
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No: AB 1410 **Hearing Date:** 5/31/2022
Author: Rodriguez
Version: 5/17/2022
Urgency: No **Fiscal:** No
Consultant: Andrew Dawson

SUBJECT: Associations: declared emergency: protected uses: regulation

DIGEST: This bill makes several changes to the Davis Sterling Act related to Common Interest Developments (CIDs).

ANALYSIS:

Existing law:

- 1) Establishes the Davis-Stirling Common Interest Development Act, which provides rules and regulations governing the operation of residential CIDs and the rights and responsibilities of homeowners and homeowners' association (HOA) members.
- 2) Allows members or residents of CIDs to do the following:
 - a) Assemble peacefully during reasonable hours and in a reasonable manner for purposes relating to common interest development living, association elections, legislation, election to public office, or the initiative, referendum, or recall process.
 - b) Use the common area for an assembly or meeting.
 - c) Canvas and petition members
 - d) Distribute or circulate information about common interest development living, association elections, legislation, election to public office, or the initiative, referendum, recall process, or other issues of concern to members and residents.
- 3) Allows an owner of separate interest in a CID to rent or lease any of the separate interests, accessory dwelling units, or junior accessory dwelling units to a renter, lessee, or tenant.

- 4) Establishes that a CID shall be managed by a HOA that may be incorporated or unincorporated.
 - a) A HOA shall hold an election for a seat on the board of directors
- 5) Requires an HOA to provide a fair, reasonable, and expeditious procedure for resolving a dispute involving member rights, duties, or liabilities. The procedure must, at a minimum, satisfy the following requirements:
 - a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.
 - b) The procedure shall provide for prompt deadlines.
 - c) If the procedure is invoked by a member, the association shall participate in the procedure.
 - d) If the procedure is invoked by the HOA, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the board.
 - e) A written resolution and agreement, signed by both parties, of a dispute pursuant to the procedure that is not in conflict with the law or the governing documents binds the HOA and is judicially enforceable.
 - f) The procedure shall provide a means by which the member and the HOA may explain their positions.
 - g) A member of the HOA shall not be charged a fee to participate in the process.

This bill:

- 1) Allows members or residents of a CID to use social media or other online resources to discuss development living, association elections, legislation, election to public office, or the initiative, referendum, or recall process even if the discussions are critical of the HOA or its governance.
- 2) Permits an owner of a separate interest in a CID to rent or lease a portion of the homeowner occupied separate interest to a renter, lessee, or a tenant for more than 30 days.
- 3) Requires any person serving as a director or employee of an HOA shall complete a course on fiduciary ethics and harassment prevention.
 - a) Directors shall complete the course within 60 days of election or reelection to the board.

- b) Employees shall complete the course within 60 days of being employed and every two years thereafter.
 - c) Directors and employees of an HOA shall attest, in writing, to completion of the course, and the HOA shall retain the attestation for at least three years.
- 4) Prohibits HOAs from pursuing enforcement actions during declared emergencies if the nature of the emergency makes it unsafe or impossible for the homeowner to either prevent or fix the violation.
- 5) Requires that a HOA that seeks to impose monetary penalty against a member shall make any physical evidence used to determine a violation available to the member.
- a) Any photographs used shall have a visible time and date stamp or be accompanied by digital metadata stating the time and date the photograph was taken.

COMMENTS:

- 1) *Author's Statement.* "For most people, the purchase of a home will be the biggest investment in their lifetime. It is not in the public interest or the interest of the state's housing policies to discourage homeownership and make it more difficult to maintain that homeownership. CIDs are a cost-effective way for many to achieve the American Dream and enter the housing market. As such, that investment deserves to have a homeowner association that is ethical, working toward the best interest of the property owners and not going out of their way to harass, fine, or limit the enjoyment of the homeowners' property.

As cities and counties struggle to meet state housing goals, CID's are becoming more and more prevalent. We must assure these homeowner community leaders know their legal responsibilities in order to mitigate future issues. If not, we will not just see disharmony in these communities but increases in lawsuits, harassment, public safety calls, and a host of other unforeseen issues that will increase costs to homeowners and to the public."

