

EXHIBIT A

AB 2159: Common interest developments: association governance: elections.

Version: Amended Senate (6/10/2024)

The people of the State of California do enact as follows:

SECTION 1. Section 5105 of the Civil Code is amended to read: 5105.

(a) An association shall adopt operating rules in accordance with the procedures prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the board and any other elected position, subject to subdivision (b), and procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member from nominating themselves for election to the board.

(4) Specify the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.

(5) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods:

(A) Appointment of the inspector or inspectors by the board.

(B) Election of the inspector or inspectors by the members of the association.

(C) Any other method for selecting the inspector or inspectors.

(6) Allow the inspector or inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties who meet the requirements in subdivision (b) of Section 5110.

(7) Require retention of, as association election materials, both a candidate registration list and a voter list. The candidate list shall include ~~name~~ names and ~~address~~ addresses of individuals nominated as a candidate for election to the board of directors. The voter list shall include the name, voting power, and either the physical address of the voters separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voters separate interest or if only the parcel number is used. The association shall permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The

association or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.

(b) An association shall disqualify a person from a nomination as a candidate for not being a member of the association at the time of the nomination. An association shall disqualify a nominee if that person has served the maximum number of terms or sequential terms allowed by the association. A director who ceases to be a member shall be disqualified from continuing to serve as a director.

(1) 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 associations governing documents.

(2) If title to a separate interest parcel is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a member for purposes of this article.

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

(1) Subject to paragraph (2) of subdivision (d), an association may require a nominee for a board seat, and a director during their board tenure, 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.

(2) An association may disqualify a person from nomination as a candidate 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.

(3) An association may disqualify a nominee if that person has been a member of the association for less than one year.

(4) 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, if the person was elected, either prevent the association from purchasing the insurance required by Section 5806 or terminate the associations existing insurance coverage required by Section 5806 as to that person should the person be elected.

(d) An association may disqualify a person from nomination for nonpayment of regular and special assessments, but may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party.

The person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:

(1) The person has paid the regular or special assessment under protest pursuant to Section 5658.

(2) The person has entered into and is in compliance with a payment plan pursuant to Section 5665.

(e) An association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.

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

(g) ~~Notwithstanding~~ Except as provided in subdivision (i), notwithstanding any other law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots.

(h) Notwithstanding any other law, the rules adopted pursuant to this section shall do all of the following:

(1) Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.

(2) Prohibit the denial of a ballot to a person with general power of attorney for a member.

(3) Require the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner.

(4) Require the inspector or inspectors of elections to deliver, or cause to be delivered, at least 30 days before an election, to each member both of the following documents:

(A) The ballot or ballots.

(B) A copy of the election operating rules. Delivery of the election operating rules may be accomplished by ~~either~~ any of the following methods:

(i) Posting the election operating rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point ~~font:~~ type: The rules governing this election may be found here:

(ii) Individual delivery.

(iii) Election operating rules adopted pursuant to this section shall not be amended less than 90 days prior to an election.

(i) Notwithstanding an associations governing documents, the association may adopt an election operating ~~rules that allow~~ rule that allows an association to utilize an inspector or inspectors of elections, as specified in Section 5110, to conduct an election by electronic secret ballot, except for an election regarding regular or special assessments, as provided for in Chapter 8 (commencing with Section 5600).

~~(1) An association that conducts an election by electronic secret ballot shall ensure all of the following: (A) The association shall provide each member with all of the following: (i) A method to authenticate the members identity to the online voting system. (ii) For an election of directors, a method to transmit an electronic secret ballot to the online voting system that ensures the secrecy and integrity of each ballot. (iii) A method to confirm, at least 14 days before the voting deadline, that the members electronic device can successfully communicate with the online voting system. (B) The association shall utilize an online voting system that has the ability to accomplish all of the following: (i) Authenticate the members identity. (ii) Authenticate the validity of each electronic vote to ensure that the vote is not altered in transit. (iii) Transmit a receipt from the online voting system to each member who casts an electronic vote. (iv) For an election of directors, permanently separate any authentication or identifying information from the electronic election ballot, rendering~~

~~it impossible to connect an election ballot to a specific member.(v)Store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.~~

(1)An election operating rule adopted pursuant to this subdivision may include, but not be limited to, all of the following purposes:

(A)Permitting a member to opt out of voting by electronic secret ballot no later than 90 days before an election and vote by written secret ballot.

