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CONSENT

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Bill No: SB 432  
Author: Wieckowski (D)  
Introduced: 2/12/21  
Vote: 21

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SENATE HOUSING COMMITTEE: 9-0, 4/15/21  
AYES: Wiener, Bates, Caballero, Cortese, McGuire, Ochoa Bogh, Skinner,  
Umberg, Wieckowski

SENATE JUDICIARY COMMITTEE: 11-0, 5/4/21  
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird,  
Stern, Wieckowski, Wiener

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**SUBJECT:** Common interest developments

**SOURCE:** Author

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**DIGEST:** This bill disqualifies termed-out board members of common interest developments (CIDs) from running for re-election, and requires an individual who is appointed to count and tabulate votes in a CID election to meet specified requirements.

**ANALYSIS:**

Existing law:

- 1) Establishes, within the Davis-Stirling Common Interest Development Act, rules and regulations governing the operation of a CID and the respective rights and duties of a homeowners association (HOA) and its members. Requires the governing documents of a CID, and any amendments to the governing documents, to be adopted through HOA elections in accordance with specified procedures.
- 2) Requires an HOA to hold elections, remove directors, adopt amendments to governing documents, or grant exclusive use of common areas, by secret ballot. [CIV 5100(a)(1)]

- 3) Requires an HOA to hold an election for a seat on the board of directors at the expiration of the corresponding director's term and at least once every four years. [CIV 5100(1)(2)]
- 4) 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. [CIV 5100(f)]
- 5) Provides that when the number of nominees for the board does not exceed the number of vacancies, the nominees shall be considered elected by acclamation if the HOA includes 6,000 or more units and the HOA provided individual notice of the election and nomination procedure at least 30 days prior to the close of nominations. [CIV 5100(g)(1),(2)]
- 6) Authorizes an HOA to disqualify an individual from nomination due to:
  - a) Lack of membership in the HOA at the time of nomination.
  - b) A past criminal conviction, as specified.
  - c) Failure to be current in payment of regular and special assessments, as specified.
  - d) Holding joint ownership with another person who would be serving on the board at the same time.
  - e) Less than a year of membership in the HOA. [CIV 5100(g)(3)]
- 7) Requires the HOA to adopt election rules that do the following:
  - a) Ensure that any candidate and member advocating a point of view has equal access to association media, newsletters, or Web sites during a campaign, for purposes reasonably related to the election.
  - b) Ensure access to common-area meeting space to all candidates at no cost.
  - c) Specify the qualifications for candidates for the board and any other elected position, as well as 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) Specify the voting power of each member; 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) Specify 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. [CIV 5105]
- 8) Requires the HOA to select one independent third party or three independent third parties as inspector or inspectors of elections. Provides that an independent third party may not be:
- a) A board director or candidate for director.
  - b) Related to a board director or candidate for director.
  - c) An individual, business entity, or subdivision of a business entity who is currently employed or under contract to the HOA for any compensable services other than serving as an elections inspector. [CIV 5110(b)]
- 9) Provides that the inspector or inspectors of elections have the following duties:
- a) Determining the number of memberships entitled to vote and the voting power of each.
  - b) Determining the authenticity, validity, and effect of proxies.
  - c) Receiving votes and ballots.
  - d) Determining all challenges and questions related to votes and ballots.
  - e) Counting and tabulating all votes.
  - f) Determining when the polls will close.
  - g) Determining the results of the election. [CIV 5110]
- 10) Permits a member of an HOA to bring a cause of action in small claims court against the HOA if the member can establish that election procedures were not followed, as specified. [CIV 5145]

This bill:

- 1) Adds to the reasons that an HOA may disqualify an individual from nomination as candidate to the board, that the individual has served the maximum number of terms or sequential terms allowed by the HOA.
- 2) Requires any individual appointed by the elections inspector or inspectors to count and tabulate votes to meet the same independent third party requirements as the elections inspector or inspectors.

## **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.

## **Comments**

- 1) *Author's statement.* "SB 432 is a cleanup bill to SB 323 (2019), which sought to bolster the right to vote and run for a board seat in HOA elections. SB 432 again permits HOAs to have term limits if term limits are contained in the bylaws or election rules. This bill also requires that anyone whom the inspector of election appoints to oversee the verification of signatures and tabulation of votes also meets the requirements of neutrality that are already applied to the inspector him/herself."
- 2) *Term limits.* Existing law requires an HOA to adopt election procedures in its governing documents, and lays out certain parameters that must be met. Term limits, however, are not addressed in existing law; an HOA may choose whether or not to adopt them. Recent legislation (SB 323, Wieckowski, Chapter 848, Statutes of 2019) made several revisions to the statute governing HOA elections. Among other things, SB 323 authorized an HOA to disqualify an individual from nomination under certain circumstances, including not having been a member for at least a year, not being paid up on HOA

assessments, or holding joint ownership of a unit within the HOA with another board member. Because this provision did not specifically call out term limits, it could be argued that a board member is eligible for nomination despite having already served their full term. To address this concern, this bill explicitly authorizes an HOA to disqualify an individual from nomination if they have already served the maximum number of terms allowed.

- 3) *Elections inspectors.* Existing law requires an HOA to select one independent third party, or three independent third parties, as inspector or inspectors of elections. Existing law authorizes an elections inspector to appoint or oversee additional independent third party individuals to verify signatures and to count and tabulate votes. This bill clarifies that an individual appointed by an elections inspector must meet the same independent third party qualifications as the elections inspector.

### **Related/Prior Legislation**

SB 323 (Wieckowski, Chapter 848, Statutes of 2019) enacted a series of reforms to the laws governing board of director elections in CIDs, also referred to as HOAs, with the intent to increase the regularity, fairness, formality, and transparency associated with such elections.

SB 754 (Moorlach, Chapter 858, Statutes of 2019) provided that nominees to an HOA board in a CID of 6,000 or more units shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board.

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

**SUPPORT:** (Verified 5/5/21)

None received

**OPPOSITION:** (Verified 5/5/21)

None received

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5/5/21 15:33:45

\*\*\*\* END \*\*\*\*