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SENATE BILL 6744

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State of Washington

60th Legislature

2008 Regular Session

By Senators Fraser and Fairley

Read first time 01/22/08. Referred to Committee on Consumer Protection & Housing.

1 AN ACT Relating to homeowners' associations; amending RCW 64.38.010  
2 and 64.38.035; adding a new section to chapter 64.38 RCW; creating new  
3 sections; and providing an expiration 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:

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,  
19 rules and regulations of the association, or other written instrument

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

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

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

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

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

13 (7) "Community" means residential real property that is subject to  
14 a declaration under which an association is established for governance  
15 of the community.

16 (8) "Cooperative" means a community in which the residential real  
17 property is owned by an association where each of those members is  
18 entitled, by virtue of his or her ownership interest in the  
19 association, to exclusive possession of a portion of the property.

20 (9) "Declarant" means any person who:

21 (a) Executes as a declarant a declaration;

22 (b) Reserves any special declarant right in the declaration;

23 (c) Exercises special declarant rights or to whom special declarant  
24 rights are transferred;

25 (d) Succeeds to the rights of a declarant pursuant to an instrument  
26 recorded in the real property records of every county in which any  
27 portion of the community is located; or

28 (e) Is the owner of a fee interest in the real property that is  
29 subject to the declaration and who directly or through one or more  
30 affiliates is materially involved in the construction, marketing, or  
31 sale of residential real property located within the association's  
32 jurisdiction.

33 (10) "Declaration" means the declaration of covenants, conditions,  
34 and restrictions or any other document, however denominated, that is  
35 recorded in every county in which any portion of the community is  
36 located and that provides for the establishment of an association to  
37 govern the community. In the case of a cooperative, "declaration"  
38 means the document or documents, however denominated, that create the

1 cooperative housing association that owns the residential real property  
2 comprising the cooperative, whether or not the document or documents  
3 were recorded.

4 (11) "Declarant control" means the right of the declarant or  
5 persons designated by the declarant to appoint and remove officers and  
6 members of the board of directors, or to veto or approve a proposed  
7 action of the board or association, under section 3 of this act.

8 (12) "Lot" means a physical portion of a community designated for  
9 separate ownership or occupancy and designated for residential use, the  
10 boundaries of which are described in the real property records of every  
11 county in which any portion of the community is located. Within a  
12 cooperative, "lot" means that portion of the community designated for  
13 exclusive possession by a member of the cooperative's association.  
14 "Lot" does not mean an apartment or unit created under chapter 64.32 or  
15 64.34 RCW.

16 (13) "Owner" means a declarant or other person who owns a lot, but  
17 does not include a person who has an interest in a lot solely as  
18 security for an obligation. Under a real estate contract, "owner"  
19 means the vendee, not the vendor.

20 (14) "Person" means a natural person, corporation, partnership,  
21 limited partnership, trust, government subdivision or agency, or other  
22 legal entity.

23 (15) "Special declarant rights" means rights reserved for the  
24 benefit of a declarant to: (a) Maintain sales offices, management  
25 offices, or signs advertising the community or cooperative; (b) use  
26 easements through the common elements for the purpose of making  
27 improvements within the community or cooperative or within real  
28 property that will be added to the community or cooperative; or (c)  
29 appoint or remove any officer of the association or any master  
30 association or any member of the board of directors, or to veto or  
31 approve a proposed action of the board or association, during any  
32 period of declarant control under section 3 of this act.

33 **Sec. 2.** RCW 64.38.035 and 1995 c 283 s 7 are each amended to read  
34 as follows:

35 (1) A meeting of the association must be held at least once each  
36 year. Special meetings of the association may be called by the  
37 president, a majority of the board of directors, or by owners having

1 ten percent of the votes in the association. Not less than fourteen  
2 nor more than sixty days in advance of any meeting, the secretary or  
3 other officers specified in the bylaws shall cause notice to be hand-  
4 delivered or sent prepaid by first-class United States mail to the  
5 mailing address of each owner or to any other mailing address  
6 designated in writing by the owner. The notice of any meeting shall  
7 state the time and place of the meeting and the business to be placed  
8 on the agenda by the board of directors for a vote by the owners,  
9 including the general nature of any proposed amendment to the articles  
10 of incorporation, bylaws, any budget or changes in the previously  
11 approved budget that result in a change in assessment obligation, and  
12 any proposal to remove a director. The business to be placed on the  
13 agenda for a special meeting is determined by whoever calls the special  
14 meeting.

