SENATE THIRD READING
SB 1238 (Wahab)
As Amended August 21, 2026
Majority vote

SUMMARY

Provides that a duty of care for any managing agent, including its employees, that facilitates activities under the Davis-Stirling Common Interest Development Act (the Act) is owed to the homeowners' association (HOA) and its members. Requires disclosure of specified information related to exterior elevated elements (EEEs) to a prospective purchaser of a separate interest in the common interest development (CID). Makes other changes to the Act related to financial and capital planning documents.

Major Provisions

1) Provides that any managing agent, including its employees, that facilitates specified management activities under the Act, or other activities under the Act that are authorized by the HOA, owes a duty of care that is prudent and provides the highest good faith effort to the HOA and its members.

2) Requires an owner of a separate interest to provide a copy of the master insurance policy for the HOA that covers the property, general liability, earthquake, flood, and fidelity coverage upon request of the property owner or prospective purchaser.

3) Requires an owner of a separate interest to provide the following information to a prospective purchaser of the separate interest, if requested by the prospective purchaser:

   a) The location on the first page of the nine-year exterior elevated elements (EEEs) inspection report where the following information may be found:

      i. The number of EEEs, and the number of units identified as impacted by the EEEs inspected and posing an immediate threat to the safety of the occupants;

      ii. The number of EEEs recommended to be included in the next reasonably competent and diligent visual inspection of major components or recommended for reinspection within the next three years; and

      iii. The number of EEEs recommended for reinspection in the next nine-year EEE inspection.

   b) Any EEE identified in the nine-year EEE inspection report as needing repairs that exceed $10,000.

4) Requires an owner of a separate interest to provide to a prospective purchaser of the separate interest the following information indicating whether:

   a) The covenants, restrictions, and conditions require an owner of a separate interest, with an exclusive right to use an EEE, to individually maintain that EEE;

   b) The HOA's reserve study includes a minimum annual budgeted replacement reserve allocation of 10% for repairs of the exterior structures; and

   c) The HOA's reserve study has been updated to include identified repairs contained within the nine-year EEE inspection report.

5) Expands the definition of "association records" to include three-year reserve studies.

6) Prohibits an HOA from expending funds designated as reserve funds for other litigation or legal services, except for litigation involving the repair, restoration, replacement, or maintenance of major components for which the HOA is responsible.

7) Adds EEEs identified in the nine-year EEE inspection report to the list of major components included in the three-year reserve study report.

8) Adds the following repair urgency categories to the first page of the nine-year EEE inspection report for the total number of inspected EEEs identified in the report and the number of units impacted:

   a) EEEs recommended to be included in the next reasonably competent and diligent visual inspection conducted pursuant to the three-year reserve study or recommended for reinspection within the next three years;

   b) EEEs recommended for reinspection in the next nine-year EEE inspection report; and

   c) EEEs demonstrating no need for repair at the time of inspection.

9) Requires an HOA's reserve funding plan to include the costs necessary to account for the repairs identified in the nine-year EEE inspection report.

10) Requires the summary of the HOA's reserves to include repairs identified in the nine-year EEE inspection report.

11) Incorporates nonsubstantive chaptering amendments.

COMMENTS

HOA managers: Under the Act, an HOA may contract with an HOA manager or management company to assist with the administration of the HOA. HOA managers commonly provide services like collecting assessments, maintaining association records, preparing budgets and financial reports, coordinating maintenance and repairs, administering contracts, and supporting compliance with applicable laws and governing documents. While an HOA manager may oversee day-to-day operations, the board of an HOA retains ultimate responsibility for governing the HOA and making decisions on behalf of the membership.

California does not require HOA managers to hold a state license in order to provide management services. However, existing law regulates the use of the title "certified common interest development manager." Individuals who use that title must satisfy education, examination, and continuing education requirements established under the Business and Professions Code. HOAs often hire HOA managers because volunteer board members may lack the time, expertise, or resources needed to manage the HOA's financial, administrative, operational, and maintenance responsibilities.

Disclosures and nine-year EEE inspection reports: This bill adds additional required elements to the nine-year EEE inspection report. SB 410 (Grayson), Chapter 516, Statutes of 2025, required the nine-year EEE inspection report to include, on the first page of the report, all of the following: a) the date of the inspection; b) the total number of units in the condominium project; c) the total number of units in the condominium project with EEEs; d) the total number of EEEs in the condominium project; and e) the total number of EEEs inspected in the report. SB 410 also required the report to include the total number of inspected EEEs identified as posing an immediate threat to the safety of the occupants and the number of units impacted. This bill now proposes additional categories of information for inclusion on the first page of the nine-year EEE inspection report. These new categories include, in addition to those posing an immediate threat to the safety of occupants, EEEs recommended to be included in the next three-year reserve study of the CID's major components, EEEs recommended for reinspection in the next nine-year EEE inspection, and EEEs demonstrating no need for repair at the time of the inspection.

Like the nine-year EEE inspection report, this bill also adds new information to be included in the mandated disclosure prior to transfers of separate interests. This bill requires all of the new categories outlined above in the nine-year EEE inspection report to be provided to a prospective purchaser, if separately requested by the purchaser. In other words, this bill both proposes to add new requirements to the first page of the nine-year EEE inspection report and requires an owner to provide the same information if separately requested by a prospective purchaser, despite the prospective purchaser already receiving the nine-year EEE inspection report (and presumably the first page of the report) per SB 410.

This bill does add new disclosure requirements previously discussed, including any balcony identified as needing repairs that exceed $10,000. Other information that this bill proposes to require to be disclosed, such as whether the HOA's three-year reserve study includes a minimum annual budgeted replacement reserve allocation of 10% of the repairs of the exterior structures, can assist prospective purchasers navigating the complex lending requirements imposed by government-sponsored enterprises.

