
SENATE BILL 5377

State of Washington

62nd Legislature

2011 Regular Session

By Senators Morton, Swecker, and Stevens

Read first time 01/21/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to homeowners' associations; amending RCW 64.38.010
2 and 64.38.025; adding new sections to chapter 64.38 RCW; and providing
3 an effective date.

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

5 **Sec. 1.** RCW 64.38.010 and 1995 c 283 s 2 are each amended to read
6 as follows:

7 ~~((For purposes of this chapter:))~~ The definitions in this section
8 apply throughout this chapter unless the context clearly requires
9 otherwise.

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

1 (2) "Governing documents" means the articles of incorporation,
2 bylaws, plat, declaration of covenants, conditions, and restrictions,
3 rules and regulations of the association, or other written instrument
4 by which the association has the authority to exercise any of the
5 powers provided for in this chapter or to manage, maintain, or
6 otherwise affect the property under its jurisdiction.

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

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

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

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

16 (7)(a) "Affiliate" means any person who controls, is controlled by,
17 or is under common control with the developer.

18 (b) For the purposes of this subsection:

19 (i) A person "controls" another person if the person: (A) Is a
20 general partner, officer, director, or employer of the developer; (B)
21 directly or indirectly or acting in concert with one or more other
22 persons, or through one or more subsidiaries, owns, controls, holds
23 with power to vote, or holds proxies representing more than twenty
24 percent of the voting interest in the developer; (C) controls in any
25 manner the election of a majority of the directors of the developer; or
26 (D) has contributed more than twenty percent of the capital of the
27 developer.

28 (ii) A person "is controlled by" another person if the other
29 person: (A) Is a general partner, officer, director, or employer of
30 the person; (B) directly or indirectly or acting in concert with one or
31 more other persons, or through one or more subsidiaries, owns,
32 controls, holds with power to vote, or holds proxies representing more
33 than twenty percent of the voting interest in the person; (C) controls
34 in any manner the election of a majority of the directors of the
35 person; or (D) has contributed more than twenty percent of the capital
36 of the person.

37 (iii) Control does not exist if the powers described in this

1 subsection are held solely as security for an obligation and are not
2 exercised.

3 (8) "Board of directors" means the body, regardless of name, with
4 primary authority to manage the affairs of the association.

5 (9) "Developer" means: (a) Any person who reserves any developer
6 control in the governing documents; or (b) any person who exercises
7 developer control or to whom developer control is transferred.

8 (10) "Developer control" means the right of the developer or
9 persons designated by the developer to appoint and remove officers and
10 members of the board of directors, or to veto or approve a proposed
11 action of the board or association.

12 (11) "Homeowner" means any person who is an owner of real property
13 subject to the governing documents.

14 (12) "Person" means a natural person, corporation, partnership,
15 limited partnership, trust, governmental subdivision or agency, or
16 other legal entity.

17 (13) "Special developer rights" means rights reserved for the
18 benefit of a developer to: (a) Complete improvements indicated on
19 survey maps; (b) exercise any development right; (c) maintain sales
20 offices, management offices, and signs advertising the development; (d)
21 use easements through the common elements for the purpose of making
22 improvements to the development; (e) make the development part of a
23 larger development; or (f) appoint or remove any officer of the
24 association or any master association or any member of the board of
25 directors, or to veto or approve a proposed action of the board or
26 association, during any period of developer control.

27 **Sec. 2.** RCW 64.38.025 and 1995 c 283 s 5 are each amended to read
28 as follows:

29 (1) Except as provided in the association's governing documents or
30 this chapter, the board of directors shall act in all instances on
31 behalf of the association. In the performance of their duties, the
32 officers and members of the board of directors shall exercise the
33 degree of care and loyalty required of an officer or director of a
34 corporation organized under chapter 24.03 RCW. An obligation of good
35 faith is imposed in the performance and enforcement of all contracts
36 and duties governed by this chapter and in all other transactions

1 involving developers, the board of directors, associations, and their
2 members. For the purposes of this section, "good faith" means honesty
3 in fact and the observation of reasonable standards of fair dealing.

4 (2) The board of directors shall not act on behalf of the
5 association to amend the articles of incorporation, to take any action
6 that requires the vote or approval of the owners, to terminate the
7 association, to elect members of the board of directors, or to
8 determine the qualifications, powers, and duties, or terms of office of
9 members of the board of directors; but the board of directors may fill
10 vacancies in its membership of the unexpired portion of any term.

11 (3) Within thirty days after adoption by the board of directors of
12 any proposed regular or special budget of the association, the board
13 shall set a date for a meeting of the owners to consider ratification
14 of the budget not less than fourteen nor more than sixty days after
15 mailing of the summary. Unless at that meeting the owners of a
16 majority of the votes in the association are allocated or any larger
17 percentage specified in the governing documents reject the budget, in
18 person or by proxy, the budget is ratified, whether or not a quorum is
19 present. In the event the proposed budget is rejected or the required
20 notice is not given, the periodic budget last ratified by the owners
21 shall be continued until such time as the owners ratify a subsequent
22 budget proposed by the board of directors.

23 ~~(4) ((The owners by a majority vote of the voting power in the~~
24 ~~association present, in person or by proxy, and entitled to vote at any~~
25 ~~meeting of the owners at which a quorum is present, may remove any~~
26 ~~member of the board of directors with or without cause.))~~ (a) Subject
27 to subsection (6) of this section, the governing documents may provide
28 for a period of developer control of the association, during which
29 period a developer, or persons designated by the developer, may: (i)
30 Appoint and remove the officers and members of the board of directors;
31 or (ii) veto or approve a proposed action of the board or association.
32 A developer has a fiduciary duty in appointing and removing nonowner
33 members of the board of directors. A developer is responsible for
34 actions of nonowner members of the board of directors appointed by the
35 developer under the doctrine of respondeat superior. A developer's
36 failure to veto or approve proposed action in writing within thirty
37 days after receipt of written notice of the proposed action shall be
38 deemed approval by the developer board of directors.

