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SB-754 Common interest developments: board members: election by acclamation. (2019-2020)

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Senate Bill No. 754

CHAPTER 858

An act to amend Section 5100 of the Civil Code, and to amend Section 7522 of the Corporations Code, relating to common interest developments.

[Approved by Governor October 12, 2019. Filed with Secretary of State October 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 754, Moorlach. Common interest developments: board members: election by acclamation.

Existing law, the Davis-Stirling Common Interest Development Act, governs the formation and operation of common interest developments. The act requires the election of directors to serve on the board of directors of the association to be held by secret ballot, and requires an association to adopt rules that specify the procedures for nomination of candidates consistent with the governing documents. The act also authorizes those rules to provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner.

This bill would require an association to hold an election for a seat on the board of directors at the expiration of the director's terms and at least once every 4 years. The bill would require, when the number of director nominees at the close of the nomination period is not more than the number of vacant director positions on the board, that the director nominees be considered elected by acclamation if the association includes 6,000 or more units, complies with specified notice requirements, and permits all candidates to run, except that the bill would require an association to disqualify a candidate for not being a member of the association at the time of the nomination and would authorize an association to disqualify a candidate for specified other reasons.

This bill would incorporate additional changes to Section 5100 of the Civil Code proposed by SB 323 to be operative only if this bill and SB 323 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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), when, as of the close of nominations for directors on the board, the number of director nominees is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, the director nominees shall be considered elected by acclamation if all of the following are true:

(1) The association includes 6,000 or more units.

(2) The association provided individual notice of the election and the procedure for nominating candidates at least 30 days before the close of nominations.

(3) The association permits all candidates to run if nominated, except as follows:

(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.

SEC. 1.1. 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), when, as of the close of nominations for directors on the board, the number of director nominees is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, the director nominees shall be considered elected by acclamation if all of the following are true:

(1) The association includes 6,000 or more units.

(2) The association provided individual notice of the election and the procedure for nominating candidates at least 30 days before the close of nominations.

(3) The association permits all candidates to run if nominated, except as follows:

(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.

SEC. 2. Section 7522 of the Corporations Code is amended to read:

7522. A corporation with 5,000 or more members may provide that, in any election of a director or directors by members of the corporation except for an election authorized by Section 7152 or 7153:

(a) The corporation's articles or bylaws shall set a date for the close of nominations for the board. The date shall not be less than 50 nor more than 120 days before the day directors are to be elected. No nominations for the board can be made after the date set for the close of nominations.

(b) If more people are nominated for the board than can be elected, the election shall take place by means of a procedure which allows all nominees a reasonable opportunity to solicit votes and all members a reasonable opportunity to choose among the nominees.

(c) A nominee shall have a reasonable opportunity to communicate to the members the nominee's qualifications and the reasons for the nominee's candidacy.

(d) If after the close of nominations the number of people nominated for the board is not more than the number of directors to be elected, the corporation may without further action declare that those nominated and qualified to be elected have been elected.

(e) (1) Notwithstanding subdivision (d), for a common interest development subject to this part, if, after the close of nominations of directors for the board of directors of the common interest development, the number of director nominees is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of elections selected pursuant to Section 5110 of the Civil Code, the director nominees shall be considered elected by acclamation if the association provided individual notice of the election and the procedure for nominating candidates at least 30 days before the close of nominations.

(2) For purposes of this subdivision:

(A) "Common interest development" has the same meaning as that term is defined in Section 4100 of the Civil Code.

(B) "Individual notice" has the same meaning as that term is defined in Section 4153 of the Civil Code.

SEC. 3. Section 1.1 of this bill incorporates amendments to Section 5100 of the Civil Code proposed by both this bill and Senate Bill 323. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 5100 of the Civil Code, and (3) this bill is enacted after Senate Bill 323, in which case Section 1 of this bill shall not become operative.