SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 502 (Davies)
Version: June 21, 2021
Hearing Date: July 13, 2021
Fiscal: No
Urgency: No
TSG

SUBJECT

Common interest developments: election requirements

DIGEST

This bill authorizes homeowners associations of any size to seat candidates for the board of directors by acclamation, in lieu of conducting balloting, if the HOA complies with specified procedural safeguards and, at the deadline for submitting nominees to the board, there are the same or more candidates than seats to be filled.

EXECUTIVE SUMMARY

Common interest development (CID) communities are, with rare exceptions, managed by a homeowners association (HOA) which essentially acts as a mini-government. Each property owner within the CID is a member of the HOA and the membership elects the HOA's board of directors, which is responsible for making key decisions about the CID community on behalf of everyone. Interest in serving on HOA boards varies greatly. In some CID communities and at certain times, elections for the HOA board of directors are hotly contested affairs. This bill addresses the opposite scenario: when there are so few people interested in serving on the board that there are more director seats to be filled than candidates who want to fill them. For years, some HOA managers have sought authorization from the Legislature to dispense with balloting in such scenarios, since the outcome of the vote is a forgone conclusion. Given the passage of recent laws limiting the ability of incumbent HOA boards to disqualify potential rivals, the Legislature has expressed a new openness to seating boards by acclamation, and it is now permitted at very large CID communities so long as specified procedures are followed. This bill would expand the possibility of seating boards by acclamation to CIDs of all sizes while establishing additional procedural safeguards against abuse.

The bill is author-sponsored. Support comes from HOA management trade associations. Opposition to the bill in print comes from homeowner and civil liberties advocates who fear that seating boards by acclamation will undermine HOA elections and facilitate the entrenchment of incumbent boards. The bill passed out of the Senate Housing Committee by a vote of 7-1.

PROPOSED CHANGES TO THE 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 HOAs and HOA members. (Civ. Code § 4000 *et seq*.)

2) Obligates HOAs to hold an election by secret ballot and according to specified procedures, for:
   a) assessments legally requiring a vote;
   b) election and removal of directors;
   c) amendments to the governing documents; or
   d) the grant of exclusive use of a common area. (Civ. Code § 5100(a).)

3) Provides that an HOA must provide general notice of the procedure and deadline for submitting a nomination at least 30 days before the nomination deadline. (Civ. Code § 5115(a).)

4) Requires HOAs to select an independent inspector or inspectors of elections to do the following:
   a) determine the number of members entitled to vote and the voting power of each;
   b) determine the authenticity, validity, and effect of proxies, if any;
   c) receive ballots;
   d) hear and determine all challenges and questions in any way arising out of, or in connection with, the right to vote;
   e) count and tabulate all votes;
   f) determine when the polls shall close, consistent with the governing documents;
   g) determine the tabulated results of the election; and
   h) perform any acts as may be proper to conduct the election with fairness to all members in accordance with all applicable laws and rules of the association regarding the conduct of the election. (Civ. Code § 5110(c).)

5) Specifies the voting procedure for an HOA election as follows:
   a) 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, 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:
      i) 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; and

ii) 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. (Civ. Code § 5115(a).)

6) Allows an HOA with 6,000 or more units to seat candidates for the board of directors by acclamation in lieu of balloting if, at the close of nominations for directors, the number of nominees is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of elections, provided that all of the following are true:
   a) the HOA provided individual notice of the election and the procedure for nominating candidates at least 30 days before the close of nominations;
   b) the HOA permits all candidates to run if nominated, except that:
      i) an HOA shall disqualify a person from nomination as a candidate if the person is not a member of the association at the time of the nomination. This does not restrict a developer from making a nomination of a nonmember candidate consistent with the developer's voting powers;
      ii) an HOA may disqualify a nominee with a prior criminal conviction that would prevent the association from purchasing or maintaining the required fidelity bond coverage;
      iii) an HOA may disqualify a nominee who is not current on their payment of regular and special assessments, which are consumer debts subject to validation. This does not allow disqualification based on failure to pay any third parties and that non-payment of assessments is not disqualifying if payments are made under protest, the nominee has entered into a payment plan, or the nominee has not been given a chance to engage in internal dispute resolution;
      iv) an HOA may disqualify a nominee who, if elected, would be serving on the board at the same time as another person with a joint ownership interest in the same separate interest parcel as the person, and the other person is either properly nominated for the current election or an incumbent director; and
      v) an HOA may disqualify a nominee who has been a member of the association for less than one year. (Civ. Code § 5100(g).)