1 (b) Regardless of the period provided in the governing documents,
2 a period of developer control terminates no later than the earlier of:
3 (i) Sixty days after conveyance of seventy-five percent of the lots
4 that may be created to owners other than the developer; or (ii) the
5 date on which the developer records an amendment to the declaration
6 pursuant to which the developer voluntarily surrenders the right to
7 further appoint and remove officers and members of the board of
8 directors. A developer may voluntarily surrender the right to appoint
9 and remove officers and members of the board of directors before
10 termination of that period in accordance with (b)(i) of this
11 subsection, but in that event the developer may require, for the
12 duration of the period of developer control, that specified actions of
13 the association or board of directors, as described in a recorded
14 instrument executed by the developer, be approved by the developer
15 before they become effective.

16 (5) Not later than sixty days after conveyance of twenty-five
17 percent of the lots that may be created to owners other than a
18 developer, at least one member and not less than twenty-five percent of
19 the members of the board of directors must be elected by owners other
20 than the developer. Not later than sixty days after conveyance of
21 fifty percent of the units that may be created to owners other than a
22 developer, not less than thirty-three and one-third percent of the
23 members of the board of directors must be elected by owners other than
24 the developer.

25 (6) Within thirty days after the termination of any period of
26 developer control, the owners must elect a board of directors of at
27 least three members, at least a majority of whom must be owners. The
28 number of directors need not exceed the number of lots subject to the
29 governing documents. The board of directors must elect the officers.
30 These members of the board of directors and officers take office upon
31 election.

32 (7) Notwithstanding any provision of the governing documents to the
33 contrary, the owners, by a two-thirds vote at any meeting of the owners
34 at which a quorum is present, may remove any member of the board of
35 directors with or without cause, other than a member appointed by the
36 developer. The developer may not remove any member of the board of
37 directors elected by the owners.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.38 RCW
2 to read as follows:

3 Within sixty days after the termination of the period of developer
4 control, or in the absence of a period of developer control, within
5 sixty days after the first conveyance of a lot subject to the governing
6 documents, the developer must deliver to the association all property
7 of the owners and of the association held or controlled by the
8 developer including, but not limited to:

9 (1) The original or a photocopy of all the governing documents;

10 (2) The minute books, including all minutes, and other books and
11 records of the association;

12 (3) Resignations of officers and members of the board who are
13 required to resign because the developer is required to relinquish
14 control of the association;

15 (4) The financial records, including canceled checks, bank
16 statements, and financial statements of the association, and source
17 documents from the time of incorporation of the association through the
18 date of transfer of control to the unit owners;

19 (5) Association funds or the control of the funds of the
20 association;

21 (6) All tangible personal property of the association, represented
22 by the developer to be the property of the association or ostensibly
23 the property of the association, and an inventory of the property;

24 (7) Insurance policies or copies thereof for the association;

25 (8) Any other permits issued by governmental bodies applicable to
26 the real estate subject to the governing documents in force or issued
27 within one year before the date of transfer of control to the unit
28 owners;

29 (9) All written warranties that are still in effect for the common
30 elements, or any other areas or facilities which the association has
31 the responsibility to maintain and repair, from the contractor,
32 subcontractors, suppliers, and manufacturers and all owners' manuals or
33 instructions furnished to the developer with respect to installed
34 equipment or building systems;

35 (10) A roster of owners and their addresses and telephone numbers,
36 if known, as shown on the developer's records;

37 (11) Any leases of the common elements or areas and other leases to
38 which the association is a party;

1 (12) Any employment contracts or service contracts in which the
2 association is one of the contracting parties or service contracts in
3 which the association or the owners have an obligation or a
4 responsibility, directly or indirectly, to pay some or all of the fee
5 or charge of the person performing the service; and

6 (13) All other contracts to which the association is a party.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.38 RCW
8 to read as follows:

9 (1) No special developer right created or reserved under the
10 governing documents may be transferred except by an instrument
11 evidencing the transfer executed by the developer or the developer's
12 successor. The name of the transferee must be recorded in every county
13 in which any portion of the real property subject to the governing
14 documents is located. Each owner must receive a copy of the recorded
15 instrument, but the failure to furnish the copy does not invalidate the
16 transfer.

17 (2)(a) Upon transfer of any special developer right, a transferor
18 developer is not relieved of any obligation or liability arising before
19 the transfer. Lack of privity does not deprive any unit owner of
20 standing to maintain an action to enforce any obligation of the
21 transferor.

22 (b) If a successor to any special developer right is an affiliate
23 of a developer, the transferor is jointly and severally liable with the
24 successor for any obligations or liabilities of the successor relating
25 to the real property subject to the governing documents.

26 (3)(a) A successor to any special developer right who is an
27 affiliate of a developer is subject to all obligations and liabilities
28 imposed on the transferor by this chapter or by the governing
29 documents.

30 (b) A successor to any special developer right who is not an
31 affiliate of a developer is subject to all obligations and liabilities
32 imposed by this chapter or the governing documents. The successor is
33 not liable for any:

34 (i) Misrepresentations by any previous developer;

35 (ii) Warranty obligations on improvements made by any previous
36 developer;

1 (iii) Breach of any fiduciary obligation by any previous developer
2 or the developer's appointees to the board of directors; or
3 (iv) Any liability or obligation imposed on the transferor as a
4 result of the transferor's acts or omissions after the transfer.

5 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2011.

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