- 2) *Background on CIDs.* 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 mobilehome parks. In recent years, CIDs have represented a growing share of California's housing stock. In 2019 there were an estimated 54,065 CIDs in the state which contain 5 million housing units, or about 35% of the state's total housing stock.

CIDs are regulated under the Davis-Stirling Act (Civil Code Section 4000 et seq.) as well as the governing documents of the CID, including the bylaws, declaration, and operating rules. CIDs can also have Covenants, Conditions, and Restrictions (CC&Rs) which are filed with the county recorder 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 how an owner can modify their home. Additionally, CIDs include HOAs which are run by an elected board of directors and HOAs must follow specific voting procedures when considering board votes. This bill proposes to make a number of changes to laws on HOAs.

- 3) *Social Media Discussion.* Since HOAs operate under democratic self-governance principles, homeowners who are unhappy with the current state of affairs in their community would face a number of challenges mobilizing to elect new directors or seeking other avenues of policy change if their HOA can restrict all critical discussion. Residents and owners can assemble peacefully and distribute information freely under current law. This bill includes online information sharing under these provisions.
- 4) *More Housing.* Current law allows for owners to rent out a separate interest, accessory dwelling unit, or junior accessory dwelling unit. This bill adds that owners can rent out space in their homeowner occupied residence. It clarifies that it must be for 30 or more days, which would exclude short-term rentals. In effect, this would authorize rentals in HOAs that do not allow renting in their governance.
- 5) *Emergencies.* In light of the ongoing COVID-19 pandemic, last year the Legislature passed and the Governor signed into law SB 391 (Min, Chapter 276, Statutes of 2021), which allows HOA board meetings to use teleconference procedures during a declared emergency if gathering in person is unsafe or impossible due to a declared emergency. This bill prohibits associations from enforcing provisions that would make it unsafe or impossible for the homeowner to prevent or fix during a declared emergency. In this way, only enforcement on certain provisions are prohibited allowing for the association to continue its governance for most of its bylaws and rules.
- 6) *Making Evidence Available.* This bill requires that if an association seeks to impose a monetary penalty on a homeowner any physical evidence must be available to the accused. Presumably, this would allow homeowners to more effectively contest erroneous violations that could occur if a violation is attributed to the wrong property address due to a data entry error. Additionally,

making physical evidence available to the homeowner could reduce the likelihood that a homeowner will contest the violations.

- 7) *Fiduciary Ethics and Harassment Training.* This bill currently requires directors and employees of a HOA to complete a fiduciary ethics and harassment training within six months of getting hired or elected. However, the bill is not clear on what entity would provide the course, establish guidelines, and provide enforcement, nor is it clear on what the consequences if directors or employees fail to comply with the bill requirements. In addition, the opposition has argued that increasing the requirements will prevent people from running for a position.

Moving forward, the author may wish to consider amending the bill to require directors or employees to sign a Code of Conduct, which would include policies relating to fiduciary ethics and discrimination instead of completing a training.

- 8) *Opposition.* Another argument that opposition has against this bill is that the limiting of speech on social media and other online resources is too broad and would allow anyone to post anything on a website controlled by an HOA.
- 9) *Double Referral.* This bill is also referred to the Senate Judiciary Committee.

RELATED LEGISLATION:

SB 391 Min (Chapter 276, Statutes of 2021) — allowed HOA board meetings to use teleconference procedures during a declared emergency

AB 3182 Ting (Chapter 198, Statutes of 2020) — allowed the owner of separate interest in a CID to rent or lease out any separate interest, accessory dwelling unit, or junior accessory dwelling unit

SB 1343 Mitchell (Chapter 956, Statutes of 2018) — requires employers who employ 5 or more employees provide sexual harassment training for its employees

SB 407 Wieckowski (Chapter 236, Statutes of 2017) — allowed residents or members of a CID to peacefully assemble, distribute information, canvas, among other activities

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

POSITIONS: (Communicated to the committee before noon on Wednesday, March 25, 2022.)

SUPPORT:

Center for California Homeowner Association Law

OPPOSITION:

Community Association Institute – California Legislative Action Committee

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