

SENATE BILL REPORT

SB 5263

As of February 6, 2015

Title: An act relating to the Washington uniform common interest ownership act.

Brief Description: Concerning the Washington uniform common interest ownership act.

Sponsors: Senators Pedersen, Benton, Mullet, Fraser, Roach, Hobbs, Rivers and Fain; by request of Uniform Law Commission.

Brief History:

Committee Activity: Financial Institutions & Insurance: 2/04/15.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Staff: Susan Jones (786-7404)

Background: Washington Acts. The Homeowners' Association Act (HOAA) was enacted in 1995. The Horizontal Property Regimes Act, enacted in 1963, applies to residential condominiums created on or before July 1, 1990. The Washington Condominium Act (WCA), enacted in 1989, applies to condominiums created after July 1, 1990. WCA was modeled after the National Conference of Commissioners on Uniform State Laws (ULC) Uniform Condominium Act.

Uniform Act. The Uniform Common Interest Ownership Act (UCIOA) was originally promulgated in 1982 by the ULC and amended to reflect the experience in states that adopted UCIOA or its predecessor acts and other analyses. UCIOA is a comprehensive act that succeeds and combines provisions from the Uniform Condominium Act, the Uniform Planned Community Act, and the Model Real Estate Cooperative Act. The goal of UCIOA was to provide uniformity among all three forms of ownership.

Summary of Bill: Applicability and General Provisions. WUCIOA is applicable to the following: (1) common interest communities (CICs), which include condominiums, cooperatives, and planned communities, created after the effective date; and (2) pre-existing CICs that do not vote to elect out of WUCIOA. A pre-existing CIC may vote to amend its governing documents so that some or all of WUCIOA is applicable. WUCIOA has limited applicability to nonresidential plat communities. Some provisions apply prospectively to all CICs. Except as expressly provided in WUCIOA, the effect of the provisions of WUCIOA

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may not be varied by agreement and rights conferred may not be waived. A court may refuse to enforce unconscionable contracts or terms. An obligation of good faith is imposed.

Creation and Amendments. A CIC is created by recording a declaration and map. Detailed requirements for the contents of a declaration are provided. With certain exceptions, the declaration may be amended by a 67 percent or more vote. Amendments increasing special declarant's rights, increasing the number of units, changing boundaries, or allocating interests require 90 percent or more vote.

Management. When the first unit is conveyed, the association must be organized. The membership is exclusively unit owners. The association must have a board. An extensive list of association and board duties and powers are provided. Officers and board members have the same duty of care and loyalty as corporate officers or directors, and are subject to corporate conflict of interest rules. The board cannot amend the declaration or bylaws, terminate the CIC, elect board members, or determine board qualifications. Unit owners may remove an officer or board member upon majority vote of unit owners or two-thirds vote at a meeting. The board may remove board members or officers if the person is more than 60 days late and has not paid within 30 days after receiving notice of intent to remove the person. The board may remove an officer elected by the board at any time, with or without cause. Provisions are made for periods where the declarant is in control of the association, and for the process after the termination of the declarant's control.

Meetings and Notices. An association meeting must be held once yearly. Special meetings may be called by the president, the majority of the board, or 20 percent or more of unit owners. Notices to owners of meetings are required. Owners must be allowed to comment at owner and board meetings. Board meetings must be open to owners, except for limited executive sessions. Notice by the board to unit owners is required prior to and after the board's adoption, amendment, or repeal of reasonable rules. The declaration may allow for adoption of rules on construction and design criteria and aesthetic standards. Participation by board members through telephonic or other means, and limited unanimous board consent actions are allowed. Action to set aside board action must be brought within 90 days of the later of minute approval or distribution to owners.