7) Permits a non-profit public benefit corporation to declare nominees for the board of directors elected without further action if, at the close of nominations, the number of people nominated for the board is not more than the number of directors to be elected. (Corp. Code § 7522(d).)

8) Provides that, in municipal elections, if the number of candidates does not exceed the number of offices to be filled, the governing body of the local government is authorized to appoint the candidate or candidates to the office. (Elec. Code § 10229.)

This bill:

1) Authorizes HOAs of any size to seat board members by acclamation in lieu of conducting balloting if the following conditions are met:
   a) the HOA complies with statutory limitations on the disqualification of nominees;
   b) the HOA has held a regular election for directors with balloting within the last three years;
   c) the HOA provides individual notice of the election, and of procedures for nominating candidates, at least 90 days before the deadline for nominations and again at least 30 days before the deadline for nominations; and
   d) at the close of nominations for directors, the number of nominees is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of elections.

COMMENTS

1. Background on HOAs and their governance

CIDs are self-governing groups of dwellings that share common spaces and amenities. They come in a wide variety of physical layouts: condominium complexes, apartment buildings, and neighborhoods of detached, single-family residences, for example. Units within common housing developments currently account for approximately a quarter of the state's overall housing stock, meaning that the laws governing such developments have a large impact on the population. In California, CIDs are governed by the Davis-Stirling Act. (Civ. Code §§ 4000-6150.)

The Davis-Stirling Act sets forth a system for CID self-governance. The owners of the separate properties within the community are the members of the HOA. HOA members vote for the board of directors of the association that oversees operation of the community.

An HOA board has a number of duties and powers. The board manages the community, frequently by hiring an individual or entity to do so on its behalf. The board determines the annual assessments – much like taxes – that members must pay in order to cover communal expenses. 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. This combination of responsibilities and authority has led multiple courts to observe that HOAs function in many ways almost "as a second

municipal government, regulating many aspects of [the homeowners'] daily lives." (*Villa Milano Homeowners Ass'n v. Il* Davorge (2000) 84 Cal.App.4th 819, 836. Internal citations omitted.)

Much like municipal governments, HOAs also use elections to choose members to serve on the association's board of directors. Under existing law, HOAs conduct these elections through a paper and mail-based balloting system that closely resembles California's vote-by-mail process. (Civ. Code § 5115.)

While not tremendously expensive on a per-person basis, for larger HOAs the cost of running one of these board elections can reach into the tens of thousands of dollars. Meanwhile, interest in serving on HOA boards varies greatly. At some HOAs, board elections are hotly contested affairs with raucous campaigns and debates. Other HOAs constantly struggle to drum up people willing to run. It is not uncommon for there to be fewer candidates than there are board vacancies to fill. In such a case, the outcome of the election is a foregone conclusion but, under existing law, balloting must be conducted anyway, except in the case of very large HOAs composed of 6,000 or more units.

This bill would, instead, allow HOAs of any size to seat board members by acclamation anytime there are at least as many open seats on the board as there are candidates running. However, to ensure that the dearth of candidates is not due to lack of awareness about the election, HOAs would only be permitted to seat board members by acclamation if all HOA members were individually noticed about the opportunity to run 90 days before the close of nominations and given a reminder 30 days out. Additionally, so that the HOA membership does not fall into the habit of never holding a balloted election, HOAs could only seat candidates for the board by acclamation if the HOA held an election with balloting within the past three years.

