elections, the director nominees shall be considered
26 elected by acclamation. *Director nominees shall not be considered*
27 *elected by acclamation unless the association provided individual*
28 *notice of the election and the procedure for nominating candidates*
29 *at least 30 days prior to the close of nominations.*

30 SEC. 4. Section 7522 of the Corporations Code is amended to
31 read:

32 7522. A corporation with 5,000 or more members may provide
33 that, in any election of a director or directors by members of the
34 corporation except for an election authorized by Section 7152 or
35 7153:

36 (a) The corporation’s articles or bylaws shall set a date for the
37 close of nominations for the board. The date shall not be less than
38 50 nor more than 120 days before the day directors are to be
39 elected. No nominations for the board can be made after the date
40 set for the close of nominations.

1 (b) If more people are nominated for the board than can be
2 elected, the election shall take place by means of a procedure which
3 allows all nominees a reasonable opportunity to solicit votes and
4 all members a reasonable opportunity to choose among the
5 nominees.

6 (c) A nominee shall have a reasonable opportunity to
7 communicate to the members the nominee's qualifications and the
8 reasons for the nominee's candidacy.

9 (d) If after the close of nominations the number of people
10 nominated for the board is not more than the number of directors
11 to be elected, the corporation may without further action declare
12 that those nominated and qualified to be elected have been elected.

13 (e) Notwithstanding subdivision (d), if a common interest
14 development, as defined in Section 4100 of the Civil Code, is
15 subject to this part and after the close of nominations for the
16 directors on the board of the association of the common interest
17 development the number of director nominees is not more than
18 the number of vacancies to be elected, as determined by the
19 inspector or inspectors of elections selected pursuant to Section
20 5110 of the Civil Code, the director nominees shall be considered
21 elected by acclamation. *Director nominees shall not be considered*
22 *elected by acclamation unless the association provided individual*
23 *notice of the election and the procedure for nominating candidates*
24 *at least 30 days prior to the close of nominations.*

O

THIRD READING

Bill No: SB 1128
Author: Roth (D)
Amended: 5/15/18
Vote: 21

SENATE TRANS. & HOUSING COMMITTEE: 11-0, 4/17/18
AYES: Beall, Cannella, Dodd, Gaines, Galgiani, Morrell, Roth, Skinner, Vidak,
Wieckowski, Wiener
NO VOTE RECORDED: Allen, McGuire

SENATE JUDICIARY COMMITTEE: 6-0, 5/8/18
AYES: Jackson, Moorlach, Anderson, Hertzberg, Monning, Stern
NO VOTE RECORDED: Wieckowski

SUBJECT: Common interest developments: governance

SOURCE: Laguna Woods Village

DIGEST: This bill provides that a homeowner association (HOA) in a common interest development (CID) may provide a document by electronic means if the recipient has consented by email; reduces the notice requirement of a proposed rule change by the HOA board from 30 days to 28 days; and provides that the nominees to a board shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board.

ANALYSIS:

Existing law:

- 1) Requires the election and removal of directors, amendments to governing documents, or the grant of exclusive use of common areas, to be held by secret ballot.

- 2) Provides that directors shall not be required to be elected if the governing documents provide that one member from each separate interest (e.g., unit or lot) is a director.
- 3) Requires the HOA to adopt election rules that do the following:
 - a) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or websites during a campaign, and that equal access shall be provided to all candidates and members, for purposes reasonably related to the election.
 - b) Ensure access to common-area meeting space at no cost to all candidates.
 - c) Specify the qualifications for candidates for the board and any other elected position, and procedures for the nomination of candidates, consistent with the governing documents. A rule shall not be deemed reasonable if it disallows any member from nominating himself or herself for election to the board.
 - d) Specifies the qualifications for voting; the voting power of each membership; the authenticity, validity, effect of proxies; and the voting period for elections. This includes the times at which polls will open and close, consistent with the governing documents.
 - e) Specifies a method for selecting one or three independent third parties as inspector or inspectors of elections. Inspectors may appoint or oversee additional independent third-party persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate.
- 4) Requires the inspector of elections to be one or three individuals who have the following duties:
 - a) Determine the number of memberships entitled to vote and the voting power of each
 - b) Determine the authenticity, validity, and effect of proxies
 - c) Receive votes and ballots and hear and determine all challenges and questions
 - d) Count and tabulate all votes
 - e) Determine when the polls will close
 - f) Determine the results of the election.
- 5) Permits the nomination of candidates from the floor of membership meetings or nomination by any other manner.

