

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

AB 611 (Quirk-Silva)
Version: May 28, 2021
Hearing Date: June 29, 2021
Fiscal: No
Urgency: No
TSG

SUBJECT

Safe at Home program: homeowners' associations

DIGEST

This bill requires homeowner associations to keep a member's residential address and other specified contact information confidential, upon the request of the member, if the member is a participant in California's Safe at Home program.

EXECUTIVE SUMMARY

Homeowners associations (HOAs) are the community organizations that typically govern and manage common interest development (CID) communities. The membership of an HOA is composed of all of the owners of separate property within the CID. To facilitate communication among HOA members for things like HOA elections, HOAs must maintain membership contact lists and allow any member of the HOA to access them. This presents a potential problem for participants in California's Safe at Home Program, which is designed to keep confidential the residential address of victims and survivors of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse, thus making it more difficult for abusers to locate victims who have escaped from them. To prevent abusers from obtaining their victim's contact information through HOA membership lists, this bill requires HOAs, at the request of any member who is a participant in the Safe at Home program, to withhold or redact that member's contact information from the HOA's membership lists and to use that member's confidential Safe at Home address instead of the member's actual residential address.

The bill is sponsored by Calegislation and California Crime Victims United. Support comes from two district attorneys and advocates for survivors of domestic violence, among others. There is no opposition. The bill passed out of the Senate Housing Committee by a vote of 8-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Safe at Home program under the Secretary of State's Office to help victims of domestic violence, stalking, sexual assault, human trafficking, elder and dependent abuse, and reproductive health care workers keep their residential addresses confidential. (Gov. Code § 6205 *et seq.*)
- 2) Establishes, within the Davis-Stirling Common Interest Development Act, rules and regulations governing the operation of a residential common interest development (CID) and the respective rights and duties of an HOA and its members. (Civ. Code § 4000 *et seq.*)
- 3) Defines HOA "association records" to encompass membership lists including members' names, property addresses, mailing addresses, and email addresses. (Civ. Code § 5200(a)(9).)
- 4) Empowers members to opt-out of having their name, property address, and mailing address included in the HOA membership list. (Civ. Code §5220.)
- 5) Provides that association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member and empowers an association to bring a civil action against anyone who violates this provision. (Civ. Code 5230.)
- 6) Requires a member requesting the membership list to state the purpose for the request, which must be reasonably related to the requester's interest as a member. (Civ. Code § 5225.)
- 7) Empowers an HOA to deny members access to the membership list if the association reasonably believes that the information on the list will be used for a purpose other than one reasonably related to the requester's interest as a member (Civ. Code § 5225.)

This bill:

- 1) Makes a series of finding and declarations regarding the key role of the Safe at Home program in safeguarding the confidentiality of contact information for victims and survivors of domestic violence, stalking, human trafficking, and sexual assault as well as the risk to that confidentiality posed by HOA membership lists.
- 2) Requires an HOA, upon request of a member who is an active participant in the Safe at Home program, to do both of the following:

- a) accept and use the substitute address given to the member by the Safe at Home program for all HOA communications; and
 - b) withhold or redact any information in HOA membership lists that would reveal the name, residential address, or email address of the member.
- 3) Prohibits an HOA from divulging that a member is a participant in the Safe at Home program.

COMMENTS

1. About HOAs and access to their membership lists

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. Some consist of thousands of units. Others are made up of just a handful. Dwellings 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 primarily governed by the Davis-Stirling Act. (Civ. Code §§ 4000-6150.)

The Davis-Stirling Act sets forth a system for each CID to govern itself through an HOA. The owners of the separate properties within the CID are the members of the HOA. The membership of the HOA elects a board of directors. The board manages the HOA, frequently by hiring an individual or entity – the property manager – 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 and 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, place liens on the offending member's property, and, if ultimately necessary, the power to foreclose. This array of responsibilities and powers 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 [citations omitted].)

Under existing law, HOAs must attempt to update the contact information they have on file for each of their members each year. (Civ. Code § 4041.) To do this, the HOAs are supposed to solicit the members' names and mailing addresses, as well as an alternative mailing address, and the contact information for the member's legal representative, if any. (*Ibid.*) Once collected, this information becomes part of the HOA's official records. (Civ. Code § 4041(b).) In fact, the Davis-Stirling Act defines "association records" to encompass membership lists and goes on to state that membership lists include

members' names, property addresses, mailing addresses, and email addresses. (Civ. Code § 5200(a)(9).)

All HOA records are subject to inspection by any of the members. Like the federal Freedom of Information Act or the California Public Records Act, this aspect of the HOA law allows for the sort of transparency that is critical to a self-governed community. Since membership lists are part of the HOA's records, the membership lists, too, are subject to inspection. This enables members to contact one another about HOA elections and other matters of community concern. At the same time, however, the accessibility of membership lists raises creates the risk that bad actors could exploit the availability of the contact information on the lists for nefarious purposes.