(B)Requiring an electronic secret ballot and a written ballot to contain the same list of items being voted on.

(C)Requiring the association to mail a written ballot only to a member who has opted out of voting by electronic secret ballot.

(D)Requiring the association to maintain a voting list identifying which members will vote by electronic secret ballot and which members will vote by written ballot, and include information on the procedures to opt out of voting by electronic secret ballot in the annual statement prepared pursuant to Section 5310.

(E)Requiring a member who votes by electronic secret ballot to provide a valid email address to the association.

(F)Prohibiting nomination of candidates from the floor of membership meetings, notwithstanding subdivision (g).

(2)An electronic secret ballot may be accompanied by or contained in an electronic individual notice in accordance with paragraph (2) of subdivision (a) of Section 4040.~~(3)If an electronic secret ballot is conducted by internet website,~~

~~(3)(A)The association shall deliver individual notice of the electronic secret ballot shall be delivered to each member 30 days before the election and shall contain instructions on both of the following:~~

~~(A)~~

~~(i)How to obtain access to that internet website. internet-based voting system.~~

~~(B)~~

~~(ii)How to vote by electronic secret ballot.~~

~~(B)Delivery of the individual notice described in subparagraph (A) may be accomplished by electronic submission to an address, location, or system designated by the member.~~

(4)A vote made by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by ~~the inspector or inspectors of elections for this purpose.~~ an inspector or inspectors of elections.

(5)A vote made by electronic secret ballot shall not be revoked.(6)For purposes of determining a quorum, a member voting electronically pursuant to this subdivision shall be counted as a member in attendance at the meeting. Once the quorum is established, a substantive vote of the members shall not be taken on any issue other than the issues specifically identified in the electronic vote.

~~(7)The association shall not use an electronic secret ballot unless the association establishes procedures that provide a member an opportunity to do both of the following:(A)Vote by written secret ballot.(B)Opt out of voting by electronic secret ballot.(8)~~

(7) As used in this subdivision, electronic secret ballot means a ballot conducted by ~~email or internet website~~ an electronic voting system that ensures the secrecy and integrity of a ballot pursuant to the requirements of this article.

SEC. 2. Section 5110 of the Civil Code is amended to read: 5110.

(a) The association shall select an independent third party or parties as an inspector of elections. The number of inspectors of elections shall be one or three.

(b) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services other than serving as an inspector of elections.

(c) The inspector or inspectors of elections shall do all of the following:

(1) Determine the number of memberships entitled to vote and the voting power of each.

(2) Determine the authenticity, validity, and effect of proxies, if any.

(3) Receive ballots.

(4) Ensure compliance with all of the following, if the inspector or inspectors of elections conducts an election by electronic secret ballot pursuant to Section 5105:

(A) Each member voting by electronic secret ballot shall be provided with all of the following:

(i) A method to authenticate the members identity to the internet-based voting system.

(ii) A method to transmit an electronic secret ballot to the internet-based voting system that ensures the secrecy and integrity of each ballot.

(iii) A method to confirm, at least 30 days before the voting deadline, that the members electronic device can successfully communicate with the internet-based voting system.

(B) Any internet-based voting system that is utilized shall have the ability to accomplish all of the following:

(i) Authenticate the members identity.

(ii) Authenticate the validity of each electronic secret ballot to ensure that the electronic secret ballot is not altered in transit.