2. <u>Recently enacted limitations on the ability of incumbent boards to disqualify rivals has greatly reduced the risk that seating by acclamation could be abused to entrench incumbent boards</u>

For many years, proposals to seat HOA boards by acclamation ran into difficulty in the Legislature. This Committee has itself posed serious questions about the concept in the past. One of the primary arguments previously raised against seating by acclamation was the possibility that incumbent HOA boards might use their power to set the rules for candidate eligibility in order to disqualify all rivals, re-seat themselves by acclamation, and thereby reign over the HOA in perpetuity.

The opponents of this bill as it appears in print (at least one of whom – the Center for California Homeowner Association Law (CCHAL) – has indicated that they will remove opposition based on the amendments the author proposes to offer in Committee) raise that argument once again. CCHAL writes about the bill in print that

"[t]he worrisome fact about AB502 is how many homeowners report to us that their efforts to run for a board seat are blocked by "qualifications" set by the incumbent board," and that "homeowners report a mind-boggling list of "qualifications" to be met in order to become a candidate for a board seat." CCHAL mentions qualification requirements like being able to speak English, being a full time resident, or not being a person with disabilities. In a similar vein, the ACLU of California states that: "unlike local legislative bodies, HOA boards have the power to set candidate qualifications and the eligibility determination process, and to do so without evidence or an opportunity to object by those who are excluded."

These arguments appear largely to ignore the fact that recent legislation – sponsored by CCHAL and passed in 2019 – greatly diminished the power of HOA boards to set the rules around candidate qualification. (Wieckowski, SB 323, Ch. 848, Stats. 2019.) Prior to the enactment of SB 323, HOA boards did have nearly unfettered power to disqualify potential rivals from running. As a result of SB 323, however, HOA boards can only disqualify nominees for one of the following five reasons: (1) the nominee is not a member of the HOA; (2) the nominee has a prior criminal conviction that would prevent the HOA from purchasing or maintaining mandatory fidelity bond coverage; (3) the nominee would be serving on the board simultaneously with another member who occupies the same separate property; (4) the nominee is behind on payment of assessments to the HOA and has not challenged the basis for the charges nor entered into a payment plan to get caught up; or (5) the nominee has not been a member of the association for more than a year. (Civ. Code § 5105(b) through (e), inclusive.)

The existence of these limitations on the power of a HOA boards to disqualify rivals greatly diminishes the plausibility of the nightmare scenario in which seating by acclamation enables an incumbent board to avoid elections altogether and cling to power. After the enactment of SB 323's reforms, if there are fewer candidates than seats to fill on the board, dubious disqualifications can no longer be blamed.

3. Does seating by acclamation undermine the democratic process?

Even with restrictions on an HOA's ability to disqualify potential challengers, the opponents of the bill in print remain uncomfortable with seating by acclamation as a concept. From their point of view, seating board members by acclamation somehow deprives members of the right to vote and may even be unconstitutional. The opponents advance a number of related theories for this proposition, all proceeding from the basic premise that the democratic rights of members within an HOA are the same as, or at least quite similar to, those of a voter in relation to a local public election. As noted earlier in these Comments, even though HOAs are technically private, non-governmental actors, there is case law suggesting that the quasi-governmental powers exercised by HOAs mean that members have certain constitutional – or at least quasi-constitutional – rights in relation to the HOA. Even granting this equivalency, however,

it is not necessarily apparent that seating association board members by acclamation, *alone*, violates those rights.

a. Some municipal elections laws authorize seating by acclamation

As an initial matter, it appears that seating candidates by acclamation *is* allowed in some local public elections. In a municipal election, for example, if fewer candidates emerge than there are corresponding offices to fill, the governing body of the city is authorized to appoint the candidate to the office or, if there are no candidates at all, to appoint an eligible elector. (Elec. Code §10229.) The appointed person shall then "qualify and take office and *serve exactly as if elected* at a municipal election for the office." (Elec. Code § 10229(a)(3). Emphasis added.)