- 6) Permits a member of an association to bring a cause of action in small claims court against the HOA if the HOA restricts access to association resources by a candidate or member advocating a point of view; the receipt of the ballot by a member; or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after the tabulation.
- 7) Requires the HOA board to provide notice of a proposed rule change, as specified, at least 30 days prior to making the rule change.
- 8) Provides that if an HOA must deliver a document by “individual delivery” or “individual notice,” it may deliver the document by email, fax, or other electronic means if the recipient has consented in writing to that method of delivery.

This bill:

- 1) Specifies that a recipient may consent by email to have a document delivered by the association via email, fax, or other electronic means.
- 2) Requires a board to provide general notice, pursuant to existing law, of a proposed rule change at least 28 days before making the rule change.
- 3) Provides that if, at the close of nominations, the inspector or inspectors of elections determines that the number of nominees is not more than the number of vacancies on the board, the nominees shall be considered elected by acclamation.

Background

A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of CIDs. There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or approximately one-quarter of the state’s housing stock. CIDs are governed by HOAs. The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the association, collectively referred to as the governing documents.

Existing law requires CID elections to be held by secret ballot and, among other things, an association must adopt rules around campaigning, specifying the qualifications for candidates for the board, qualifications for voting, and the method for selecting independent third-party election inspectors. Ballots and two pre-addressed envelopes with instructions for returning the ballot are mailed to every member not less than 30 days prior to the deadline for voting. The ballot is inserted into an envelope, which is placed in a second envelope and mailed to the inspectors. The votes are tabulated by the inspectors at a properly noticed open meeting of the board or members. The tabulated results must be reported promptly to the board and recorded in the minutes of the next meeting. Additionally, within 15 days of the election, the board must give general notice to all members of the election results.

Comments

- 1) *Purpose.* The author states that CIDs vary in purpose and size, from just a few units to several thousand. Larger CIDs may offer their residents significant amenities, such as golf courses, tennis and other recreational facilities, media services, and transportation services. Elected boards provide oversight for the operation and maintenance of facilities, as well as the annual budget. State law provides the framework for certain aspects of CID boards. Laguna Woods Village, sponsor of this bill, is home to more than 18,000 residents. They expect the board and management to assure that goods and services are provided in the most cost effective manner possible. To that end, Laguna Woods has identified three areas where improvements can be made: delivery of documents, notice requirements, and uncontested elections. This bill takes steps toward increased efficiency of operations by addressing these three areas.
- 2) *Uncontested elections.* This bill would provide that if the elections inspector determines that the number of candidates is equal to or less than the number of board vacancies, those candidates shall be considered elected by acclamation. Laguna Woods Village is a CID with three major developments within its boundaries, each governed by a board, totaling more than 12,500 units of senior housing. Laguna Woods Village states that in 2017 it spent approximately \$20,000 on each of three elections, despite the fact that in all three cases the number of candidates did not exceed the number of available board seats. The sponsor states that the requirement to hold an election even when the outcome has effectively already been decided shifts resources away from other important needs.

