

UNFINISHED BUSINESS

Bill No: SB 1238
Author: Wahab (D)
Amended: 8/21/26
Vote: 21

SENATE HOUSING COMMITTEE: 9-0, 4/15/26

AYES: Arreguín, Cabaldon, Caballero, Cortese, Durazo, Gonzalez, Grayson,
Ochoa Bogh, Padilla

NO VOTE RECORDED: Seyarto

SENATE JUDICIARY COMMITTEE: 12-0, 4/21/26

AYES: Umberg, Niello, Allen, Ashby, Caballero, Durazo, Laird, Reyes, Stern,
Wahab, Weber Pierson, Wiener

NO VOTE RECORDED: Valladares

SENATE APPROPRIATIONS COMMITTEE: 5-1, 5/11/26

AYES: Cervantes, Cabaldon, Grayson, Richardson, Wahab

NOES: Seyarto

NO VOTE RECORDED: Dahle

SENATE FLOOR: 36-2, 5/19/26

AYES: 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

NOES: Dahle, Seyarto

NO VOTE RECORDED: Jones, Niello

ASSEMBLY FLOOR: Passed, 8/26/26

SUBJECT: Common interest developments: management

SOURCE: California Association of Realtors

DIGEST: This bill 1) 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; 2) 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); and 3) makes other changes to the Act related to financial and capital planning documents.

Assembly Amendments add a copy of the master insurance policy for an HOA to the list of required disclosures prior to the sale of a separate interest in an HOA, recast provisions of the bill to clarify that EEEs identified in the nine-year EEE inspection report are considered “major components” for the purposes of the three-year reserve study, and addresses chaptering conflicts with AB 739 (Jackson), and AB 2050 (Laird).

ANALYSIS:

Existing law:

- 1) Establishes, within the Davis-Stirling CID Act, rules and regulations governing the operation of CIDs and the respective rights and duties of a 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) Establishes, within the Davis-Stirling CID Act, rules and regulations governing the operation of CIDs and the respective rights and duties of a 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.
- 3) Requires the HOA board of a CID with buildings containing three or more multifamily units to cause a reasonably competent and diligent visual inspection to be conducted of EEEs for which the HOA has maintenance or repair responsibility, as specified.
- 4) Requires the inspection to determine whether the EEEs are in a generally safe condition and performing in accordance with applicable standards.
- 5) Requires the first inspection to be completed by January 1, 2025, and every nine years thereafter in coordination with the HOA reserve study inspection pursuant to existing law.

- 6) Requires the owner of a separate interest (housing unit) in a CID to provide the following documents to a prospective buyer prior, to transfer of title or the execution of a real property sales contract, as specified:
- a) A copy of all governing documents for the HOA, or a written statement that the HOA is not incorporated, as specified.
 - b) If applicable, a statement that a restriction in the governing documents limiting the occupancy, residency, or use of a unit on the basis of age is only enforceable as specified.
 - c) A copy of the most recent HOA annual budget report and policy statements, as specified.
 - d) A written statement regarding the amount of the HOA's current regular and special assessments and fees, any unpaid assessments on the unit, and any unpaid fines or penalties on the unit, as specified.
 - e) A copy or summary of any notice previously sent to the seller setting forth any alleged violation of the governing documents that is unresolved, as specified.
 - f) A copy of the initial list of defects provided to each HOA member, unless the HOA and the builder subsequently enter into a settlement agreement or otherwise resolve the matter, as specified.
 - g) A copy of the latest information on construction defect litigation affecting the HOA, as specified.
 - h) Any change in the HOA's current regular and special assessments and fees approved by the board that have not yet become due and payable.
 - i) If applicable, a statement describing any prohibition on renting or leasing any individual units in the CID.
 - j) If requested by the buyer, a copy of the minutes of HOA board meetings conducted over the previous 12 months, as specified.
 - k) A copy of the most recent EEE inspection conducted of the CID.
- 7) Specifies the format and contents for the disclosure form given to the prospective buyer of a unit in a CID.

This bill:

- 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.

Background

CIDs and HOAs. CIDs are a type of housing with separate ownership of housing units that also share common areas and amenities. There are a variety of different types of CIDs, including condominium complexes, planned unit developments, and resident-owned mobile home parks. In recent years CIDs have represented a growing share of California's housing stock. Data from 2019 indicates that there are an estimated 54,065 CIDs in the state that are made up of 5 million housing units, or about 35% of the state's total housing stock.