There are similar provisions for special district elections (Elec. Code § 10515) and for elections to the local school board (Elec. Code §§ 5326, 5328, and 5328.5.) All of these provisions have been on the books for many years and there are no reported cases challenging them.

Writing in opposition to the bill in print, CCHAL strongly rejects any equivalency between these provisions and the HOA context, calling it a "deeply flawed analogy." Among other things, CCHAL points out that filling seats by acclamation can be halted through a petition process under the California Elections Code, while the seating by acclamation proposed by this bill has no similar provision. Moreover, CCHAL argues, in the HOA context, the incumbent board itself sets the rules and runs the election, not a neutral third party bound by elections laws. Finally, CCHAL asserts that seating by acclamation cuts off the possibility of nominations from the floor or write-in votes.

b. Write-in candidacies not constitutionally required

Write-in candidates are the only evident way that voting a ballot with fewer nominees than vacant seats could lead to a different result than seating by acclamation. In that regard, it is noteworthy that allowing people to run as write-in candidates is discretionary under the Davis-Stirling Act. (Civ. Code §5105(b).) In other words, an incumbent board bent on suppressing insurgent candidates could prevent write-in candidates by disallowing them altogether, though there might be some constitutional limitation on such a move. The U.S. Supreme Court has ruled that the federal constitution does not require the possibility of write-in candidates (*Burdick v. Takushi* (1992) 504 U.S. 428), but the question is closer under the California Constitution. The California Supreme Court upheld a prohibition on write-in candidates in a municipal election run-off, but left open the question of whether a complete ban on write-in candidates might violate the state constitution. (*Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164.) If there is indeed some equivalency between municipal elections and HOA elections, it may also be noteworthy that California elections law

prohibits write-in candidates in a municipal election once a candidate has been appointed through the acclamation process. (Elec. Code §10229(c).)

4. Finding the policy sweet spot

Ultimately, the policy challenge presented by this bill is how to capture the beneficial efficiency and cost-savings which seating by acclamation offers while incorporating sufficient safeguards to protect against abuse.

As discussed in Comment 2, above, the enactment of SB 323's restrictions on the power of HOA boards to disqualify rivals has made it far less likely that seating by acclamation could be abused. As this bill has made its journey through the legislative process, additional protections have been added. The process of filling out and returning ballots helps to keep elections and democratic processes fresh in the minds of members. Given that, early amendments to this bill authorized seating by acclamation, but only if a fully balloted HOA board election has taken place within the last three years. Subsequent amendments required HOAs desiring the option to proceed by acclamation to provide notice of the nomination deadline and procedures 90 days in advance with an additional reminder notice at least 30 days before the deadline. These innovations reduced the risk that seating by acclamation would occur simply because the nominating process took place without HOA members even realizing.

To those safeguards against abuse, the author now proposes to offer still further refinements. First, the author proposes to require HOAs to provide anyone submitting a nomination for the board with receipt acknowledging the nomination. This would give the nominator assurance (and evidence as backup) that an unscrupulous or especially sloppy HOA board could not intentionally or inadvertently lose track of the nomination. Second, the author proposes to require HOAs to inform nominees about the status of their candidacy. If the nominee will not be allowed to run, the nominee will have to be told the basis for the disqualification and the procedure for how the nominee can appeal that disqualification. The procedure for appeal will have to comply with the HOA's mandatory internal dispute resolution mechanism. Third, the author proposes to expand upon the required content for the initial and reminder notices that the HOA must send out to members about the nomination process. In particular, the proposed amendments ensure that members are made aware – and reminded – that seating by acclamation is possible in the event that the process produces the same or fewer candidates than there are board seats to fill. This process should provide members and nominees with sufficient time to avert seating by acclamation, if they wish, through the nomination of additional qualified candidates. Finally, the amendments clarify that the decision to seat board candidates by acclamation without balloting must be made at a noticed meeting for which the agenda indicates the names of the candidates who will be seated. With the offer to incorporate these amendments, CCHAL has indicated that it will withdraw its opposition to the bill.

5. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to offer amendments in Committee that would:

- require HOAs wanting to have the option to seat boards by acclamation to provide written acknowledgment to the nominator, in paper or electronic form, of the HOA's receipt of the nomination, within seven business days of the nomination;
- require HOAs wanting to have the option to seat boards by acclamation to notify each nominee, within seven business days of receiving the nomination, if they will be allowed to run as a candidate and, if not, the basis for the disqualification and the procedure for appeal it; and
- specify content that must appear in the initial and reminder notices that HOAs must send out to alert members about the nomination process and the possibility that seating by acclamation may take place if there are not, by the close of the nominating period, more qualified candidates than board seats to be filled;
- clarify that the procedure by which a nominee may dispute the nominee's disqualification from running for the board must meet the standards for the HOA's mandatory internal dispute resolution mechanism; and
- clarify that the decision to seat qualified candidates by acclamation without balloting must be made at a noticed meeting for which the agenda indicates the names of the qualified candidates who will be seated.

A mock-up of the amendments in context is attached to this analysis.

6. Arguments in support of the bill

According to the author:

> California's HOAs have been hit especially hard during the Covid-19 pandemic. Many have had to alter their payment schedules and services provided to members due to numerous state and local regulations. As a result of decreased revenue, HOAs are being forced to potentially increase fees on members. One way we can reduce fee and resources needed to do basic business for HOAs is to allow all HOAs to conduct elections by acclamation. This process allows the filling of positions quicker and easier thus saving HOAs time and financial resources. AB 502 accomplishes this by removing the threshold of this process to allow any HOA, regardless of size, to take advantage of this procedure.

In support of the bill, the California Association of Community Managers writes:

> Community managers run the day-to-day operations of associations and have seen first-hand the cumbersome and

> unnecessary burdens the secret ballot process places on associations when there are uncontested elections. All costs in an association are typically borne by the homeowners and paid for through homeowner assessments. Printing, mailing and other associated costs can be quite significant, especially for large associations. For smaller associations, it takes a larger portion out of their budget. All for an election where the results are already known.

7. Arguments in opposition to the bill in print

In opposition to the bill in print, the Center for California Homeowner Association Law writes:

> California law grants homeowners who sit on association boards broad legal authority over the behavior and property of the other homeowners in the community and broad authority to write rules that govern it. Incumbent boards also control the HOA's financial resources – association bank accounts – enabling them to hire attorneys to enforce the rules and policies they adopt. The primary and most readily available tool for checking this power and calling the board to account is the right of the governed to vote and the right to run for a board seat. AB 502 damages – if not eliminates – both these rights. The right to vote -- to choose board leaders – is essential to the people governed by HOA boards, because membership in these local governments is mandatory.

In further opposition to the bill, the American Civil Liberties Union of California writes:

> HOA elections should be held to high standards of fairness and transparency. Homeowner associations are not voluntary social clubs or casual neighborhood groups. California courts have established repeatedly that, in form and in function, homeowner associations constitute a form of quasi local government, "paralleling in almost every case the powers, duties, and responsibilities of a municipal government." […] Despite the significant parallels between local governments and HOAs, there is one important difference between local legislative bodies and HOA boards – unlike local legislative bodies, HOA boards have the power to set candidate qualifications and the eligibility determination process, and to do so without evidence or an opportunity to object by those who are excluded. With AB 502, HOA boards will be further empowered to dispense with elections altogether after cherry-picking their preferred candidates.

SUPPORT

Alicante Maintenance Corporation
BHE Management Corporation
California Association of Community Managers
Community Associations Institute's California Legislative Action Committee

OPPOSITION

American Civil Liberties Union of California
California Alliance for Retired Americans
Center for California Homeowner Association Law
One individual

RELATED LEGISLATION

Pending Legislation: SB 432 (Wieckowski, 2021) provides, among other things, that an HOA may disqualify a member from running for the board of directors once that member has served the maximum allowable number of terms or sequential terms.

