

# AB 1458

STOP, ADJOURN, THEN PROCEED

NEW REDUCED QUORUM REQUIREMENTS  
HELP MAKE EVERY VOTE COUNT



BY: RACHEAL E. SOLOMON, ESQ.,  
NORDBERG | DENICHILO, LLP

DANIEL HEATON, ESQ.,  
NORDBERG | DENICHILO, LLP

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**R**ecent legislation has provided various tools to remedy the difficulties that many associations face due to the lack of member participation in director elections. AB 502 went into effect in 2022, permitting elections by acclamation when the number of qualified candidates running for a board of directors is less than or equal to the number of positions to be filled (subject to several procedural requirements). Recently, AB 1458 was also enacted to address the inability of many associations to reach quorum due to lack of voter participation. This article describes the framework of AB 1458, including its limitations, and details how to comply with the new law so associations can take advantage of reduced quorum requirements and achieve a successful election of directors

California legislators have attempted to address the common frustrations and unique pitfalls many homeowners associations face when it comes to corporate governance and director elections. Specifically, many governing documents require an association to reach a requisite quorum of the membership before an election may proceed and the ballots opened. Oftentimes, associations are unable to reach quorum due to voter apathy. The result is wasted time and financial resources and lost hope as some elections never conclude.

### The Scope and Limitations of AB 1458

AB 1458 went into effect at the start of this year and amends Civil Code § 5115 and Corporations Code § 7512. Presuming the requisite notices have been provided, if quorum is not reached at a meeting called to count ballots for a director election, the association can adjourn the meeting for at least 20 days, and then resume with a reduced quorum of twenty percent. The ability to reduce quorum at an adjourned meeting does not apply to all elections. For example, AB 1458 does not apply to membership votes required to authorize assessments or amend the CC&Rs, or arguably, a vote to recall the board. Rather, it only serves to reduce quorum exclusively at an adjourned meeting involving director elections.

Initially, associations should review their governing documents to determine whether a quorum is even required. If an association's bylaws have eliminated the quorum requirement, or if there are already provisions setting quorum below twenty percent, then the new statutory provisions do not apply.

Notably, some attorneys have suggested that this provision is ambiguous and should instead be interpreted as a default provision in that if an association's bylaws already provide for a reduced quorum process, that controls even if the percentage is greater than twenty percent. Given this potential ambiguity, boards should consult their own legal counsel on this issue, particularly if their bylaws provide for a reduced quorum at an adjourned meeting that is more than twenty percent.



### Complying with AB 1458 to Qualify for Reduced Quorum.

Before an association may take advantage of a reduced quorum percentage at an adjourned election meeting, Civil Code § 5115 requires the addition of several new statements in the notices provided to the members:

First, a new statement must be added to the general notice that is already required to be provided at least 30 days before the distribution of ballots. In addition to all the information required previously, this notice must now also include the following statement:

“[AB 1458] WILL HOPEFULLY ENABLE MORE ASSOCIATIONS TO SUCCESSFULLY CONDUCT DIRECTOR ELECTIONS EVEN IN THE FACE OF ONGOING DIFFICULTIES ENCOURAGING THE MEMBERSHIP TO PARTICIPATE IN THE PROCESS.”

*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 association's members voting in person, by proxy, or by secret ballot. (Civ. Code § 5115(b)(5))*

Second, if the quorum set forth in the association's governing documents is not met at the initial meeting, the members may adjourn the meeting for at least 20 days. The association is then required by Section 5115(d) (3) to provide an additional general notice to the members at least 15 days before the adjourned meeting that includes the following:

- The date, time, and location of the meeting;
- The list of all candidates; and
- A statement that 20 percent of the association present or voting by proxy or secret ballot will satisfy the quorum requirement for the election of directors and that the ballots will be counted if a quorum is reached, if the association's governing documents require a quorum.

Assuming the association complies with the above requirements, then at the adjourned meeting, the required quorum to conduct the election automatically reduces to twenty percent. This will hopefully enable more associations to successfully conduct director elections even in the face of ongoing difficulties encouraging the membership to participate in the process.

While not required under the statute, boards may wish to discuss with legal counsel whether election rules should be updated to take advantage of new legislative changes pertaining to director elections. These updates should incorporate the above pre-ballot statements and new pre-adjournment meeting notices into the association's regular election procedures so there is no question as to the procedures that must be followed in order to take advantage of a reduced quorum needed to make every vote count.



Racheal E. Solomon and Daniel C. Heaton are Senior Associates at Nordberg | DeNichilo, LLP, exclusively representing community associations throughout California as corporate and litigation counsel. They may be reached at 949.654.1510 or [www.ndhoalaw.com](http://www.ndhoalaw.com).