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SENATE BILL 5536

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State of Washington                      54th Legislature                      1995 Regular Session

By Senators Smith and Long

Read first time 01/26/95. Referred to Committee on Law & Justice.

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, "homeowners'  
8 association" or "association" means: (1) A corporation, each member of  
9 which is an owner of real property located within the association  
10 boundaries and by virtue of membership or ownership of property is  
11 obligated to pay real property taxes, insurance premiums, maintenance  
12 costs, or for improvement of real property other than that which is  
13 owned by the member; and (2) the association named in the governing  
14 documents as the real property managers.

15            "Homeowners' association" does not mean an association created  
16 under chapters 64.32 and 64.34 RCW.

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

4        NEW SECTION.    **Sec. 4.**    An association may:

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

6            (2) Adopt and amend budgets for revenues, expenditures, and  
7 reserves, and impose and collect assessments for common expenses from  
8 owners;

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

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

14           (5) Make contracts and incur liabilities;

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

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

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

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

24           (10) Impose and collect any payments, fees, or charges for the use,  
25 rental, or operation of the common areas;

26           (11) Impose and collect charges for late payments of assessments  
27 and, after notice and an opportunity to be heard by the board of  
28 directors or by the representative designated by the board of directors  
29 and in accordance with the procedures as provided in the bylaws or  
30 rules and regulations adopted by the board of directors, levy  
31 reasonable fines in accordance with a previously established schedule  
32 adopted by the board of directors and furnished to the owners for  
33 violation of the bylaws, rules, and regulations of the association;

34           (12) Exercise any other powers conferred by the bylaws;

35           (13) Exercise all other powers that may be exercised in this state  
36 by the same type of corporation as the association; and

37           (14) Exercise any other powers necessary and proper for the  
38 governance and operation of the association.

1        NEW SECTION.    **Sec. 5.**    (1) Except as provided in the articles of  
2 incorporation, bylaws, or this chapter, the board of directors shall  
3 act in all instances on behalf of the association. In the performance  
4 of their duties, the officers and members of the board of directors  
5 shall exercise the degree of care and loyalty required of an officer or  
6 director of a corporation organized under chapter 24.03 RCW.

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

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

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

30        NEW SECTION.    **Sec. 6.**    Unless provided for in the declaration, the  
31 bylaws of the association shall provide for:

32        (1) The number, qualifications, powers and duties, terms of office,  
33 and manner of electing and removing the board of directors and officers  
34 and filling vacancies;

35        (2) Election by the board of directors of the officers of the  
36 association as the bylaws specify;

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

1 (4) Which of its officers may prepare, execute, certify, and record  
2 amendments to the declaration on behalf of the association;

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

4 (6) Subject to the provisions of the declaration, any other matters  
5 the association deems necessary and appropriate.

6 NEW SECTION. **Sec. 7.** (1) A meeting of the association must be  
7 held at least once each year. Special meetings of the association may  
8 be called by the president, a majority of the board of directors, or by  
9 owners having ten percent of the votes in the association. Not less  
10 than ten nor more than sixty days in advance of any meeting, the  
11 secretary or other officers specified in the bylaws shall cause notice  
12 to be hand-delivered or sent prepaid by first class United States mail  
13 to the mailing address of each owner or to any other mailing address  
14 designated in writing by the owner. The notice of any meeting shall  
15 state the time and place of the meeting and the business to be placed  
16 on the agenda by the board of directors for a vote by the members,  
17 including the general nature of any proposed amendment to the articles  
18 of incorporation, bylaws, any budget or changes in the previously  
19 approved budget that result in a change in assessment obligation, and  
20 any proposal to remove a director.

21 (2) Except as otherwise provided in the articles of incorporation,  
22 this subsection shall apply to all meetings of the board of directors.  
23 Except as provided in this subsection, all meetings of the board of  
24 directors shall be open for observation by all owners of record and  
25 their authorized agents. The board of directors shall keep minutes of  
26 all actions taken by the board, which shall be available to all owners.  
27 Upon the affirmative vote in open meeting to assemble in closed  
28 session, the board of directors may convene in closed executive session  
29 to consider personnel matters; consult with legal counsel or consider  
30 communications with legal counsel; and discuss and consider likely or  
31 pending litigation, matters involving possible violation of the  
32 articles of incorporation, bylaws, or rules and regulations of the  
33 association, and matters involving the possible liability of an owner  
34 to the association. The motion shall state specifically the purpose  
35 for the closed session. Reference to the motion and the stated purpose  
36 for the closed session shall be included in the minutes. The board of  
37 directors shall restrict the consideration of matters during the closed  
38 portions of meetings only to those purposes specifically exempted and

1 stated in the motion. No motion, or other action adopted, passed, or  
2 agreed to in closed session may become effective unless the board of  
3 directors, following the closed session, reconvenes in open meeting and  
4 votes in the open meeting on such motion, or other action which is  
5 reasonably identified. The requirements of this subsection shall not  
6 require the disclosure of information in violation of law or which is  
7 otherwise exempt from disclosure.

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

13 NEW SECTION. **Sec. 9.** Unless otherwise provided in the  
14 declaration, any surplus funds of the association remaining after  
15 payment of or provision for common expenses and any provision for  
16 reserves shall, in the discretion of the board of directors, either be  
17 paid to the owners in proportion to their common expense liabilities or  
18 credited to them to reduce their future common expense assessments.

19 NEW SECTION. **Sec. 10.** (1) The association or its managing agent  
20 shall keep financial and other records sufficiently detailed to enable  
21 the association to fully declare to each member the true statement of  
22 its financial status. All financial and other records of the  
23 association, including but not limited to checks, bank records, and  
24 invoices, in whatever form they are kept, are the property of the  
25 association. Each association managing agent shall turn over all  
26 original books and records to the association immediately upon  
27 termination of the management relationship with the association, or  
28 upon such other demand as is made by the board of directors. An  
29 association managing agent is entitled to keep copies of association  
30 records. All records which the managing agent has turned over to the  
31 association shall be made reasonably available for the examination and  
32 copying by the managing agent.

33 (2) All records of the association, including the names and  
34 addresses of owners and other occupants of the lots, shall be available  
35 for examination by all owners, holders of mortgages on the lots, and  
36 their respective authorized agents on reasonable advance notice during

1 normal working hours at the offices of the association or its managing  
2 agent. The association may impose and collect a reasonable charge for  
3 copies and any reasonable costs incurred by the association in  
4 providing access to records.

5 (3) At least annually, the association shall prepare, or cause to  
6 be prepared, a financial statement of the association in accordance  
7 with generally accepted accounting principles. The financial  
8 statements of associations with an annual budget of fifty thousand  
9 dollars or more shall be audited at least annually by a certified  
10 public accountant, but the audit may be waived if sixty-seven percent  
11 of the votes cast by owners, at a meeting of the association at which  
12 a quorum is present, vote each year to waive the audit.

13 (4) The funds of the association shall be kept in accounts in the  
14 name of the association and shall not be commingled with the funds of  
15 any other association, nor with the funds of any manager of the  
16 association or any other person responsible for the custody of such  
17 funds.

18 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act  
19 constitute a new chapter in Title 64 RCW.

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