Prior Legislation:

SB 754 (Moorlach, Ch. 858, Stats. 2019) authorized HOAs composed of 6,000 or more units to seat candidates for the board by acclamation if the HOA follows specified procedures and, at the deadline for nominations, the number of nominees does not exceed the number of vacancies on the board.

SB 323 (Wieckowski, Ch. 848, Stats. 2019) enacted a series of reforms to the laws governing board of director elections in HOAs to increase the regularity, fairness, formality, and transparency associated with such elections. Among other things, SB 323 restricted the grounds on which an HOA could disqualify nominees from running for board positions.

SB 1128 (Roth, 2018) would have allowed HOAs of all sizes to seat board members by acclamation, provided that the HOA followed specified protocols. In his message vetoing SB 1128, then-Governor Brown wrote, among other things: "California has over 50,000 common interest developments varying in purpose and size. Each one has governing documents that are tailored specifically for that individual community. This bill takes a once-size-fits-all approach, but not all homeowner associations are alike. If changes to an election process are needed, they should be resolved by the members of that specific community."

SB 1265 (Wieckowski, 2018) would have reformed several aspects of the HOA elections process in an effort to ensure greater accessibility, accountability, and transparency. Among other things, the bill would have required HOAs to let any member run for the

board of directors and would have limited the ability of associations to disenfranchise association members. In his message vetoing SB 1265, then-Governor Brown wrote, among other things: "California has over 50,000 common interest developments varying in purpose and size. Each one has governing documents that are tailored specifically for that individual community. This bill takes a once-size-fits-all approach, but not all homeowner associations are alike. If changes to an election process are needed, they should be resolved by the members of that specific community."

AB 1426 (Irwin, 2017) would have allowed the board of directors of an HOA to be seated by acclamation if the election was uncontested, meaning, among other things, that there are at least as many board seats available as there are candidates. AB 1426 died in the Assembly Housing and Community Development Committee.

AB 1799 (Mayes, 2016) would have allowed the board of directors of an HOA to be seated by acclamation if the election is uncontested, as defined, and would have provided a procedure for an election to be declared uncontested. In addition, AB 1799 would have ensured a member in good standing who meets specified qualification requirements is not denied the right to vote or the right to be a candidate for director. AB 1799 died in the Senate Judiciary Committee.

AB 1360 (Torres, 2014) would have amended the Davis-Stirling Common Interest Development Act to authorize associations to conduct elections using electronic voting systems, provided participating voters opt into using the electronic voting system and other required conditions are met. AB 1360 failed passage in the Senate Judiciary Committee.

PRIOR VOTES:

Senate Housing Committee (Ayes 7, Noes 1)
Assembly Floor (Ayes 73, Noes 0)
Assembly Housing and Community Development Committee (Ayes 8, Noes 0)

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Amended Mock-up for 2021-2022 AB-502 (Davies (A))

Mock-up based on Version Number 95 - Amended Senate 6/21/21

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5100 of the Civil Code is amended to read:

5100. (a) (1) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600 shall be held by secret ballot in accordance with the procedures set forth in this article.

(2) An association shall hold an election for a seat on the board of directors in accordance with the procedures set forth in this article at the expiration of the corresponding director's term and at least once every four years.

(b) This article also governs an election on any topic that is expressly identified in the operating rules as being governed by this article.

(c) The provisions of this article apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

(d) The procedures set forth in this article shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

(e) In the event of a conflict between this article and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this article shall prevail.

(f) Directors shall not be required to be elected pursuant to this article if the governing documents provide that one member from each separate interest is a director.

(g) Notwithstanding the secret balloting requirement in subdivision (a), or any contrary provision in the governing documents, when, as of the deadline for submitting nominations provided for in subdivision (a) of Section 5115, the number of ~~director nominees~~qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, the association may, but is not required to, consider the ~~director nominees~~ qualified candidates elected by acclamation if all of the following conditions have been met:

(1) The association has held a regular election for the directors in the last three years. The three-year time period shall be calculated from the date ballots were due in the last full election to the start of voting for the proposed election.