(iii) Transmit a receipt from the internet-based voting system to each member who casts an electronic secret ballot.

(iv) Permanently separate any authenticating or identifying information from the electronic secret ballot, rendering it impossible to connect an election ballot to a specific member.

(v) Store and keep electronic secret ballots accessible to elections officials or their authorized representatives for recount, inspection, and review purposes.

~~(4)~~

(5) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

~~(5)~~

(6) Count and tabulate all votes.

~~(6)~~

(7) Determine when the polls shall close, consistent with the governing documents.

(7)

(8) Determine the tabulated results of the election.

(8)

(9) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

(d) An inspector or inspectors of elections shall perform all duties impartially, in good faith, to the best of the inspector or inspectors of elections ability, as expeditiously as is practical, and in a manner that protects the interest of all members of the association. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

~~SEC. 2.~~ SEC. 3. Section 5115 of the Civil Code is amended to read: 5115.

(a) An association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Section 4040 if individual notice is requested by a member. This subdivision shall only apply to elections of directors and to recall elections.

(b) For elections of directors and for recall elections, an association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

(1) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections.

(2) If the association conducts the election by electronic secret ballot as provided for in Section 5105, the ~~election procedures pursuant to that section, whether the ballot will be conducted by email or internet website, and~~ date and time by which electronic secret ballots are to be transmitted to the internet-based voting system and preliminary instructions on how to vote by electronic secret ~~ballot.~~ ballot upon commencement of the voting period.

(3) The date, time, and location of the meeting at which a quorum will be determined, if the associations governing documents require a quorum, and at which ballots will be counted.

(4) The list of all candidates names that will appear on the ballot.

(5) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

(6) If the associations governing documents require a quorum for an election of directors, a statement that the board of directors may call a subsequent meeting at least 20 days after a scheduled election if the required quorum is not reached, at which time the quorum of the membership to elect directors will be 20 percent of the associations members voting in person, by proxy, or by secret ballot.

(c) 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, unless an association conducts an election by electronic secret ballot as provided for in Section 5105, in which case only members who have opted out of voting by electronic secret ballot pursuant to Section 5105 shall be mailed or delivered the ballots and envelopes. In order to preserve confidentiality, a voter may not be identified by name, address, or 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:

(1) 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 voters name, indicate the voters name, and indicate the address or separate interest identifier that entitles the voter to vote.

(2) 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.

(d)(1) A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector **or inspectors** of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.

(2) For an election of directors of a corporation that is a common interest development, and in the absence of meeting quorum as required by the associations governing documents or Section 7512 of the Corporations Code, unless a lower quorum is authorized by the associations governing documents, the association may adjourn the proceeding to a date at least 20 days after the adjourned proceeding, at which time the quorum required for purposes of a membership meeting to elect directors shall be 20 percent of the associations voting members present in person, by proxy, or by secret written ballot received.

(3) No less than 15 days prior to an election authorized pursuant to paragraph (2), the association shall provide general notice of the membership meeting, which shall include:

(A) The date, time, and location of the meeting.

(B) The list of all candidates.

(C) A statement that 20 percent of the association present or voting by proxy or secret ballot will satisfy the quorum requirements for the election of directors and that the ballots will be counted if a quorum is reached, if the associations governing documents require a quorum.

(e) An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

(f) **Except Notwithstanding any contrary provision in the governing documents, except** for the meeting to count the votes required in subdivision (a) of Section 5120, an election may be conducted entirely by mail ~~unless otherwise specified in the governing documents.~~ **or electronic secret ballot pursuant to Section 5105.**

(g) In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.

SEC. 4. Section 5120 of the Civil Code is amended to read: 5120.

