

Assembly Bill No. 1458

CHAPTER 303

An act to amend Section 5115 of the Civil Code, and to amend Section 7512 of the Corporations Code, relating to common interest developments.

[Approved by Governor October 4, 2023. Filed with Secretary
of State October 4, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1458, Ta. Common interest developments: association governance: member election.

Existing law, the Davis-Stirling Common Interest Development Act, defines and regulates common interest developments, including member elections. Existing law prescribes that a quorum is required only if stated in the governing documents or by law.

In the absence of a quorum, this bill would authorize an association to adjourn the proceeding to a date at least 20 days after the adjourned proceeding, at which time the quorum required for purposes of a membership meeting shall be 20% of the voting members present in person, by proxy, or by secret written ballot received. The bill would require an association to provide general notice of the membership meeting, as specified, no less than 15 days prior to the election of directors.

Under existing law, for elections of directors and for recall elections, an association is required to provide general notice of specified information about the election at least 30 days before the ballots are distributed, including the date, time, and location of the meeting at which ballots will be counted.

This bill would additionally require the general notice to include the date, time, and location of the meeting at which quorum will be determined, if the association's governing documents require a quorum. The bill would require an association whose governing documents require a quorum for election of directors to provide general notice of a statement that the board of directors may call a subsequent meeting at least 20 days after a scheduled election if the quorum is not reached, as specified.

Existing law authorizes and regulates the formation and operation of various corporations, including a nonprofit mutual benefit corporation. Existing law sets forth the parameters of a quorum at a meeting of members, as specified. For a corporation that is a common interest development, existing law imposes notice requirements for special meetings.

In the absence of a quorum, this bill would authorize a corporation that is a common interest development to adjourn a membership meeting to a date at least 20 days after the adjourned proceeding, at which time the quorum required for purposes of a membership meeting shall be 20% of

the voting members present in person, by proxy, or by secret written ballot received.

The people of the State of California do enact as follows:

SECTION 1. Section 5115 of the Civil Code is amended to read:

5115. (a) An association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Section 4040 if individual notice is requested by a member. This subdivision shall only apply to elections of directors and to recall elections.

(b) For elections of directors and for recall elections, an association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

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

(2) The date, time, and location of the meeting at which a quorum will be determined, if the association's governing documents require a quorum, and at which ballots will be counted.

(3) The list of all candidates' names that will appear on the ballot.

(4) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

(5) If the association's governing documents require a quorum for election of directors, a statement that the board of directors may call a subsequent meeting at least 20 days after a scheduled election if the required quorum is not reached, at which time the quorum of the membership to elect directors will be 20 percent of the association's members voting in person, by proxy, or by secret ballot.

(c) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.

(2) The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.

(d) (1) A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.

(2) For an election of directors of a corporation that is a common interest development, and in the absence of meeting quorum as required by the association's governing documents or Section 7512 of the Corporations Code, unless a lower quorum is authorized by the association's governing documents, the association may adjourn the proceeding to a date at least 20 days after the adjourned proceeding, at which time the quorum required for purposes of a membership meeting to elect directors shall be 20 percent of the association's voting members present in person, by proxy, or by secret written ballot received.

(3) No less than 15 days prior to an election authorized pursuant to paragraph (2), the association shall provide general notice of the membership meeting, which shall include:

(A) The date, time, and location of the meeting.

(B) The list of all candidates.

(C) A statement that 20 percent of the association present or voting by proxy or secret ballot will satisfy the quorum requirements for the election of directors and that the ballots will be counted if a quorum is reached, if the association's governing documents require a quorum.

(e) An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

(f) Except for the meeting to count the votes required in subdivision (a) of Section 5120, an election may be conducted entirely by mail unless otherwise specified in the governing documents.

(g) In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.

SEC. 2. Section 7512 of the Corporations Code is amended to read:

7512. (a) One-third of the voting power, represented in person or by proxy, shall constitute a quorum at a meeting of members, but, subject to subdivisions (b) and (c), a bylaw may set a different quorum. Any bylaw amendment to increase the quorum may be adopted only by approval of the members (Section 5034). If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the members unless the vote of a greater number or voting by classes is required by this part or the articles or bylaws.

(b) Where a bylaw authorizes a corporation to conduct a meeting with a quorum of less than one-third of the voting power, then the only matters that may be voted upon at any regular meeting actually attended, in person or by proxy, by less than one-third of the voting power are matters notice

of the general nature of which was given, pursuant to the first sentence of subdivision (a) of Section 7511.

(c) Subject to subdivision (b), the members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum or, if required by this division, or by the articles or the bylaws, the vote of the greater number or voting by classes.

(d) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the votes represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (c).

(e) For an election of directors of a corporation that is a common interest development, and in the absence of meeting quorum as required by the association's governing documents or this section, unless a lower quorum is authorized by an association's governing documents, the corporation may adjourn the proceeding to a date at least 20 days after the adjourned proceeding, at which time the quorum required for purposes of a membership meeting to elect directors shall be 20 percent of the association's voting members present in person, by proxy, or by secret written ballot received.