(2) The association provided individual notice of the election and the procedure for nominating candidates as follows:

(A) Initial notice at least 90 days before the deadline for submitting nominations provided for in subdivision (a) of Section 5115. *The initial notice shall include all of the following:*

(i) The number of board positions that will be filled at the election.

(ii) The deadline for submitting nominations.

(iii) The manner in which nominations can be submitted.

(iv) A statement informing members that if, at the close of the time for making nominations, there are the same number or fewer qualified candidates as there are board positions to be filled, then the board of directors may, after voting to do so, seat the qualified candidates by acclamation without balloting.

(B) A reminder notice between 7 and 30 days~~at least 30 days~~ before the deadline for submitting nominations provided for in subdivision (a) of Section 5115. *The reminder notice shall include all of the following:*

(i) The number of board positions that will be filled at the election.

(ii) The deadline for submitting nominations.

(iii) The manner in which nominations can be submitted.

(iv) A list of the names of all of the qualified candidates to fill the board positions as of the date of the reminder notice.

(v) A statement reminding members that if, at the close of the time for making nominations, there are the same number or fewer qualified candidates as there are board positions to be filled, then the board of directors may, after voting to do so, seat the qualified candidates by acclamation without balloting. This statement is not required if, at the time the reminder notice will be delivered, the number of qualified candidates already exceeds the number of board positions to be filled.

(3)(A) The association provides, within seven business days of receiving a nomination, a written or electronic communication acknowledging the nomination to the member who submitted the nomination.

(B) The association provides, within seven business days of receiving a nomination, a written or electronic communication to the nominee, indicating one of the following:

(i) The nominee is a qualified candidate for the board of directors.

(ii) That the nominee is not a qualified candidate for the board of directors, the basis for the disqualification, and the procedure, which shall comply with Article 2 of Chapter 10 of Part 5 of Division 4 of the Civil Code (beginning with Section 5900), by which the nominee may appeal the disqualification.

(C) The association may combine the written or electronic communication described in subparagraphs (A) and (B) into a single written or electronic communication if the nominee and the nominator are the same person.

(4~~3~~) The association permits all candidates to run if nominated, *except for nominees disqualified from running as allowed or required pursuant to subdivisions (b) through (e), inclusive, of Section 5105.* ~~as follows:~~

(5) The association board votes to consider the qualified candidates elected by acclamation at a meeting pursuant to Article 2 of Chapter 6 of Part 5 of Division 4 of the Civil Code (beginning with Section 4900) for which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved.

~~(A) An association shall disqualify a person from nomination as a candidate if the person is not a member of the association at the time of the nomination. This subdivision does not restrict a developer from making a nomination of a nonmember candidate consistent with the voting power of the developer, as set forth in the regulations of the Department of Real Estate and the association's governing documents.~~

~~(B) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of Section 5105 only, an association may disqualify a person from nomination as a candidate based on any of the following:~~

~~(i) An association may disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would either prevent the association from purchasing the fidelity bond coverage required by Section 5806 should the person be elected or terminate the association's existing fidelity bond coverage as to that person should the person be elected.~~

~~(ii) Failure to be current in the payment of regular and special assessments, which are consumer debts subject to validation. If an association requires a nominee to be current in the payment of regular and special assessments, it shall also require a director to be current in the payment of regular and special assessments. An association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. An association shall not disqualify~~

~~a nominee for failure to be current in payment of regular and special assessments if any of the following circumstances are true:~~

~~(I) The nominee has paid the regular assessment or special assessment under protest pursuant to Section 5658.~~

~~(II) The nominee has entered into a payment plan pursuant to Section 5665.~~

~~(III) The nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.~~

~~(iii) If the person, if elected, would be serving on the board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.~~

~~(iv) If that person has been a member of the association for less than one year.~~