- 3) *Precedent for election by acclamation.* Existing elections law for certain entities indicates precedent for making the election-by-acclamation change to CID law. For school districts, county boards of education, and special districts, if the number of candidates does not exceed the number of vacancies by the end of the nominating period, and no one has filed a petition signed by 10% of the voters or 50 voters (whichever is greater) requesting that an election be held, the nominees must be appointed and seated as if elected. Similarly, for municipal elections, if the number of candidates does not exceed the number of candidates by the end of the nominating period, the city elections official must inform the city's governing body that it may adopt one of the following courses of action: appoint the nominee, appoint an eligible individual if no one has been nominated, or hold the election.
- 4) *Electronic notice.* Existing law allows an HOA to deliver a document by email, fax, or other electronic means if the recipient has consented in writing to that method of delivery. This bill provides that a recipient may consent by email to the method of delivery. Some documents, such as annual budgets and annual policy statements, can run to hundreds of pages and can be costly to deliver in hardcopy. The sponsor notes that while residents are often reluctant to submit a written request for delivery of documents by electronic means, they are much more inclined to submit such a request via email.
- 5) *30-day notice on rule changes.* Existing law requires an HOA board to provide notice of a proposed rule change to its residents at least 30 days prior to making the change. Laguna Woods Village notes that shorter months create delays in important decisions. For example, if a board meets on the first Tuesday of each month, in short months there are not 30 days between the first Tuesday in one month and the first Tuesday in the next. Indeed, the sponsor notes that in one 12-month period, eight meetings did not meet the 30-day requirements for two of its boards and nine did not meet it for the third board, meaning that actions had to be delayed another month. To alleviate such delays, this bill would reduce the notice period to 28 days.
- 6) *Amendments to address opposition concerns.* Opponents state that allowing election by acclamation would enable an HOA board to ignore or prevent nominations of non-incumbents and then determine that no election is required due to an insufficient number of candidates. To help address these concerns, the author amended this bill in the Senate Judiciary Committee to prevent the use of vote by acclamation unless the HOA provides notice of nomination

procedures to all association members at least 30 days prior to the nomination deadline.

Related/Prior Legislation

SB 1265 (Wieckowski, 2018) — makes several changes to the elections process held in CIDs, as well as making changes the process for handling disputes between a member and an HOA. *This bill is on the Senate Floor.*

AB 1799 (Mayes, 2016) — would have exempted HOAs in CIDs from election procedure requirements in uncontested elections. *This bill was passed by the Senate Transportation and Housing Committee but died in the Senate Judiciary Committee.*

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/15/18)

Laguna Woods Village (source)
California Association of Community Managers
Community Associations Institute of California
Community Associations Institute, Orange County Chapter
Congress of California Seniors
Rossmoor Walnut Creek
Rossmoor First Walnut Creek Mutual
Rossmoor Second Walnut Creek Mutual
Rossmoor Third Walnut Creek Mutual
Rossmoor Fourth Walnut Creek Mutual
Rossmoor Fifth Walnut Creek Mutual
Rossmoor Mutual No. 8
Rossmoor Mutual No. Twenty-Two
Rossmoor Mutual No. Twenty-Eight
Rossmoor Mutual No. Twenty-Nine
Rossmoor Mutual No. Thirty
Rossmoor Mutual No. Forty-Eight
Rossmoor Mutual No. Fifty-Six
Rossmoor Mutual No. Fifty Nine
Rossmoor Mutual No. Sixty-One
Rossmoor Mutual No. Sixty-Five
Rossmoor Mutual No. Sixty Eight
Rossmoor Mutual No. Seventy

Third Mutual of Laguna Woods Village
United Mutual of Laguna Woods Village
70 individuals

OPPOSITION: (Verified 5/15/18)

California Alliance for Retired Americans
California Land Title Association
1 individual

ARGUMENTS IN SUPPORT: The sponsor states that while the statutory changes in this bill are relatively minor, they will enable efficiencies which can result in significant cost savings for member-financed homeowners associations.

ARGUMENTS IN OPPOSITION: Opponents argue that this bill takes away the constitutional right to vote. Opponents state that allowing election by acclamation would enable an HOA board to ignore or prevent nominations of non-incumbents and then determine that no election is required due to an insufficient number of candidates.

Prepared by: Erin Riches / T. & H. / (916) 651-4121
5/16/18 9:54:27

**** **END** ****

AMENDED IN SENATE MAY 15, 2018

AMENDED IN SENATE APRIL 2, 2018

SENATE BILL

No. 1265

Introduced by Senator Wieckowski

February 15, 2018

An act to amend Sections 5105, 5110, 5125, 5145, and 5930 of, and to add Sections 4801 and 5910.1 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 1265, as amended, Wieckowski. Common interest developments: elections.

The Davis-Stirling Common Interest Development Act governs the creation and management of common interest developments. The act requires a homeowner's association to adopt rules that, among other things, specify the qualifications for candidates for the board of directors of the association and any other elected position, qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents. The act requires the sealed ballots to be at all times in the custody of the inspector or inspectors of elections or at a designated location until after the tabulation of the vote.