Use of reserve funds: This bill specifies that reserve funds may not be used for any litigation expenses or legal services other than those permitted related to the major components. According to one of the sponsors of this bill, most standard contracts between HOA managers and HOAs require that the HOA manager be held harmless in the event they get sued and further indemnify all the HOA manager's employees. This bill's sponsor further cites sections within the Act that require reserves to be used only to maintain, repair and replace the common areas. Existing law prohibits an HOA from expending funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components that the HOA is obligated to repair, restore, replace, or maintain. Existing law already limits the use of reserve funds to obligations to repair, restore, replace, or maintain major components and any related litigation.

Reserve fund planning and major components: Under existing law, HOAs are required to periodically assess their long-term repair and replacement obligations through reserve studies. At least once every three years, the HOA board must conduct a reasonably competent and diligent visual inspection of the accessible areas of major components for which the HOA is responsible, where the replacement value of those components is at least one-half of the association's gross budget, excluding reserves, and must review that study annually and make appropriate adjustments to its reserve analysis. The reserve study must identify major components with less than 30 years of remaining useful life, estimate their remaining life and repair or replacement costs, calculate the annual contribution needed to fund those obligations, and include a reserve funding plan. For purposes of the three-year reserve study, major components include gas, water, and electric service to the extent the HOA is responsible for repair or replacement of those lines. This bill adds EEEs, associated waterproofing systems, and load-bearing components to the list of major components and specifies that the reserve funding plan must include repairs identified in the nine-year EEE inspection report. In effect, EEEs would be inspected every nine years as part of the nine-year EEE inspection report and every three years as part of the three-year reserve study.

Duty of care: An HOA itself has a fiduciary relationship with its members. Members of an HOA's board of directors also owe a fiduciary duty to the HOA and its members, including a duty of loyalty and a duty of care. These duties ensure that an HOA board acts in the best interests of the HOA and its members, and helps members of the HOA hold board members accountable if they fail to properly operate the HOA or have a conflict of interest. An HOA management company or manager, hired to conduct the HOA's day-to-day operations, may, in some circumstances, have a fiduciary relationship with the HOA board under the contract it signs with the HOA. However, the management company does not have a fiduciary relationship with the members of the HOA. Initially, this bill proposed requiring HOA managers or HOA management companies provide a fiduciary duty to the HOA board and the members of the HOA. The duty of care provisions were amended to instead specify any managing agent, including its employees, that facilitates specified management activities under the Act, or other activities under the Act that are authorized by the HOA, owes a duty of care that is prudent and provides the highest good faith effort to the HOA and its members. This bill still extends this duty of care to members of the HOA, not just the HOA board.

According to the Author
"SB 1238 will protect homeowners who reside in communities with a homeowner's association (HOA) by requiring additional disclosures to the homeowner and ensuring HOAs act in the homeowners' best interest by requiring a duty of care be provided by HOA managers to the HOA board and the HOA members. Under current law HOA managers have no licensing requirements or duties to the homeowner. This bill will establish a minimum standard by requiring HOA managers to provide a duty of care to the homeowner while also prohibiting HOAs from using HOA reserve funds to sue homeowners seeking to hold boards and managers accountable for property maintenance required under CA law."

Arguments in Support
According to the California Association of Realtors, the sponsor of this bill, "As the Department of Real Estate reports, nearly all new housing constructions now includes an HOA, yet current law provides virtually no state-level oversight of HOA managers or management companies. This lack of accountability has created long-term risks for homeowners, including opaque financial practices, limited access to essential documents, and costly barriers to enforcing their rights under the Davis-Stirling Act. SB 1238 addresses these gaps by establishing clear standards of conduct and improving access to information necessary for homeowners to understand the financial health of their association – information that is especially critical during a real estate transaction or homeowners' refinance."

Arguments in Opposition
According to the Community Associations Institute's California Legislative Action Committee, "The bill was recently amended to add language regarding a manager's 'duty of care' to the association and members of the association. While we agree the manager owes a duty of care to the association because of the contractual relationship between the two, we cannot support extending in statute that duty to the members of the association. The manager is the association's agent. Its contractual duty is owed to the corporation not the members. The association already owes a duty to the members. If the manager fails to comply with Davis-Stirling Act, that failure is imputed to the association. There is no need to impose a duty on the manager. It will only create litigation expenses which will be passed on to the owners, increasing the cost of ownership. It is for these reasons, we request an amendment to limit that language to the association."

FISCAL COMMENTS

According to the Senate Appropriations Committee, as amended April 23, 2026, "The Department of Real Estate (DRE) estimates minor one-time costs, likely in the tens of thousands of dollars, to conduct stakeholder and consumer education and to conduct training for Subdivisions Division staff. DRE would also incur one-time contract costs of approximately $50,000 to update Subdivision forms, the Operating Costs Manual, and Reserve Study Guidelines related to HOA budgets. (Real Estate Fund)"

VOTES

SENATE FLOOR: 36-2-2
YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Durazo, Gonzalez, Grayson, Grove, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Ochoa Bogh, Padilla, Pérez, Reyes, Richardson, Rubio, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener
NO: Dahle, Seyarto
ABS, ABST OR NV: Jones, Niello

ASM HOUSING AND COMMUNITY DEVELOPMENT: 9-0-3
YES: Haney, Ávila Farías, Caloza, Garcia, Kalra, Lee, Ward, Wicks, Wilson
ABS, ABST OR NV: Patterson, Ta, Tangipa

ASM JUDICIARY: 9-3-0
YES: Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur
NO: Macedo, Dixon, Sanchez

UPDATED

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CONSULTANT: Juan Reyes / H. & C.D. / (916) 319-2085 FN: 0003972