Voting. Unit owners may vote in person, by proxy, by absentee ballot, or without a meeting. Voting without a meeting requires a notice and the deadlines for receipt of votes may be extended up to 11 months. The governing documents may require that votes be cast by lessees in certain circumstances. Majority vote is required unless a greater amount is required under organizational documents or WUCIOA. Provisions for transmitting notices, including electronic transmission with consent, are provided. A quorum is 20 percent of the owners, in person, by proxy or by absentee ballot, and a majority of the board members.

Accounts, Assessments, Liens, and Records. The association must properly maintain its accounts and reconcile them annually. Provisions are made for assessments and priority of association liens for past-due amounts. The association must maintain certain financial and other records. Such records are available for examination and copying by unit owners and mortgagees during reasonable business hours. Certain records may be withheld. The association must prepare annual financial statements on the accrual method. An association with an annual assessment of \$50,000 or more must have the financial statements audited by

a CPA. An association with an annual assessment of less than \$50,000 may waive the audit requirement with majority vote. Funds must be in a separate account and not commingled.

Budgets. Within 30 days after adopting a proposed budget, the board must set a meeting not less than 14 days and not more than 50 days after providing the budget. Unless a majority of the votes reject the budget, it is ratified. If the budget is rejected, the last ratified budget continues until another budget is ratified. Items required in the budget are provided.

Unit Alteration. A unit owner may alter a unit provided the alteration does not impair the structural integrity, mechanical or electrical systems, or lessen supports. A unit owner acquiring all or part of the adjoining unit may remove or add partitions. Mobile home title elimination is allowed. Unit boundaries may be altered and units may be subdivided or combined under certain circumstances. The board must approve certain requests and fees and costs may be charged.

Flags, Political Signs, and Solar Panels. The association may not prohibit the display of flags or political signs on or within a unit or limited common element or a solar panel on or within a unit. The association may make reasonable restrictions. An association may adopt rules that affect the use or occupancy of or behavior in residential units only to (1) implement a provision of the declaration; (2) regulate any behavior in or occupancy of a unit that violates the declaration or adversely affects the use and enjoyment of other units or the common elements by others; and (3) restrict the leasing of residential units to meet lenders' underwriting requirements.

Reserve Studies. Residential CICs must prepare an annual reserve study unless they have nominal reserve costs or the cost of the study exceeds 10 percent of the annual budget. At least every third year the study must be prepared by a professional upon visual site inspection. When more than three years have passed, 20 percent of the owners may demand that the board include the reserve study cost in the next budget. If the budget is not rejected, the board must arrange for the study. The owners may bring an action to enforce the requirements and request attorneys' fees and costs. An association required to have a reserve study must maintain an income-earning reserve account. The officers, board members, and advisers are immune from liability related to reserve accounts and studies.

Information to Purchasers and Tenants' Rights in Conversion. A detailed public offering statement (POS) must be provided to a purchaser by a declarant. After receipt, a purchaser has seven days to cancel the sale and may extend a sale to not more than seven days after receipt. A unit owner must provide a resale certificate to a purchaser before executing a sale contract. The contract is voidable by the purchaser for five days after receipt. Within ten days after an owner's request, the association must provide a resale certificate and may charge a fee not to exceed \$275 for the certificate and \$100 for updates. A unit owner is not liable for erroneous information in the certificate. A purchaser is not liable for assessments greater than those in the certificate. Tenant rights are provided for buildings being converted to a CIC.

Express Warranties. Express warranties, if relied upon by the purchaser, are created by written statements of fact or promise; models, depictions, or written descriptions of characteristics or quantities; or a written statement that a purchaser may put a unit only to a

specified use. No formal words or intentions are necessary. A purchaser may not rely on the representation unless it is made in: a POS; a record signed by the declarant or their agent identified in the POS; or approved or authorized advertisement or promotional materials.