This bill would delete the requirement that the rules specify the qualifications for candidates for the board and any other elected position and the qualifications for voting. The bill would prohibit a rule that specifies procedures for the nomination of candidates from being deemed reasonable if it disallows a member from being nominated for any reason other than not being a member at the time of the ~~nomination~~.

nomination, but would authorize an association's bylaws to disqualify members who have been convicted of certain felonies. The bill would require the rules to ensure that the meeting at which ballots are counted is accessible to seniors and persons with disabilities: all members or their representatives who want to witness the tabulation. The bill would also require the rules to require a notice to be provided regarding the return and counting of ballots, nominations, and list of candidates' names that will appear on the ballot. The bill would require the rules to mandate that the inspector of elections deliver to each member the ballots and a copy of the election operating rules at least 30 days before an election. The bill would require these rules to prohibit the denial of a ballot to a member and to a person with *general* power of attorney for an owner. This bill would require the signed voter envelopes, voter list, and candidate registration list to be in the custody of the inspector of elections or at a designated location until after vote tabulation and would require these items and the ballots to be considered association records subject to inspection and copying.

Existing law requires an independent 3rd party to be selected by the association as the inspector of elections and prohibits a person, business entity, or subdivision of a business entity that is employed or under contract to the association for any compensable services from being an independent 3rd party unless otherwise expressly authorized by the rules of the association.

This bill would delete the exception made by rules of the association.

Existing law authorizes a member of an association to bring a civil action for declaratory or equitable relief for a violation of the above described provisions by the association within one year from the date the cause of action accrues and authorizes a court to void the election results, as specified. *Existing law also authorizes a cause of action for certain violations of the provisions governing common interest development association elections to be brought in small claims court.*

This bill would, among other things, authorize the civil action to be brought in Superior Court or, if the amount of the demand does not exceed the jurisdictional amount of the small claims court, in small claims court, within one year from the date that the inspector of elections notifies the board and membership of the election results, whichever is later. The bill would also require the court to void the elections results, as specified, unless the association establishes that the failure of the association to follow this article or the election operating rules was unintentional and did not affect the results of the election. The bill would

also prohibit an association from filing a civil action regarding a dispute in which the member has requested dispute resolution unless the association has complied with ~~provisions of existing law regarding dispute resolution~~. *the internal dispute resolution procedures governing common interest developments, as specified.*

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 4801 is added to the Civil Code, to read:
2 4801. The Legislature hereby finds and declares both of the
3 following:

4 (a) Common interest developments function as
5 quasi-governmental entities, paralleling in ~~almost every way~~ *many*
6 *ways* the powers, duties, and responsibilities of a local government.

7 (b) As a result, it is the intent of the Legislature for this chapter
8 to ensure that democratic principles and practices are in place with
9 respect to the governance of common interest developments.

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

11 5105. (a) An association shall adopt rules, at least 90 days
12 before any election, in accordance with the procedures prescribed
13 by Article 5 (commencing with Section 4340) of Chapter 3, that
14 do all of the following:

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

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

- 1 (3) Specify the procedures for the nomination of candidates,
 2 consistent with the governing documents. ~~A~~
- 3 (A) A nomination or election procedure shall not be deemed
 4 reasonable if it disallows any member from nominating himself
 5 or herself for election or if it disallows a member from being
 6 nominated for any reason other than not being a member at the
 7 time of the nomination.
- 8 (B) *Notwithstanding paragraph (A), an association’s bylaws*
 9 *may disqualify a member from running for an elective office if,*
 10 *within the past 20 years, the member has been convicted of a felony*
 11 *involving accepting or giving, or offering to give, a bribe, the*
 12 *embezzlement of money, the extortion or theft of money, perjury,*
 13 *or conspiracy to commit any of those crimes. For purposes of this*
 14 *paragraph, “conviction of a felony” includes a conviction of a*
 15 *felony in this state and a conviction under the laws of any other*
 16 *state, the United States, or any foreign government or country of*
 17 *a crime that, if committed in this state, would be a felony, and for*
 18 *which the person has not received a pardon from a person or entity*
 19 *authorized to grant the pardon.*
- 20 (4) Specify the voting power of each membership, the
 21 authenticity, validity, and effect of proxies, and the voting period
 22 for elections, including the times at which polls will open and
 23 close, consistent with the governing documents.
- 24 (5) Specify a method of selecting one or three independent third
 25 parties as inspector or inspectors of elections utilizing one of the
 26 following methods:
- 27 (A) Appointment of the inspector or inspectors by the board.
- 28 (B) Election of the inspector or inspectors by the members of
 29 the association.
- 30 (C) Any other method for selecting the inspector or inspectors.
- 31 (6) Allow the inspector or inspectors to appoint and oversee
 32 additional persons to verify signatures and to count and tabulate
 33 votes as the inspector or inspectors deem appropriate, provided
 34 that the persons are independent third parties.
- 35 (7) Ensure that the meeting at which ballots are counted is *held*
 36 *on association property and accessible to persons with disabilities.*
 37 *all members or their representatives who want to witness the*
 38 *tabulation.*
- 39 (8) Require notice to be provided of all of the following:

1 (A) The date and time by which, and the physical address where,
2 ballots are to be returned by mail or handed to the inspector or
3 inspectors of elections.

4 (B) The date and location of the meeting at which ballots will
5 be counted.

6 (C) The procedure and deadline for submitting a nomination,
7 which shall be provided at least 30 days before that deadline.

8 (D) The list of all candidates' names that will appear on the
9 ballot, which shall be provided at least 30 days before the ballots
10 are distributed.

11 (E) The list of all voters by either name or parcel number, and
12 voting power.

13 (9) Require any errors or omissions to the list of candidates'
14 names or list of voters to be immediately reported to the inspector
15 or inspectors and require necessary corrections to be made within
16 two business days.

17 (b) Notwithstanding any other provision of law, the rules
18 adopted pursuant to this section may provide for the nomination
19 of candidates from the floor of membership meetings or nomination
20 by any other manner. Those rules may permit write-in candidates
21 for ballots.

22 (c) Notwithstanding any other provision of law, the rules adopted
23 pursuant to this section shall do all of the following:

24 (1) Prohibit the denial of a ballot to a member for any reason
25 other than not being a member at the time when ballots are
26 distributed.

27 (2) Prohibit the denial of a ballot to a person with *general* power
28 of attorney for a member.

29 (3) Require the ballot of a person with *general* power of attorney
30 for a member to be counted if returned in a timely manner.

31 (4) Require the inspector or inspectors of elections to deliver,
32 or cause to be delivered, at least 30 days before an election, to each
33 member both of the following documents:

34 ~~(A) A copy of the election operating rules.~~

35 ~~(B) The ballot or ballots.~~

36 (A) *The ballot or ballots.*

37 (B) *A copy of the election operating rules. Delivery of the*
38 *election operating rules may be accomplished by either of the*
39 *following methods:*

1 (i) *Posting the election operating rules to an Internet Web site*
 2 *and including the corresponding Internet Web site address on the*
 3 *ballot together with the phrase, in at least 12-point font: “The*
 4 *rules governing this election may be found here:”*

5 (ii) *Individual delivery.*

6 SEC. 3. Section 5110 of the Civil Code is amended to read:

7 5110. (a) The association shall select an independent third
 8 party or parties as an inspector of elections. The number of
 9 inspectors of elections shall be one or three.

10 (b) For the purposes of this section, an independent third party
 11 includes, but is not limited to, a volunteer poll worker with the
 12 county registrar of voters, a licensee of the California Board of
 13 Accountancy, or a notary public. An independent third party may
 14 be a member, but may not be a director or a candidate for director
 15 or be related to a director or to a candidate for director. An
 16 independent third party may not be a person, business entity, or
 17 subdivision of a business entity who is currently employed or under
 18 contract to the association for any compensable ~~services.~~ *services*
 19 *other than serving as an inspector of elections.*

20 (c) The inspector or inspectors of elections shall do all of the
 21 following:

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

24 (2) Determine the authenticity, validity, and effect of proxies,
 25 if any.

26 (3) Receive ballots.

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

29 (5) Count and tabulate all votes.

30 (6) Determine when the polls shall close, consistent with the
 31 governing documents.

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

33 (8) Perform any acts as may be proper to conduct the election
 34 with fairness to all members in accordance with this article, the
 35 Corporations Code, and all applicable rules of the association
 36 regarding the conduct of the election that are not in conflict with
 37 this article.

