

FALL 2006

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How SB 1560 Amends the New Election Laws

BY TAWNY Y. LUU, ESQ.
ORANGE COUNTY OFFICE



SB 1560 amends Civil Code Section 1363.03, the new law that, as of July 1, 2006, changes how community associations conduct their votes and elections. SB 1560 was first introduced in February 2006 as a clean-up Bill to clarify the provisions of SB 61 (now Civil Code Section 1363.03). Since February 2006, SB 1560 has been amended five times, with the latest amendment made on August 8, 2006. SB 1560 was finally signed by the Governor on September 18, 2006. Following is a summary of the major changes that SB 1560 makes to Civil Code Section 1363.03.

Specify When Polls Open and Close

SB 1560 now requires that any election rules adopted by the association in accordance with Civil Code Section 1363.03 specify when the voting polls shall open and close. The Association may state specific times or may state generally when polls shall open and close. For example, the polls shall open when registration begins and close when a motion to cease balloting is made and passed.

Assistants to Inspectors

SB 1560 allows the inspector(s) of election to appoint additional people to verify signatures and to count and tabulate votes. Any additional assistants appointed by the inspector(s) of election must meet the same qualifications of an independent third party as inspector(s) of elections do. This provision allowing for assistants to the inspector(s) of election will be especially helpful to larger associations because it will authorize inspector(s) of election to select assistants to aid in the verification, counting, and tabulating of votes.

Recall of the Board

SB 1560 now specifies that an election for directors and removal of directors (i.e. a recall) must be conducted by the secret ballot procedure. This supplements the language in Civil Code Section 1363.03, which provides that the secret ballot procedure shall be used for "selection" of the board.

The Recognized Authority in Community Association Law.

THE LEGAL PERSPECTIVE

Ballots Count Toward Quorum

SB 1560 provides that if quorum is required by an association's governing documents, each ballot received by the inspector(s) of election shall be treated as a member present at a meeting for quorum purposes. This clarifies some concerns expressed about whether ballots count toward quorum.

Cumulative Voting

SB 1560 provides that cumulative voting is permitted if provided for in the governing documents.

Independent Third Party Inspectors

Civil Code Section 1363.03 currently provides that the association shall select an independent third party or parties as inspector(s) of election. Pursuant to Civil Code Section 1363.03, an independent third party may be a member of the association, but may not be: (1) a member of the board of directors, (2) a candidate for the board of directors, (3) related to a member of the board of directors or a candidate for the board of directors or (4) a person who is currently employed or under contract to the association for any compensable services unless expressly authorized by election rules of the of the association.

SB 1560 expands who may not be an independent third party by adding that, unless expressly authorized by the rules of the association adopted pursuant to California Civil Code Section 1363(a) (5), a business entity or subdivision of a business entity who is currently employed or under contract to the association for any compensable services is not considered an independent third party. An association's management or certified public accountant company would fall under the category of business entities who are currently employed or under contract to the association for compensable services. Accordingly, an association's management company or certified public accountant may not be selected as an inspector(s) of election because they are not considered independent third parties under SB 1560, unless the association's election rules specifically provide that the association's management company or certified public accountant will serve as inspector(s) of election.

Proxies

SB 1560 provides a definition of a "proxy" as "a written authorization signed by a member or the authorized representative of the member that gives another member or members the power to vote on behalf of that member." This is a major change in the law. Previously anyone could be a proxyholder, and now a proxyholder must be a *member* of the association. SB 1560 also provides a definition of "signed" as "the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the member or authorized representative of the member."

SB 1560 also clarifies the use of proxies. SB 1560 provides that proxies shall not be construed or used in lieu of a ballot. SB 1560 does provide that an association may use proxies if proxies are permitted or required by the association's bylaws and if the proxies meet the requirements of SB 1560, other law and the association's governing documents. Under 1560, an association is not required to prepare or distribute proxies to its members unless required by the governing documents.

Verification of Member's Information

SB 1560 allows the inspector(s) of election or his/her designated representative(s) to verify the validity of a member's signature and address on the ballot envelope prior to the meeting where the ballots are tabulated. This provision will save inspector(s) of elections time at the meeting by allowing inspector(s) and/or his/her designated representative(s) to verify information on the outer/ballot envelope before the actual meeting where counting will take place.

Inspectors Will Make Ballots Available to Members on Recount

SB 1560 requires the inspector(s) of election, rather than the association, to make ballots available to a member or his/her authorized representative for review and inspection for a recount or other challenge to an election. Also, under SB 1560, inspector(s) are now required to retain the ballots for nine months after the election, at which time custody of the ballots will be transferred to the association.

Nomination of Candidates

SB 1560 provides that candidates may be nominated from the floor in a membership meeting or by any other manner allowed by the governing documents. SB 1560 also allows for write-in candidates in elections.

Exempts Delegates and Other Representatives

SB 1560 specifies that the secret ballot procedures apply to membership votes cast directly by the membership, but not to votes cast by delegates or other elected representatives.

