

#### SB 177 L.016 Summary and Problems

- This amendment removes the prohibition on having anyone affiliated with the law firm that represents or will represent that association in the construction defect lawsuit prepare or help prepare the required disclosure.
- *This amendment has no practical effect. The bill still requires that associations provide the disclosures before retaining or agreeing to retain any expert or consultant connected to the lawsuit and associations cannot realistically provide the disclosures without advice from experts or consultants connected to the lawsuit.*

#### SB 177 L.017 Summary and Problems

- This amendment removes the prohibition on proxy voting and instead requires that the Association obtain a signed, written statement from a majority of owners indicating the owner has received the required disclosures and approves of the board's action.
- *This amendment imposes additional obstacles for associations facing construction defects by requiring that written consent be obtained from owners who may not be able to easily provide written consent, such as those stationed overseas, working two jobs, who speak English as a second language, etc. and who are relying on their board of directors to make thoughtful decisions in the community's best interest.*
- *This amendment does not close the loophole that allows a declarant to simply transfer title to a related entity and vote to prevent a lawsuit.*

#### SB 177 L.018 Summary and Problems:

- This amendment removes the requirement that the association use the arbitrator designated in governing documents and instead requires that the parties agree on an arbitrator. If the parties cannot agree on an arbitrator, they may petition the court to appoint an arbitrator. Preference is to be given to the arbitrator designated in the governing documents.
- *Even with this amendment, the bill still prohibits homeowners from amending unfair arbitration-related provisions imposed by governing documents, such as obtaining a developer's consent in order to bring a lawsuit, evidentiary restrictions and damages limitations.*

- *The bill still requires that homeowners absorb the significant, unnecessary, additional cost of paying an arbitrator to decide a dispute.*
- *Even though the amendment states that both parties must agree on an arbitrator, it gives preference to what the declaration requires and prohibits the Association from amending the declaration. Courts will likely appoint the arbitrator designated in the governing documents because the bill directs that preference is to be given to the arbitrator designated in the governing documents.*
- *Involving the Court in appointing an arbitrator will unreasonably delay resolution of the dispute.*

SB 177 L.019 Summary and Problems:

- This amendment deletes the required disclosure topics included in the original draft and substitutes equally problematic disclosure topics. The Association is still prohibited from hiring, or agreeing to hire, experts or consultants in connection with the construction defect claim before providing these disclosures.
- *The amendment requires that the Board disclose the date after which its claims are barred, which is a defense that the law requires that defendants prove. The Association should not be required to prove that defense.*
- *The amendment requires that the Association predict its ultimate recovery, without help from experts or consultants involved in the case. This disclosure is impossible.*
- *The amendment requires that the Association make potentially false statements regarding its own liability and owners' ability to obtain financing.*
- *The amendment requires that the Board state that it intends to hire attorneys on a contingency fee basis, even if that's not true.*