38 (d) An inspector of elections shall perform all duties impartially,
 39 in good faith, to the best of the inspector of election’s ability, and
 40 as expeditiously as is practical. If there are three inspectors of

1 elections, the decision or act of a majority shall be effective in all
2 respects as the decision or act of all. Any report made by the
3 inspector or inspectors of elections is prima facie evidence of the
4 facts stated in the report.

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

6 5125. (a) The sealed ballots, signed voter envelopes, voter list,
7 and candidate registration list shall at all times be in the custody
8 of the inspector or inspectors of elections or at a location designated
9 by the inspector or inspectors until after the tabulation of the vote,
10 and until the time allowed by Section 5145 for challenging the
11 election has expired, at which time custody shall be transferred to
12 the association. If there is a recount or other challenge to the
13 election process, the inspector or inspectors of elections shall, upon
14 written request, make the ballots available for inspection and
15 review by an association member or the member's authorized
16 representative. Any recount shall be conducted in a manner that
17 preserves the confidentiality of the vote.

18 (b) Notwithstanding Section 5200, ballots, signed voter
19 envelopes, voter list, and candidate registration list shall be
20 association records subject to inspection and copying by a member.

21 SEC. 5. Section 5145 of the Civil Code is amended to read:

22 5145. (a) A member of an association may bring a civil action
23 for declaratory or equitable relief for a violation of this article by
24 the association, including, but not limited to, injunctive relief,
25 restitution, or a combination thereof, within one year of the date
26 that the inspector or inspectors of elections notifies the board and
27 membership of the election results or the cause of action accrues,
28 whichever is later. Upon a finding that the election procedures of
29 this article, or the adoption of and the adherence to rules provided
30 by Article 5 (commencing with Section 4340) of Chapter 3, were
31 not followed, a court shall void the results of the election, unless
32 the association establishes, by ~~clear and convincing~~ *a*
33 *preponderance of the* evidence, that the failure of the association
34 to follow this article or the election operating rules was
35 unintentional and did not affect the results of the election. The
36 findings of the court shall be stated in writing as part of the record.

37 (b) A member who prevails in a civil action to enforce the
38 member's rights pursuant to this article shall be entitled to
39 reasonable attorney's fees and court costs, and the court may
40 impose a civil penalty of up to five hundred dollars (\$500) for each

1 violation, except that each identical violation shall be subject to
 2 only one penalty if the violation affects each member of the
 3 association equally. A prevailing association shall not recover any
 4 costs, unless the court finds the action to be frivolous,
 5 unreasonable, or without foundation. If a member prevails in a
 6 civil action brought in small claims court, the member shall be
 7 awarded court costs and reasonable attorney’s fees incurred for
 8 consulting an attorney in connection with this civil action.

9 (c) A cause of action under subdivision (a) may be brought in
 10 either the Superior Court or, if the amount of the demand does not
 11 exceed the jurisdictional amount of the small claims court, in small
 12 claims court.

13 SEC. 6. Section 5910.1 is added to the Civil Code, to read:

14 5910.1. An association may not file a civil action regarding a
 15 dispute in which the member has requested dispute resolution
 16 unless the association has complied with Section ~~5910~~: 5910 by
 17 *engaging in good faith in the internal dispute resolution procedures*
 18 *as set forth therein after a member invokes those procedures.*

19 SEC. 7. Section 5930 of the Civil Code is amended to read:

20 5930. (a) An association or a member may not file an
 21 enforcement action in the superior court unless the parties have
 22 endeavored to submit their dispute to alternative dispute resolution
 23 pursuant to this article.

24 (b) This section applies only to an enforcement action that is
 25 solely for declaratory, injunctive, or writ relief, or for that relief
 26 in conjunction with a claim for monetary damages not in excess
 27 of the jurisdictional limits stated in Sections 116.220 and 116.221
 28 of the Code of Civil Procedure.

29 (c) This section does not apply to a small claims action.

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FINANCIAL QUALIFICATIONS POLICY
Revised February 13, 2018
Resolution 01-18-24

Prospective Shareholders of Units in (United) are required to meet minimum financial requirements for Membership as set forth below. All income and assets claimed must be verified by presenting documentation acceptable to the Mutual Board of Directors.