(a) All votes shall be counted and tabulated by the inspector or inspectors of elections, or the designee of the inspector **or inspectors** of elections, in public at a properly noticed open meeting of the board or members. Any candidate or other member of the association may witness the counting and tabulation of the votes. ~~No~~ **A** person, including a member of the association or an employee of the management company, shall **not** open or otherwise review any ballot ~~prior to~~ **before** the time and place at which the ballots are counted and

tabulated. The inspector **or inspectors** of elections, or the designee of the inspector **or inspectors** of elections, may verify the members information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector **or inspectors** of elections, it shall be irrevocable.

(b)The tabulated results of the election shall be promptly reported to the board and shall be recorded in the minutes of the next meeting of the board and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Section 4045 of the tabulated results of the election.

(c)**A person, including a member of the association or an employee of the management company, shall not open or otherwise review any tally sheet of votes cast by electronic secret ballots before the time and place at which the ballots are counted and tabulated.**

SEC. 5.Section 5125 of the Civil Code is amended to read:5125.

The sealed ballots, signed voter envelopes, voter list, proxies, ~~and~~ candidate registration ~~list~~ **list, and tally sheet of votes cast by electronic secret ballot** shall at all times be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 5145 for challenging the election has expired, at which time custody shall be transferred to the association. If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written request, make the ballots **and the tally sheet of votes cast by electronic secret ballot** available for inspection and review by an association member or the members authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

SEC. 6.Section 5200 of the Civil Code is amended to read:5200.

For the purposes of this article, the following definitions shall apply:

(a)Association records means all of the following:

(1)Any financial document required to be provided to a member in Article 7 (commencing with Section 5300) or in Sections 5565 and 5810.

(2)Any financial document or statement required to be provided in Article 2 (commencing with Section 4525) of Chapter 4.

(3)Interim financial statements, periodic or as compiled, containing any of the following:

(A)Balance sheet.

(B)Income and expense statement.

(C)Budget comparison.

(D)General ledger. A general ledger is a report that shows all transactions that occurred in an association account over a specified period of time.

The records described in this paragraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

(4)Executed contracts not otherwise privileged under law.

(5)Written board approval of vendor or contractor proposals or invoices.

(6)State and federal tax returns.

(7)Reserve account balances and records of payments made from reserve accounts.

(8)Agendas and minutes of meetings of the members, the board, and any committees appointed by the board pursuant to Section 7212 of the Corporations Code; excluding,

however, minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900).

(9) Membership lists, including name, property address, mailing address, email address, as collected by the association in accordance with Section 4041 where applicable, but not including information for members who have opted out pursuant to Section 5220.

(10) Check registers.

(11) The governing documents.

(12) An accounting prepared pursuant to subdivision (b) of Section 5520.

(13) An enhanced association record as defined in subdivision (b).

(14) Association election materials as defined in subdivision (c).

(b) Enhanced association records means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, bank account statements for bank accounts in which assessments are deposited or withdrawn, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.

(c) Association election materials means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, ~~and~~ the candidate registration ~~list~~, ~~list~~, and the tally sheet of votes cast by electronic secret ballot. Signed voter envelopes may be inspected but may not be copied. An association shall maintain association election materials for one year after the date of the election.

SEC. 7. Section 5260 of the Civil Code is amended to read: 5260.

To be effective, any of the following requests shall be delivered in writing to the association, pursuant to Section 4035:

(a) A request to change the members information in the association membership list.

(b) A request to add or remove a second email or mailing address for delivery of individual notices to the member, pursuant to Section 4040.

(c) A request for individual delivery of general notices to the member, pursuant to subdivision (b) of Section 4045, or a request to cancel a prior request for individual delivery of general notices.

(d) A request to opt out of the membership list pursuant to Section 5220, or a request to cancel a prior request to opt out of the membership list.

(e) A request to receive a full copy of a specified annual budget report or annual policy statement pursuant to Section 5320.

(f) A request to receive all reports in full, pursuant to subdivision (b) of Section 5320, or a request to cancel a prior request to receive all reports in full.

(g) A request to opt out of electronically voting by electronic secret ballot pursuant to Section 5105.