Implied Warranties. Declarants and dealers impliedly warrant that: (1) the unit will be in as good of condition at closing as at the time of the contract; (2) units or common elements are suitable for ordinary use; (3) improvements will be free from defective materials, constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner; and (4) for residential, the existing use is lawful. A plaintiff must show that the alleged breach adversely affected or will adversely affect the performance of the unit or common element. The adverse affect must be more than technical and be significant to a reasonable person. Damages are the cost of repair or the loss in market value. The implied warranties may be excluded or modified by written agreement and "as is" is sufficient; however, for residential CICs, only a specific defect may be disclaimed if it is a specific, described defect and if the declarant knows or should have known of the defect and the defect and its expected effect are described in a bold-faced, capitalized, underlined, or otherwise conspicuous manner. The implied warranties only apply to condominiums.

Statute of Limitations for Warranties. Conveyances transfer the warranties to purchasers. The statute of limitations is four years and may not be modified. Attorneys' fees and costs may be awarded. The parties may agree to binding or nonbinding arbitration.

Termination. Termination of a CIC requires an 80 percent vote and a recorded termination agreement. The agreement may require the sale of the CIC in CICs with horizontal unit boundaries, and the sale terms must be provided in the agreement. Proceeds of the sale are distributed to unit owners and lienholders in proportion to the respective interests. Any interest in the CIC not sold vests in the unit owners in proportion to their respective interests.

Miscellaneous. Rights of secured lenders may be provided for in the declaration, such as approval rights for certain actions. A declaration may provide for a master association. The board is not liable for actions of the master association if board delegation to the master association is provided for in the declaration. Powers may be delegated to a subassociation. Two or more communities may merge upon an owner vote. In large-scale communities the right to create at least 500 units on more than 500 acres is reserved; the declaration does not need to provide all the required information until each unit is conveyed.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 3, 2016.

Staff Summary of Public Testimony: PRO: This bill is a result of a 2007 legislative taskforce that found that there were substantial defects in the HOA act and bar association work for eight years. There have been constituent complaints about the HOA act. The bill

was crafted to address many of those problems. The bill is based on a uniform act but modernized to make it appropriate for Washington. The drafters avoided changing the warranties because that is better suited for a different legislative forum. The bill expands consumer protection to planned communities by requiring a public offering statement or resale certificate so the purchasers received all the documents, and understand the financial situation, and the rules and regulations. Many HOAs have poor governing documents, which do not allow the HOA to function properly. The bill provides relief to ambiguities and technical inadequacy in the statute and embraces the modern arena by allowing electronic transmission of documents. This is a balanced bill, providing advantages to associations, consumers and developers and lessening litigation. It is helpful that this is a single, retroactive act.

CON: This increases the complexity of the law and does not solve the problems. Time is needed to examine the bill to see where it applies and the interplay with case law. There is a concern about the section regarding associations' lien rights. The financial institution generally holds a superior position for lien rights. This important principal has helped to ensure that loans for real estate are both available and affordable in our state. Section 318 seeks to place association lien rights in an expanded superior position to financial institutions and expanded the cost added to the association's lien. This goes against decade's long protection to the banking industry. The current law has a proper balance. In addition the bill adds to the amount the bank would have to pay which is passed on to the consumer. Anything that affects the availability to finance and develop these communities is critical to our housing market.

OTHER: Implied warranties of quality should apply to all residential common interest units. The super priority lien should be extended to 12 months. The presale disclosures need to be strengthened. These changes further the owners' interests and affordable housing.

Persons Testifying: PRO: Senator Pedersen, prime sponsor; Joe McCarthy, David Rockwell, Stoel Rives; Gary Ackerman, Foster Pepper; Hugh Lewis, attorney; Vicky Sparks, citizen.

CON: Raymond Pedersen, attorney; Bill Stauffacher, Building Industry Assn. of WA; Denny Eliason; WA Bankers Assn., United Financial Lobby; Brian Sommer, RCO Legal.

OTHER: Kathryn Hedrick, Brian McLean, Jim Talaga, Community Assns. Institute; Deverick Martin, University Plaza; Linda Mitchell, Watermark Tower; Bob Mitchell, WA Assn. of Realtors.