CIDs are regulated under the Davis-Stirling Act as well as the governing documents of the HOA, including the bylaws, declaration, and operating rules. CIDs can also have CC&Rs that are filed with the county and recorded at the time they are established. Owners in a CID are contractually obligated to abide by the CC&Rs and the governing documents of a CID, which specify rules such as parking policies, allowable modifications to homes, and rental restrictions. Additionally, HOAs are governed by a board of directors elected by the membership in elections that closely resemble California's vote-by-mail process. In addition, many HOAs use a managing agent to assist with finances, logistics, and other services provided to homeowners.

HOA boards have a number of duties and powers. The board determines the annual assessments that members must pay to cover communal expenses, including maintenance obligations. The board enforces the community rules and can propose as well as make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members and, if necessary, the power to foreclose upon the offending member's property.

Comments

Author statement. “SB 1238 will protect homeowners who reside in communities with a HOA by requiring additional disclosures to the homeowner and ensuring HOAs act in the homeowners' best interest by requiring a fiduciary duty 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 fiduciary duty 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.”

Balcony safety. In 2015, a wooden balcony collapsed at the Library Gardens apartment complex in the City of Berkeley, near the University of California, Berkeley campus. The balcony collapse killed six young adults and injured seven others. Investigations later revealed that the balcony had decayed wooden joists caused by wood dry rot left untreated due to poor building maintenance.

Ultimately, the Contractor's State License Board revoked the license of Segue Construction, Inc., the general contractor responsible for building the apartment complex where the collapse occurred, as it was alleged that the contractor company “willfully departed from or disregarded building plans or specifications, and willfully departed from accepted trade standards for good and workmanlike construction.”

As a result of that collapse, the Legislature passed SB 465 (Hill, Chapter 372, Statutes of 2016), which, in addition to requiring additional oversight for contractors, also required the California Building Standards Commission (CBSC) to establish a working group to study the failure of EEEs. The bill directed the CBSC to submit a report to the Legislature containing findings and possible recommendations for statutory or other changes to the California Building Standards Code. In 2017, the CBSC approved emergency regulations to accelerate the adoption of higher construction standards.

The following year, SB 721 (Hill, Chapter 445, Statutes of 2018) established a requirement to perform regular inspections of EEEs of certain multi-unit residential buildings. The bill required building owners to have those elements and other load-bearing components and waterproofing elements inspected at least every six years by certain licensed persons, to determine that the EEEs and their associated waterproofing elements are in a generally safe condition, adequate working order, and free from any hazardous conditions. It also required any identified repairs be made within a designated timeframe and provided penalties for building owners who do not complete the required repairs.

Notably, SB 721 specifically excluded CIDs from its provisions. In 2019, SB 326 (Hill, Chapter 207, Statutes of 2019) extended similar inspection requirements to CIDs. SB 326 requires HOA boards to arrange an inspection every nine years, as specified, of the CID's balconies over which the HOA has maintenance or repair responsibility. The inspector must provide a report for the board, which must be incorporated into the HOA's reserve study.

The deadline for the initial inspection under both SB 721 and SB 326 was January 1, 2025. However, recent legislation (AB 2579, Chapter 835, 2024) generally extended this deadline to January 1, 2026—but did not explicitly extend the deadline for CIDs.

Ensuring accountability for inspections. The original EEE inspection legislation included a mechanism for follow-up from any inspection that results in a finding that repairs are needed. If an inspector advises that the condition of an EEE poses an immediate threat to the safety of the occupants, the inspector must provide a copy of the inspection report to the local code enforcement agency and the building owner must immediately undertake preventive measures. For less urgent repairs, the law requires building owners to apply for a permit to make the repairs within 120 days and imposes fines on building owners who do not commence repairs in a timely fashion.

However, the legislation imposing EEE inspection requirements on CIDs did not include a follow-up mechanism and does not impose any consequences if an HOA does not take action in response to an inspection report that finds an EEE in need of repair. Instead, the law deems EEE inspections to be part of an HOA's ongoing maintenance responsibility.

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

According to the Senate Appropriations Committee: 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)

SUPPORT: (Verified 8/25/2026)

California Association of Realtors (Source)
Center for Homeowner Association Law

OPPOSITION: (Verified 8/25/2026)

Community Associations Institute of California

ARGUMENTS IN SUPPORT: The California Association of Realtors, the sponsor of the bill, argues that this bill creates accountability for HOA managers, improves disclosure requirements and strengthens access to essential HOA documents.

ARGUMENTS IN OPPOSITION: The Community Associations Institute of California is opposed to the bill. They argue that extending the duty of care that HOA managers owe to the association, to individual members of the association, could complicate a manager's ability to fulfill their contractual obligations to its client (the association) where it already has a duty of care.

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8/26/26 14:22:15

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