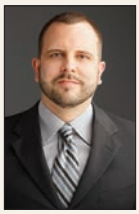
Fourth Quarter · 2023

Kriger LAW FIRM News

Assembly Bill 648: Statutory Notice Requirements for Remote Meetings



By Tyler Kerns, Esq.

Assembly Bill (AB) 648 was signed by the Governor on September 22, 2023 and will amend existing Civil Code §4090 and add a new Civil Code §4926 effective January 1, 2024. This new legislation allows associations to conduct entirely remote meetings by teleconference/videoconference without the need for any physical location subject to specified notice and procedural requirements.

Previously, Civil Code §4090(b) allowed open board meetings to be conducted by teleconference (through audio or video or both) but required that *"the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend, and at least one director or a person designated by the board shall be present at that location."* In response to the COVID-19 pandemic, legislation took effect in September of 2021 that created an exception to the "physical location" requirement for meetings if gathering in person is unsafe or impossible because the association is in an area affected by a declared federal, state, or local disaster or emergency. That statute also set forth certain additional notice and procedural requirements for conducting such meetings. However, since that exception only applies during a declared federal, state, or local disaster or emergency and only to the extent that gathering in person is unsafe or impossible because of the disaster or emergency, it cannot ordinarily be relied upon as a basis for conducting entirely remote meetings without any physical location.

However, as of January 1, 2024, as a result of AB 648, associations will be able to conduct entirely remote meetings by teleconference/videoconference even in the absence of any state of emergency or disaster that would make meeting in person unsafe or impossible. This is welcome news for many associations that have found remote meetings to be convenient for directors and owners alike and have found the "physical location" requirement burdensome. For those associations that choose to conduct entirely remote meetings with no physical location, it will be necessary to comply with the notice and procedural requirements of the new Civil Code §4926. Otherwise, the meetings and the decisions made at those meetings could be subject to legal challenge.

Pursuant to the new Civil Code §4926, in addition to the ordinary statutory requirements for meeting notices, the notice for each meeting conducted entirely remotely without any physical location will also need to include: [1] clear technical instructions on how to participate (including, but not limited to, log-in/dial-in information); [2] the telephone number and email address of a person who can provide technical assistance with the teleconference/videoconference process, both before and during the meeting; and [3] a reminder that a member may request individual delivery of meeting notices, with instructions on how to do so.

In addition, the statute requires that every director and member must have the same ability to participate in the meeting that would exist if the meeting were held in person, all directors and members must be given the option of participating by telephone, and any vote of the directors must be conducted by a roll call vote (where each director is individually called upon for their vote).

Lastly, the new Civil Code §4926 allowing for entirely remote meetings without a physical location in the absence of a declared disaster or emergency does not apply to a meeting at which secret ballots are to be counted and tabulated. A physical location will still be required for meetings at which secret ballots are to be counted (unless there is a declared state of emergency or disaster that would make meeting in person unsafe or impossible, in which case the separate Civil Code §5450 exception could apply).

Boards and managers of associations wishing to conduct entirely remote meetings without any physical location should familiarize themselves with the additional notice and procedural requirements of the new Civil Code §4926 and consult legal counsel with any questions. ■

In This Issue:

AB 1458 Reduces Quorum Requirements

By Garrett Wait, Esq.

Many homeowners associations have had difficulty reaching quorum at their annual meetings for years, leading to stagnated boards and reinforcing member apathy. The state legislature addressed this ongoing, pervasive issue with Assembly Bill 1458 by allowing the association's board of directors to adjourn the meeting to a later date, where the quorum requirement will be reduced to 20 percent of the membership. After receiving nearly unanimous support in the legislature, Governor Gavin Newsom signed the bill into law, and it will be made part of Civil Code Section 5115, taking effect on January 1, 2024.

The new law applies only to annual elections despite some confusing drafting. It is at least partially in response to recent cases related to elections and the application of Corporations Code Section 7512, including *Takiguchi v. The Venetian Condominium Owners Association*. AB 1458 reduces the quorum requirement to 20 percent at a reconvened meeting for common interest developments whose governing documents are silent on quorum reduction. However, the new statute remains permissive rather than mandatory, meaning that associations are not explicitly required to adjourn an annual meeting election to a later date despite the significantly reduced quorum.

Nonetheless, this new law should incentivize homeowners associations who achieve at least 20 percent at the time of the initial date for the election to adjourn that meeting to a later date to take advantage of the statutorily reduced quorum. It should allow more homeowners associations to complete a valid election, maintaining election cycles and director terms. Critically, it will also allow associations to take advantage of the election by acclamation provision that requires an association to have held an election in the last three years.

Of course, associations looking to take advantage of the quorum reduction must follow certain notice provisions. That includes adjourning the meeting to at least 20 days after the initial meeting date and providing general notice to the membership at least 15 days before the adjourned meeting that the inspector of elections will count ballots if the association meets the 20 percent quorum requirement.

While there may be a few hurdles, AB 1458 should lead to more associations completing elections. Completing elections should allow more members to serve on their association's board of directors and potentially end board stagnation. Of course, associations should still encourage members to vote. A mere 20 percent quorum requirement likely does not sufficiently represent all members' positions, so boards should continue advocating for member involvement and participation whenever possible. ■

How Assembly Bill 1764 Will Impact Your Election

By Niki Tran, Esq.