Conclusion

Because Civil Code Section 1363.03 radically alters many longstanding voting procedures, it created challenges for associations and managers when it took effect on July 1, 2006. SB 1560 clarifies and refines some provisions of Civil Code Section 1363.03. However, we anticipate additional amendments to this law in the future after associations have had experience implementing the new election laws. ■

SB 1560 Also Changes Accounting and Record Requests



BY JESSE W.J. MALE, ESQ.
INLAND EMPIRE OFFICE

The SB 1560 clean up legislation primarily dealt with elections, yet the legislature also used SB 1560 to clean up a portion of Civil Code Section 1365.2 regarding records.

Associations Must Use Accrual or Modified Accrual Basis Accounting

SB 1560 changes Civil Code Section 1365.2 (a)(1)(C) to require that all balance sheets, income and expense statements, budget comparisons, and general ledgers, be prepared in accordance “with an accrual or modified accrual basis of accounting.” Previously the statute only required that accounting records be prepared in accordance with generally accepted accounting principles. Under most circumstances, the alternative method of accounting – cash basis accounting – was already considered to not be in accordance with generally accepted accounting principles. Therefore, most associations should not have to take action to comply with the change to this Section. However, associations should now confirm that their accounting books and records are being prepared on an accrual or modified accrual basis.

Only Committee Minutes & Agendas from Executive Committees Need to be Provided

Previously Civil Code Section 1365.2 (a)(1)(H) defined “Association records” to include agendas and minutes from meetings of any committees appointed by the board. After modification by SB 1560 this Section now only covers “committees appointed by the board of directors pursuant to Section 7212 of the Corporations Code”. Corporations Code Section 7212 refers to Executive Committees. Executive Committees are committees composed of board members or others empowered to act on behalf of the board with regard

to an issue or problem. A common example would be when a board creates an Executive Committee to address pending litigation matters.

Liability Limitation Extended to Cover Third Parties

Civil Code Section 1365.2 (d)(3) includes a limitation on liability for identity theft or other breach of privacy for an association’s failure

to withhold or redact documents provided in a record request. SB 1560 extends this limitation to cover third parties in addition to members. Despite this limitation, associations need to be cautious when providing documents, as this liability limitation does not apply to intentional, willful, or negligent acts.

Associations can Offer to Provide Documents in an Electronic Format

Following passage of SB 1560 associations can now offer to provide specifically identified documents in an electronic format or electronic transmission. Previously Civil Code Section 1365.2 permitted requesting parties to have the option of being provided with electronically formatted or transmitted records, so long as the records could be provided in a redacted format and were not alterable, Civil Code Section 1365.2(h) now allows associations to similarly fulfill document requests. Thus, requesting parties can request electronic versions, and, now even without a request, associations can also offer to provide requested documents electronically. Associations should be careful when providing electronic versions; this provision does not provide that an association can just copy its computer drives, rather electronic versions that are not alterable and are in a redacted format can be provided. This provision thus permits associations to fax or scan copies of redacted documents. ■

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will be held December 1st & 8th.

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FR&P IN THE COMMUNITY

In a case decided August 24, 2006, by the Second District Court of Appeal, a Diamond Bar condominium association successfully defended its judgment quieting title to the association's emergency access easement (fire lane) over an adjoining property. (Las Brisas-Diamond Bar Homeowners Assn. v. Dolezal, et al, Case No. B180907, unpublished.) The neighboring landowner had fenced off the fire lane and claimed the easement had been extinguished. The emergency access was restored by the judgment. **Peter E. Racobs, Esq.** and **Amanda N. Owen, Esq.** of the **Inland Empire Office** represented the association at trial; Mr. Racobs and **Jesse W.J. Male, Esq.** handled the appeal.

The Orange County Regional Chapter of Community Associations Institute (CAI) has appointed **John R. MacDowell, Esq.** of the Firm's **Orange County Office** as chapter liaison to CAI/CLAC. Mr. MacDowell was also appointed to the Board of Directors for CAI's Orange County Chapter and is excited to work with the Board for the upcoming year.

Richard S. Fiore, Esq. and **John R. MacDowell** of the **Orange County Office** were speakers at the Orange County Bar Associations' Real Estate Section in August 2006. At this luncheon, they presented an overview of the 2005-2006 legislation and legal cases that affect homeowners associations.

Janet L.S. Powers, Esq. and **Erin A. Maloney, Esq.** of the **Orange County and Inland Empire Offices** are panelists at the CAI Greater Inland Empire's **2006 Legislative Update** seminars on October 24, 2006 and November 14, 2006.

Fiore, Racobs & Powers was voted "**First Place Booth**" by the managers at the **CACM EXPO** which was held July 26-28, 2006. The booth depicted the theme "Fiore's House of Blues" and included lifesize statues of the famed Jake and Elwood characters. Thank you to all the managers who visited our Booth and took the time to vote. It was a wonderful time to meet new managers and see familiar faces.

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