15 (2) Except as provided in this subsection, all meetings of the  
16 board of directors shall be open for observation by all owners of  
17 record and their authorized agents. The board of directors shall keep  
18 minutes of all actions taken by the board, which shall be available to  
19 all owners. Upon the affirmative vote in open meeting to assemble in  
20 closed session, the board of directors may convene in closed executive  
21 session to consider personnel matters; consult with legal counsel or  
22 consider communications with legal counsel; and discuss likely or  
23 pending litigation, matters involving possible violations of the  
24 governing documents of the association, and matters involving the  
25 possible liability of an owner to the association. The motion shall  
26 state specifically the purpose for the closed session. Reference to  
27 the motion and the stated purpose for the closed session shall be  
28 included in the minutes. The board of directors shall restrict the  
29 consideration of matters during the closed portions of meetings only to  
30 those purposes specifically exempted and stated in the motion. No  
31 motion, or other action adopted, passed, or agreed to in closed session  
32 may become effective unless the board of directors, following the  
33 closed session, reconvenes in open meeting and votes in the open  
34 meeting on such motion, or other action which is reasonably identified.  
35 The requirements of this subsection shall not require the disclosure of  
36 information in violation of law or which is otherwise exempt from  
37 disclosure.

1       (3) This section applies to all homeowners' associations and  
2 supersedes any conflicting provisions in chapter 23B.07 or 23B.16 RCW  
3 or RCW 24.03.075, 24.03.080, or 24.03.135.

4       NEW SECTION. Sec. 3. A new section is added to chapter 64.38 RCW  
5 to read as follows:

6       (1) Subject to subsection (2) of this section, the declaration may  
7 provide for a period of declarant control of the association, during  
8 which period a declarant or persons designated by the declarant may (a)  
9 appoint and remove the officers and members of the board of directors  
10 or (b) veto or approve a proposed action of the board or association.  
11 A declarant's failure to veto or approve the proposed action in writing  
12 within thirty days of written notice of the proposed action shall be  
13 deemed an approval of the proposed action by the declarant.

14       (2) Regardless of any period provided in the declaration, a period  
15 of declarant control terminates within thirty days after two-thirds of  
16 the lots are transferred to owners other than the declarant.

17       NEW SECTION. Sec. 4. By December 10, 2008, the department of  
18 community, trade, and economic development shall conduct a study to  
19 determine the efficacy of creating a state agency run homeowners'  
20 association ombudsman office, which would provide dispute resolution  
21 services and information to homeowners about their rights and duties  
22 under chapter 64.38 RCW. The study must include:

23       (1) The estimated number of Washington residents that live in  
24 communities or cooperatives subject to chapter 64.38 RCW;

25       (2) The estimated number of owners who would take advantage of the  
26 ombudsman office;

27       (3) The estimated expense of creating and running the ombudsman  
28 office; and

29       (4) A determination based on a cost-benefit analysis of whether the  
30 ombudsman office should be created.

31       If the department determines that an ombudsman office should be  
32 created, the study must also include recommendations for procedures  
33 that the ombudsman office should follow when providing dispute  
34 resolution services.

1        NEW SECTION.    **Sec. 5.**    (1) The homeowners' association declarations  
2 task force is created with ten members as provided in this subsection.

3        (a) The majority leader of the senate shall appoint one member from  
4 the senate.

5        (b) The speaker of the house of representatives shall appoint one  
6 member from the house of representatives.

7        (c) The majority leader of the senate and the speaker of the house  
8 of representatives jointly shall appoint eight nonlegislative members  
9 of the task force, which shall include two board members representing  
10 two different homeowners' associations, three homeowners who own a home  
11 that is their primary residence in a community or cooperative that is  
12 governed by chapter 64.38 RCW, two attorneys with expertise in  
13 homeowners' association formation, and a representative from the  
14 department of community, trade, and economic development.

15        (2) The task force shall convene as soon as possible upon the  
16 appointment of its members. The task force shall elect a chair and  
17 adopt rules for conducting the business of the task force.  
18 Administrative and clerical support shall be provided by the department  
19 of community, trade, and economic development.

20        (3) Legislative members of the task force must be reimbursed for  
21 travel expenses in accordance with RCW 44.04.120.

22        (4) The task force shall conduct a review of declarations that have  
23 been used to form homeowners' associations in Washington state and  
24 other states.

25        (5) The task force shall draft model declarations, which declarants  
26 may appropriate to form homeowners' associations.

27        (6) By December 10, 2008, the task force shall provide a report of  
28 the model declarations to the department of community, trade, and  
29 economic development and to the legislature.

30        NEW SECTION.    **Sec. 6.**    The code reviser shall alphabetize and  
31 renumber the definitions in RCW 64.38.010.

32        NEW SECTION.    **Sec. 7.**    Sections 4 and 5 of this act expire December  
33 31, 2008.

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