2. About the Safe at Home program

In 1998, SB 489 (Alpert, Ch. 1005, Stats. 1998) established the "Address Confidentiality for Victims of Domestic Violence" program, which is now referred to as the "Safe at Home" program. The program is available to victims of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse, and provides these individuals with a substitute mailing address in order to protect the confidentiality of the participant's home, work, or school address. The substitute mailing address is an assigned post office box, and the California Secretary of State (SOS) is designated as the participant's agent for service of process and receipt of mail. Mail is forwarded by the SOS from the post office box to the participant. Thus, the Safe at Home program allows participants to have a publicly available address without disclosing the participant's actual residence or alternate location. Upon successful application, a program participant is certified to remain in the program for four years, subject to early termination or withdrawal. The participant must re-certify pursuant to the SOS's renewal process if they wish to continue in the program beyond the four-year enrollment period. For victims not yet of the age of majority, or for incapacitated persons, a parent or guardian may apply to enroll the victim into the program. In 2020, there were nearly 5,000 active participants.¹

3. The problem this bill is intended to address

The proponents of this bill assert that some HOAs do not alter their HOA membership lists to redact the contact information, including the residential property address, of members who are participants in the Safe at Home program. When the HOAs do not redact their membership lists in this way, the lists undermine the Safe at Home program by providing abusers with a potential avenue for locating their victims.

¹ 2020 Annual Legislative Report for the Secretary of State's Safe at Home Program, p. 2, available at <https://admin.cdn.sos.ca.gov/reports/2020/sah-annual-report.pdf> (as of May 16, 2021).

According to the proponents, this is true even when the member tries to exercise the member's right to opt out of inclusion in the membership lists pursuant to Civil Code Section 5220, though the HOA would presumably be opening itself up to liability if it did not honor such a request. Regardless, participants in the Safe at Home program should not have to opt out of the possibility of receiving communications from fellow HOA members in order to preserve the confidentiality of their residential address.

4. The solution proposed by the bill

To prevent HOA membership lists from undermining the efficacy of the Safe at Home program, the bill requires that an HOA do two things upon request from a member of the HOA who is an active participant in the Safe at Home program. First, the HOA must accept and use the member's Safe at Home address in lieu of the member's actual residential address. Second, the HOA must withhold or redact from the HOA's membership lists any information that would reveal the name, residential address, or email address of the member.

5. Arguments in support of the bill

According to the author:

The protective intention of this address confidentiality program is in conflict with some board of director's interpretations of the law governing Home Owner's Associations. Because SAH Participants who own property in a common development with a Homeowners Association, become part of the homeowner's membership, they are required to provide their contact information to the Board and the Management Company-which must also be made available to the full membership. An HOA membership list is defined by law to include a member's name, property address, mailing address and email address. While the law also allows for homeowners to opt out of sharing their information for specified purposes, that provision is voluntary on the part of association boards, who remain free to use and publish personal information of the members despite a member's request for privacy. In the case of SAH participant's, public access to this information can hold life threatening consequences.

As sponsor of the bill, California Crime Victims United writes:

California Safe at Home program has allowed victims of domestic violence, sexual assault, and stalking to have some peace of mind knowing that their addresses are protected from their assailant. Statistically, it is well known the most dangerous time for victims

of these crimes is when they take the courageous step to leave the abuse. Many of the victims need to keep their resident private to prevent them from being harmed, stalked, or harassed by their assailant. It's critical that their address be protected. AB 611 closes a loophole in the prior laws that neglected to include homeowner associations.

In support, an individual writes:

My family and I have been active participants [in the Safe at Home program] for over 10 years now, it brings us the sense of comfort knowing that our residential address is not public, that school records are to remain confidential, DMV supports the program, personal information can be removed from a website and so on just by showing our participant card. Safety and confidentiality can be a sensitive topic, which most people and organizations respect and support. Most folks consider their home a safe haven, a place you or your kids or pets or loved ones would feel welcomed. When you are a victim of stalking, or any sort of domestic violence, the LAST thing you want to worry about is the safety and well-being of your family in your home.

SUPPORT

Calegislation (sponsor)
California Crime Victims United (sponsor)
California Partnership to End Domestic Violence
Innovative Justice Alliance
Los Angeles County District Attorney's Office
Orange County Employees Association
San Francisco District Attorney
2 individuals

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 392 (Archuleta, 2021), among other things, prohibits an HOA or its managing agent from selling a member's personal information for any purpose without the consent of the member or transmitting a member's personal information to a third party without

the consent of the member unless required to do so by law. SB 392 is currently pending consideration on the Assembly Floor.

AB 277 (Valladares, 2021) requires (1) the Secretary of State (SOS) to provide application forms, notices, and explanatory materials related to the Safe at Home program in at least five languages; and (2) the inclusion of information about the Safe at Home program on Judicial Council forms relating to domestic violence. AB 277 is currently pending consideration before the Senate Appropriations Committee.

Prior Legislation:

SB 1318 (Alpert, Ch. 562, Stats. 2000) extended the protections of the Address Confidentiality for Victims of Domestic Violence program to victims of stalking and revised certain notification procedures relating to termination of certification as a program participant.

SB 489 (Alpert, Ch. 1005, Stats. 1998) established the Address Confidentiality for Victims of Domestic Violence program to provide victims of domestic violence with a substitute mailing address whenever their home, work, or school address is required. The bill also designated the Secretary of State as the domestic violence victims' agent for service of process for mail receipt.

PRIOR VOTES:

Senate Housing Committee (Ayes 8, Noes 0)

Assembly Floor (Ayes 74, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
