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AB-502 Common interest developments: election requirements. (2021-2022)

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Assembly Bill No. 502

CHAPTER 517

An act to amend Section 5100 of, and to add Section 5103 to, the Civil Code, relating to common interest developments.

[Approved by Governor October 05, 2021. Filed with Secretary of State October 05, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 502, Davies. Common interest developments: election requirements.

The Davis-Stirling Common Interest Development Act governs the formation and operation of common interest developments and generally provides for the election and removal of directors of the board by secret ballot. Existing law provides for director nominees to be considered elected by acclamation if the number of director nominees is not more than the number of vacancies to be elected, the association includes 6,000 or more units, the association provides individual notice of the election at least 30 days before the close of the nominations, and the association permits all candidates to run if nominated, except as specified.

This bill would instead authorize the association to consider qualified candidates elected by acclamation if specified conditions are met, including that the association has held a regular election for the directors in the last 3 years, as specified; the association provided individual notice of the election and procedures for nominating candidates at least 90 days before the deadline for submitting nominations, and a reminder notice between 7 and 30 days before the deadline for submitting nominations, as specified; and the association board votes to consider the qualified candidates elected by acclamation at a meeting held in accordance with specified requirements. The bill would revise the requirement that the association permit all candidates to run if nominated to instead require that the association so permit except for nominees disqualified from running as allowed or required pursuant to specified law. The bill would delete the requirement in the acclamation procedures that the association include 6,000 or more units. The bill would specify that these procedures apply notwithstanding any contrary provision in the governing documents of the common interest development.

This bill would incorporate additional changes to Section 5103 of the Civil Code, as added by this bill, proposed by SB 432, to be operative only if this bill and SB 432 are enacted.

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.

SEC. 2. Section 5103 is added to the Civil Code, to read:

5103. Notwithstanding the secret balloting requirement in Section 5100, 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 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 qualified candidates elected by acclamation if all of the following conditions have been met:

(a) 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.

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

(1) 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:

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

(B) The deadline for submitting nominations.

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

(D) A statement informing members that if, at the close of the time period 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.

(2) A reminder notice between 7 and 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:

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

(B) The deadline for submitting nominations.

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

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

(E) A statement reminding members that if, at the close of the time period 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.

(c) (1) 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.

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

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

(B) 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 (commencing with Section 5900) of Chapter 10, by which the nominee may appeal the disqualification.

(3) The association may combine the written or electronic communication described in paragraphs (1) and (2) into a single written or electronic communication if the nominee and the nominator are the same person.

(d) The association permits all candidates to run if nominated, except for nominees disqualified for running as allowed or required pursuant to subdivisions (b) to (e), inclusive, of Section 5105.

(e) The association board votes to consider the qualified candidates elected by acclamation at a meeting pursuant to Article 2 (commencing 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.

SEC. 2.5. Section 5103 is added to the Civil Code, to read:

5103. Notwithstanding the secret balloting requirement in Section 5100, 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 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 qualified candidates elected by acclamation if all of the following conditions have been met:

(a) 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.

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

(1) 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:

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

(B) The deadline for submitting nominations.

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

(D) A statement informing members that if, at the close of the time period 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.

(2) A reminder notice between 7 and 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:

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

(B) The deadline for submitting nominations.

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

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

(E) A statement reminding members that if, at the close of the time period 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.

(c) (1) 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.

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

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

(B) 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 (commencing with Section 5900) of Chapter 10, by which the nominee may appeal the disqualification.

(3) The association may combine the written or electronic communication described in paragraphs (1) and (2) into a single written or electronic communication if the nominee and the nominator are the same person.

(d) (1) The association permits all candidates to run if nominated, except for nominees disqualified for running as allowed or required pursuant to subdivisions (b) to (e), inclusive, of Section 5105.

(2) Notwithstanding paragraph (1), an association may disqualify a nominee if the person has served the maximum number of terms or sequential terms allowed by the association.

(3) If an association disqualifies a nominee pursuant to this subdivision, an association in its election rules shall also require a director to comply with the same requirements.

(e) The association board votes to consider the qualified candidates elected by acclamation at a meeting pursuant to Article 2 (commencing 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.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 5103 of the Civil Code, as added by this bill, proposed by Senate Bill 432 to Section 5100 of the Civil Code. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, and (2) this bill adds Section 5103 to the Civil Code and Senate Bill 432 amends Section 5100 of the Civil Code, in which case Section 2 of this bill shall not become operative.