All applicants shall submit the most recent year's Federal income tax return, signed and dated, including Schedules A and B, in addition to other verification documents. If income is derived from an owned business, the appropriate business tax schedules and a profit and loss statement are required.

Where there is more than one prospective Shareholder, income and assets can be calculated collectively, if each is eligible and intends to reside.

Membership applicants to United are required to submit a completed Financial Statement/Credit Information form, together with satisfactory verification of identity, income and assets.

ASSET REQUIREMENT

The prospective Shareholder shall submit satisfactory verification of assets equal to the purchase price of the Unit plus \$125,000. Prospective transferees (i.e., outside escrow) are required to demonstrate a minimum asset base of \$125,000 only.

Acceptable assets will be those that are considered to be liquid, marketable or income producing. Only aged accounts (180 days) will be considered. Acceptable assets include, among others:

- Equity in U.S. residential property
- Savings accounts in U.S. financial institutions
- Cash value life insurance
- Certificates of deposit, money market accounts in U.S. financial institutions.
- IRA, SEP, 401(k) and Keogh accounts
- US, state or municipal government bonds - valued at current market prices
- American traded investments, (NYSE, Amex, OTC, NASDAQ, etc.) valued at current market prices
- Mortgages and promissory notes, provided that interest is reported on the applicant's tax return
- Equity in U.S. income producing real estate

Excluded from consideration are the following, among others:

- Mobile Homes
- Recreational vehicles, boats and trailers
- Vacant land
- Automobiles
- Artwork, jewelry, furs and collections such as coins, dolls, stamps and other similar items
- Term life insurance
- Annuity funds, which cannot be withdrawn in lump sum
- Anticipated bequests or inheritances
- Promissory Notes whose income is not reported on the perspective transferee tax return
- Community property

INCOME REQUIREMENTS

Prospective Shareholders shall submit from a recognized Credit Reporting Agency (e.g. Equifax, TransUnion, Experian), a full credit report and FICO score dated within 60 days prior to the application submittal.

Prospective Shareholders and transferees must provide satisfactory verification of income of at least \$40,000 per year at the time of purchase.

1. Acceptable verifications include, among others:

- The most recent Federal Tax returns
- W - 2 Forms or paycheck stubs
- Bank, credit union or investment account statements
- Letters from bankers
- Notices of annuities and Social Security payments
- Pensions
- Trust income
- Disability income
- Residential / commercial property rental income

2. Unacceptable income verifications include, among others:

- Letters from employers, accountants, bookkeepers and attorneys
- Income not reported on Federal income tax returns
- Funds held outside US borders

OWNERSHIP OF MULTIPLE MEMBERSHIPS

United does not permit ownership of more than one cooperative Membership, except under an interim dual Membership agreement which is issued for six months.

FINANCIAL QUALIFICATION WAIVERS

Shareholders who purchase a replacement Unit do not have to re-qualify financially for Membership, if there is no change to the Membership vesting and the dual interim agreement is in effect.

Current members of one Mutual who wish to purchase in another Mutual are required to meet the financial requirements of the Mutual in which they are purchasing.

A former member may obtain a waiver of financial qualifications if the replacement Membership is purchased within 90 days of the closing of the sale of the previously owned Membership, and vesting in the new Unit is exactly the same as the vesting in the Unit previously owned.

DISCRETIONARY AUTHORITY

United Board of Directors may, but is not obligated to, deny or approve applications for Membership based on the conditions herein. The Board of Directors, exercising prudent business judgement, may also deny or approve, in its sole and absolute discretion, applications based on other material factors, such as, but not limited to, history of bankruptcy, excess liabilities, or history of non-compliance as a member in United, GRF, or other Mutuels in Laguna Woods Village.

MEMBERSHIP

Membership in United is created, and starts, with the later occurring of the following:

- Written approval of Membership by the United Mutual Board of Directors;
- Issuance of a Membership Stock Certificate;
- The signing of an Occupancy Agreement; and
- Upon close of escrow.

Upon Membership approval the Occupancy Agreement entitles the Member to occupy the Unit for three years, which is automatically renewed for three-year terms per Article 4 of the Occupancy Agreement, unless terminated by transfer or United's non-renewal or termination by the Board of Directors.