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ENGROSSED SUBSTITUTE HOUSE BILL 1471

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State of Washington

54th Legislature

1995 Regular Session

By House Committee on Law & Justice (originally sponsored by  
Representatives Padden and Appelwick)

Read first time 02/17/95.

1 AN ACT Relating to homeowners' associations; and adding a new  
2 chapter to Title 64 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The intent of this chapter is to provide  
5 consistent laws regarding the formation and legal administration of  
6 homeowners' associations.

7 NEW SECTION. **Sec. 2.** For purposes of this chapter:

8 (1) "Homeowners' association" or "association" means a corporation,  
9 unincorporated association, or other legal entity, each member of which  
10 is an owner of residential real property located within the  
11 association's jurisdiction, as described in the governing documents,  
12 and by virtue of membership or ownership of property is obligated to  
13 pay real property taxes, insurance premiums, maintenance costs, or for  
14 improvement of real property other than that which is owned by the  
15 member. "Homeowners' association" does not mean an association created  
16 under chapter 64.32 or 64.34 RCW.

17 (2) "Governing documents" means the articles of incorporation,  
18 bylaws, plat, declaration of covenants, conditions, and restrictions,

1 rules and regulations of the association, or other written instrument  
2 by which the association has the authority to exercise any of the  
3 powers provided for in this chapter or to manage, maintain, or  
4 otherwise affect the property under its jurisdiction.

5 (3) "Board of directors" or "board" means the body, regardless of  
6 name, with primary authority to manage the affairs of the association.

7 (4) "Common areas" means property owned, or otherwise maintained,  
8 repaired or administered by the association.

9 (5) "Common expense" means the costs incurred by the association to  
10 exercise any of the powers provided for in this chapter.

11 (6) "Residential real property" means any real property, the use of  
12 which is limited by law, covenant or otherwise to primarily residential  
13 or recreational purposes.

14 NEW SECTION. **Sec. 3.** The membership of an association at all  
15 times shall consist exclusively of the owners of all real property over  
16 which the association has jurisdiction, both developed and undeveloped.

17 NEW SECTION. **Sec. 4.** Unless otherwise provided in the governing  
18 documents, an association may:

19 (1) Adopt and amend bylaws, rules, and regulations;

20 (2) Adopt and amend budgets for revenues, expenditures, and  
21 reserves, and impose and collect assessments for common expenses from  
22 owners;

23 (3) Hire and discharge or contract with managing agents and other  
24 employees, agents, and independent contractors;

25 (4) Institute, defend, or intervene in litigation or administrative  
26 proceedings in its own name on behalf of itself or two or more unit  
27 owners on matters affecting the homeowners' association;

28 (5) Make contracts and incur liabilities;

29 (6) Regulate the use, maintenance, repair, replacement, and  
30 modification of common areas;

31 (7) Cause additional improvements to be made as a part of the  
32 common areas;

33 (8) Acquire, hold, encumber, and convey in its own name any right,  
34 title, or interest to real or personal property;

35 (9) Grant easements, leases, licenses, and concessions through or  
36 over the common areas and petition for or consent to the vacation of  
37 streets and alleys;

- 1 (10) Impose and collect any payments, fees, or charges for the use,  
2 rental, or operation of the common areas;
- 3 (11) Impose and collect charges for late payments of assessments  
4 and, after notice and an opportunity to be heard by the board of  
5 directors or by the representative designated by the board of directors  
6 and in accordance with the procedures as provided in the bylaws or  
7 rules and regulations adopted by the board of directors, levy  
8 reasonable fines in accordance with a previously established schedule  
9 adopted by the board of directors and furnished to the owners for  
10 violation of the bylaws, rules, and regulations of the association;
- 11 (12) Exercise any other powers conferred by the bylaws;
- 12 (13) Exercise all other powers that may be exercised in this state  
13 by the same type of corporation as the association; and
- 14 (14) Exercise any other powers necessary and proper for the  
15 governance and operation of the association.

16 NEW SECTION. **Sec. 5.** (1) Except as provided in the association's  
17 governing documents or this chapter, the board of directors shall act  
18 in all instances on behalf of the association. In the performance of  
19 their duties, the officers and members of the board of directors shall  
20 exercise the degree of care and loyalty required of an officer or  
21 director of a corporation organized under chapter 24.03 RCW.

22 (2) The board of directors shall not act on behalf of the  
23 association to amend the articles of incorporation, to take any action  
24 that requires the vote or approval of the owners, to terminate the  
25 association, to elect members of the board of directors, or to  
26 determine the qualifications, powers, and duties, or terms of office of  
27 members of the board of directors; but the board of directors may fill  
28 vacancies in its membership of the unexpired portion of any term.

29 (3) Within thirty days after adoption by the board of directors of  
30 any proposed regular or special budget of the association, the board  
31 shall set a date for a meeting of the owners to consider ratification  
32 of the budget not less than fourteen nor more than sixty days after  
33 mailing of the summary. Unless at that meeting the owners of units to  
34 which a majority of the votes in the association are allocated or any  
35 larger percentage specified in the governing documents reject the  
36 budget, the budget is ratified, whether or not a quorum is present. In  
37 the event the proposed budget is rejected or the required notice is not  
38 given, the periodic budget last ratified by the owners shall be

1 continued until such time as the owners ratify a subsequent budget  
2 proposed by the board of directors.

3 (4) The owners by a majority vote of the voting power in the  
4 association present and entitled to vote at any meeting of the unit  
5 owners at which a quorum is present, may remove any member of the board  
6 of directors with or without cause.