In the ever-evolving landscape of homeowners association (HOA) laws and regulations, staying informed and compliant is crucial for the smooth operation of your community. The signing of Assembly Bill 1764 into law on October 11, 2023, which will take effect on January 1, 2024, brings changes to Civil Code Sections 5103 and 5105. These changes will affect how associations manage the nomination and qualification processes for board members. Here's what these changes mean for your association and why updating your election rules (yet again) may be necessary.

Under this new law, if an association decides to disqualify a nominee for the board, it must now apply the same criteria to directors. Existing laws allow associations to set specific qualifications for board nominees. These include:

1. Nonmember: Nominees shall be disqualified for not being a member of the association.
2. Membership Tenure: Nominees may be disqualified for being a member for less than one year.
3. Joint Ownership Restrictions: Nominees may be disqualified if another joint owner is already serving on the board.
4. Financial Responsibilities: Nominees who are delinquent in regular and special assessments and have not arranged for payment or paid under protest, may be disqualified.
5. Criminal Convictions: Nominees with a past criminal conviction that jeopardizes the association's insurance requirements may be disqualified.

Assembly Bill 1764 adds a new subsection (f) to Civil Code Section 5105 and reiterates the mandate from Civil Code Section 5103 that requires that if a nominee is disqualified based on the criteria mentioned above, the same standards must be applied to directors.

These changes emphasize the importance of revisiting and possibly amending your association's election rules to align with new legal standards.

Additionally, the new law moves from Civil Code Section 5103 to Civil Code Section 5105 the language regarding the maximum number of terms a director can serve. Previously, that language provided that an association *may* disqualify a nominee if the person has served the maximum number of terms or sequential terms allowed by the association. As amended under the new law, that language now provides that a nominee *shall* be disqualified if that person has served the maximum number of terms or sequential terms allowed by the association (the permissive "may" was changed to a mandatory "shall"). The new law further amends Civil Code Section 5105 to provide that a director who ceases to be a member of the association will also be disqualified from continuing to serve as a director, which clarifies what was already assumed – the criteria to disqualify a nonmember as a "candidate" would also disqualify a director who is no longer a member of the association.

These changes emphasize the importance of revisiting and possibly amending your association's election rules to align with new legal standards. Non-compliance risks legal challenges and could undermine election legitimacy.

Assembly Bill 1764 cleaned up some of the statutory language applicable to director qualifications and also offers a chance to refine your election and governance processes. To navigate these changes smoothly and ensure your association is fully compliant, it's advisable to seek professional assistance.

Our team is well-versed in the intricacies of HOA laws and is ready to assist your association in updating its election rules to comply with Assembly Bill 1764. We are ready to assist and answer any questions regarding these changes and their impact on future elections. ■

New California Laws Regarding Accessory Dwelling Units

By Steven Banks, Esq.

The Governor recently approved two Assembly bills regarding accessory dwelling units (ADUs): AB 976 and AB 1033.

The Planning and Zoning Law provides for the creation of ADUs by local ordinance, or, if a local agency (city or county) has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. Prior to AB 976, the law already required a local ordinance to mandate ADUs be either attached to or located within a primary dwelling or located on the same lot if detached from the primary dwelling. Local agencies could also require that ADUs be used for rental terms longer than 30 days. Beginning January 1, 2025, the prior law would have authorized local agencies to impose an owner-occupancy requirement on some ADUs. While local agencies will still be able to require rental terms of 30 days or longer, they will now be prohibited from imposing an owner-occupancy requirement on any ADU.

Each lot would need its own HOA to assess costs for shared property maintenance expenses.

However, the biggest change is that local agencies will be allowed, but not required, to adopt ordinances permitting owners to

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NEW CALIFORNIA LAWS REGARDING ACCESSORY DWELLING UNITS

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convert their ADUs into condos that can be sold separately from the main dwelling. Each lot would need its own HOA to assess costs for shared property maintenance expenses.

The creation of these new condos on a lot would be subject to certain conditions. For example, the condos must be created pursuant to the Davis-Stirling Common Interest Development (CID) Act and in conformance with all applicable objective requirements of the Subdivision Map Act and a local subdivision ordinance. A qualifying safety inspection of the ADU must occur before the condo plan is recorded. A subdivision map or condo plan cannot be recorded without written evidence that each lienholder has consented. Lienholders can refuse to consent or require the satisfaction of terms and conditions.

The legislative goal is to create more home ownership and give owners more options for building on their property. However, the practical result will be additional burdens on HOAs. Fortunately, if the property or separate interest is in a planned development with an existing HOA, the owner cannot record a condo plan to create a new CID without the HOA's express written authorization, defined as HOA board approval at a duly noticed board meeting, and, if required by the HOA's governing documents, approval by the HOA's membership.

HOAs should be proactive in amending their governing documents to address this change in the ADU law, including by adding CC&R provisions requiring majority or greater approval for owners to convert ADUs into condominiums and prohibiting the owners of new "condo" ADUs from membership and attendant voting rights in the existing HOA. ■