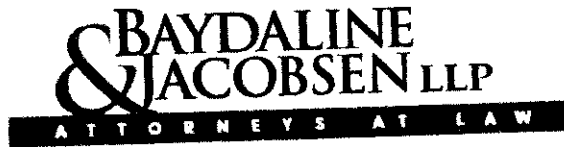


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## IMPORTANT INFORMATION REGARDING ELECTION RULES

As the Board may know, the Legislature amended the Davis-Stirling Common Interest Development Act by adding *Civil Code* §1363.03.<sup>1</sup> This statute requires all common interest development associations in California to affirmatively adopt and implement detailed election rules. The new law also contains onerous penalty provisions for associations that fail to do so.

Unfortunately, this law is complex and internally inconsistent in many places. The new law is also inconsistent with other existing laws and with standard provisions in many association governing documents. We expect that the law will continue to evolve as a result of future judicial decisions and additional legislative amendments. Nonetheless, all community associations *must* comply with the existing approved law at the present time. For this reason, we highly recommend that associations obtain competent legal counsel to assist them in this matter as soon as possible.

We would like to offer our services to assist your Association in this regard. We do not recommend that association boards of directors attempt to draft these procedures on their own. We also caution associations against attempting to mimic the procedures adopted by another association. The complexity in this law will involve a detailed and fact-specific analysis of each association's set of governing documents in reference to existing laws as well as the new requirements of SB 61 and SB 1560. Due to all of the complexities, inconsistencies and discrepancies in the new statute, we do not recommend that boards of directors attempt to navigate this difficult area without the assistance of legal counsel.

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<sup>1</sup> *Civil Code* §1363.03 is commonly referred to as "SB 61" after Senate Bill 61, the bill by which this legislation was introduced and adopted. The Legislature has already amended SB 61 once, by Senate Bill 1560, which was enacted as urgency legislation in September of last year.

As noted above, failure to comply with this law in a timely matter can be extremely costly to an association. The new law allows homeowners to sue their associations in either superior court or small claims court for violations of the law. If the member prevails, the court may impose up to a \$500 penalty for *each* violation and may award the homeowner court costs and attorneys' fees. On the other hand, if the association prevails, it may **not** recover its costs and attorneys' fees, unless the court finds the member's action to be "frivolous, unreasonable or without foundation".

Understandably, many of our association clients have called us asking about SB 61 and SB 1560 and what boards must do to comply with their provisions. The following Question & Answer section is intended to help you understand the new law. It also describes the legal services our firm will provide in helping associations comply with this law to the greatest extent possible. As we anticipate that we will be drafting a large number of these election procedures, we are in a unique position to offer this service at a preferred rate.

### QUESTIONS & ANSWERS

**Q:** *How does the new law work?*

**A:** Associations **must** adopt comprehensive rules that comply with *Civil Code* §1363.03. The following is a list of the issues that **must** be addressed in the rules:

- candidate and member access to association media
- candidate and member access to common area meeting space
- director qualifications
- nomination procedures
- voting qualifications and voting power
- authenticity, validity and effect of proxies
- polling information
- selection of inspectors of elections

The new law also specifies a new "secret ballot" procedure that **must** be used for elections or votes on the following subjects:

- election of directors
- removal of directors
- governing document amendments
- grants of exclusive use of common area property
- member approval of certain assessment increases and special assessments

Finally, the new law establishes detailed rules regarding:

- the role of the inspectors of election in receiving, opening and tabulating the "secret ballots"
- how members must fill out and submit the "secret ballots"
- the custody and storage of the "secret ballots"
- the use of association funds for campaign purposes

**Q:** *What must an association do to be in compliance with the new law?*

**A:** An association must affirmatively adopt Election Rules, and must comply with the adopted Election Rules and the other provisions of *Civil Code* §1363.03, in all votes and elections conducted on or after July 1, 2006. Equally important, an association must go through the 30-day member notification and comment process set forth in *Civil Code* §1357.100 *et seq.* in order to adopt valid Election Rules.

**Q:** *How can Baydaline & Jacobsen help us deal with the new law?*

**A:** We have spent countless hours interpreting and analyzing the new law, and have prepared a form of election procedures which we can tailor to meet the needs of each individual association.

We know that legal budgets can be stretched thin for associations and that the expense of complying with the new law will burden many. However, we firmly believe that sound legal advice for boards and managers is critical here. Accordingly, for a fixed fee of \$875, we are willing to:

- (1) prepare Election Rules that comply with this new *Civil Code* §1363.03 while still being consistent with other California laws and your Association's governing documents,
- (2) prepare the required Notice of Proposed Rule Change and a Board Resolution for adoption of the new Election Rules, and
- (3) provide a Secret Ballot form, a Secret Ballot Voting Instructions form, and a Candidate Solicitation Notice form, to assist the Board of Directors in implementing the new Election Rules.

If your Association would like to accept our proposal, please (1) have an authorized agent sign a copy of this letter where indicated below, and (2) return the signed original to us together with copies of the Association's current governing documents (*i.e.*, *Articles of Incorporation, Bylaws, CC&Rs, and Rules and Regulations*). Upon receipt of these items, we will promptly prepare the Election Rules and other documentation to bring your Association into compliance with this important new law.

If you have any questions, please feel free to call us. We look forward to the opportunity to assist the association with this important matter.

Very truly yours,

**BAYDALINE & JACOBSEN LLP**



Darren M. Bevan

**The association hereby engages Baydaline & Jacobsen LLP to prepare Election Rules under the terms set forth above.**

Dated: \_\_\_\_\_, 2008.

\_\_\_\_\_  
(Print name of Association)

By: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

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