7 NEW SECTION. **Sec. 6.** Unless provided for in the governing  
8 documents, the bylaws of the association shall provide for:

9 (1) The number, qualifications, powers and duties, terms of office,  
10 and manner of electing and removing the board of directors and officers  
11 and filling vacancies;

12 (2) Election by the board of directors of the officers of the  
13 association as the bylaws specify;

14 (3) Which, if any, of its powers the board of directors or officers  
15 may delegate to other persons or to a managing agent;

16 (4) Which of its officers may prepare, execute, certify, and record  
17 amendments to the governing documents on behalf of the association;

18 (5) The method of amending the bylaws; and

19 (6) Subject to the provisions of the governing documents, any other  
20 matters the association deems necessary and appropriate.

21 NEW SECTION. **Sec. 7.** (1) A meeting of the association must be  
22 held at least once each year. Special meetings of the association may  
23 be called by the president, a majority of the board of directors, or by  
24 owners having ten percent of the votes in the association. Not less  
25 than ten nor more than sixty days in advance of any meeting, the  
26 secretary or other officers specified in the bylaws shall cause notice  
27 to be hand-delivered or sent prepaid by first class United States mail  
28 to the mailing address of each owner or to any other mailing address  
29 designated in writing by the owner. The notice of any meeting shall  
30 state the time and place of the meeting and the business to be placed  
31 on the agenda by the board of directors for a vote by the owners,  
32 including the general nature of any proposed amendment to the articles  
33 of incorporation, bylaws, any budget or changes in the previously  
34 approved budget that result in a change in assessment obligation, and  
35 any proposal to remove a director.

36 (2) Except as provided in this subsection, all meetings of the  
37 board of directors shall be open for observation by all owners of

1 record and their authorized agents. The board of directors shall keep  
2 minutes of all actions taken by the board, which shall be available to  
3 all owners. Upon the affirmative vote in open meeting to assemble in  
4 closed session, the board of directors may convene in closed executive  
5 session to consider personnel matters; consult with legal counsel or  
6 consider communications with legal counsel; and discuss and consider  
7 likely or pending litigation, matters involving possible violations of  
8 the governing documents of the association, and matters involving the  
9 possible liability of an owner to the association. The motion shall  
10 state specifically the purpose for the closed session. Reference to  
11 the motion and the stated purpose for the closed session shall be  
12 included in the minutes. The board of directors shall restrict the  
13 consideration of matters during the closed portions of meetings only to  
14 those purposes specifically exempted and stated in the motion. No  
15 motion, or other action adopted, passed, or agreed to in closed session  
16 may become effective unless the board of directors, following the  
17 closed session, reconvenes in open meeting and votes in the open  
18 meeting on such motion, or other action which is reasonably identified.  
19 The requirements of this subsection shall not require the disclosure of  
20 information in violation of law or which is otherwise exempt from  
21 disclosure.

22 NEW SECTION. **Sec. 8.** Unless the governing documents specify a  
23 different percentage, a quorum is present throughout any meeting of the  
24 association if the owners to which thirty-four percent of the votes of  
25 the association are allocated are present in person or by proxy at the  
26 beginning of the meeting.

27 NEW SECTION. **Sec. 9.** Unless otherwise provided in the governing  
28 documents, any surplus funds of the association remaining after payment  
29 of or provision for common expenses and any provision for reserves  
30 shall, in the discretion of the board of directors, either be paid to  
31 the owners in proportion to their common expense liabilities or  
32 credited to them to reduce their future common expense assessments.

33 NEW SECTION. **Sec. 10.** (1) The association or its managing agent  
34 shall keep financial and other records sufficiently detailed to enable  
35 the association to fully declare to each owner the true statement of  
36 its financial status. All financial and other records of the

1 association, including but not limited to checks, bank records, and  
2 invoices, in whatever form they are kept, are the property of the  
3 association. Each association managing agent shall turn over all  
4 original books and records to the association immediately upon  
5 termination of the management relationship with the association, or  
6 upon such other demand as is made by the board of directors. An  
7 association managing agent is entitled to keep copies of association  
8 records. All records which the managing agent has turned over to the  
9 association shall be made reasonably available for the examination and  
10 copying by the managing agent.

11 (2) All records of the association, including the names and  
12 addresses of owners and other occupants of the lots, shall be available  
13 for examination by all owners, holders of mortgages on the lots, and  
14 their respective authorized agents on reasonable advance notice during  
15 normal working hours at the offices of the association or its managing  
16 agent. The association shall not release the unlisted telephone number  
17 of any owner. The association may impose and collect a reasonable  
18 charge for copies and any reasonable costs incurred by the association  
19 in providing access to records.

20 (3) At least annually, the association shall prepare, or cause to  
21 be prepared, a financial statement of the association in accordance  
22 with generally accepted accounting principles. The financial  
23 statements of associations with annual assessments of fifty thousand  
24 dollars or more shall be audited at least annually by a certified  
25 public accountant, but the audit may be waived if sixty-seven percent  
26 of the votes cast by owners, at a meeting of the association at which  
27 a quorum is present, vote each year to waive the audit.

28 (4) The funds of the association shall be kept in accounts in the  
29 name of the association and shall not be commingled with the funds of  
30 any other association, nor with the funds of any manager of the  
31 association or any other person responsible for the custody of such  
32 funds.

33 NEW SECTION. **Sec. 11.** Any violation of the provisions of this  
34 chapter shall entitle an aggrieved party to any remedy provided by law  
35 or in equity. The court in an appropriate case may award reasonable  
36 attorneys' fees to the prevailing party.

1        NEW SECTION.    **Sec. 12.**    Sections 1 through 11 of this act  
2    constitute a new chapter in Title 64 RCW.

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