

SENATE BILL REPORT

SB 6175

As Reported by Senate Committee On:
Financial Institutions & Insurance, February 1, 2018

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, Rivers and Mullet; by request of Uniform Law Commission.

Brief History:

Committee Activity: Financial Institutions & Insurance: 1/18/18, 2/01/18 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Establishes the Washington Uniform Common Interest Ownership Act (WUCIOA) to govern the formation, management, and termination of common interest communities including condominiums, homeowner associations, and real estate cooperatives.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Substitute Senate Bill No. 6175 be substituted therefor, and the substitute bill do pass.

Signed by Senators Mullet, Chair; Angel, Ranking Member; Fortunato, Hobbs and Kuderer.

Minority Report: That it be referred without recommendation.

Signed by Senators Hasegawa, Vice Chair; Baumgartner.

Staff: Jeff Olsen (786-7428)

Background: Washington Acts. The Homeowners' Association Act (HOAA) was enacted in 1995, to provide consistent laws regarding the formation and legal administration of homeowners' associations. The Horizontal Property Regimes Act (HPRA), 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. The legislative intent for passing the WCA included limiting changes to the

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condominium act to ensure that a broad range of affordable homeownership opportunities continue to be available to the residents of the state, and to assist cities' and counties' efforts to achieve the density mandates of the Growth Management Act. WCA was modeled after the National Uniform Law Commission (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 UCIOA is a comprehensive act that governs the formation, management, and termination of common interest communities including condominiums, planned communities, and cooperatives. The goal of UCIOA is to provide uniformity among all three forms of ownership.

Summary of Bill (First Substitute): Applicability and General Provisions. WUCIOA is applicable to common interest communities (CICs), which include condominiums, cooperatives, and planned communities, created after the effective date of the new act. Pre-existing CICs may vote to amend their governing documents to achieve any result permitted by WUCIOA. WUCIOA has limited applicability to nonresidential plat communities. Provisions regarding amendments to governing documents and adoption of budgets apply prospectively to all CICs. Except as expressly provided in WUCIOA, the effect of the provisions of WUCIOA 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 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 (statement) 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 of quality provisions only apply to condominiums. Express warranties, if relied upon by the purchaser, are created by written affirmation of fact or promise 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 statement or a record signed by the declarant or their agent identified in the statement.

Implied Warranties. Implied warranties of quality only apply to condominiums. Declarants and dealers impliedly warrant that:

- the unit will be in as good of condition at closing as at the time of the contract;
- units or common elements are suitable for ordinary use;
- 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
- 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.

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.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE (First Substitute):

- Establishes a process and minimum voting requirements for an existing common interest community to elect to be governed by the newly created Washington Uniform Common Interest Ownership Act.
- Restricts the amount of an association's attorneys' fees that may be recovered during a foreclosure to the lesser of the amount of assessments for the past six months or \$2,000.
- Requires a 60-day notification to a holder of a security interest that an owner of a unit is in default in payment of an assessment.
- Removes guidance regarding how an association may apply sums paid by unit owners who are delinquent in paying assessments.
- Clarifies that a cause of action for breach of warranty quality accrues the later of the date the unit was conveyed to the purchaser or the date any portion of the unit was completed.
- Corrects internal references and makes technical and clarifying changes.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2018.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: For years there have been concerns with the HOA statutes and many communities across the state had dysfunctional associations that were not able to adopt budgets, conduct annual meetings, and had concerns over the turn over of developer control. A task force researched the issues and adapted a national uniform act to Washington law over the course of several years. Lawyers with expertise in the area spent a considerable amount of time working through the bill. The UCIOA harmonizes the laws that apply to common interest communities and for the first time applies laws for cooperatives. The UCIOA applies to new communities that are created, and those that choose to opt in. There has been some discussion regarding warranties, lien priorities, and

finding ways to make it easier for existing communities to adopt the new UCIOA if they choose. If a community does not like the new law, it does not apply to them. The UCIOA addresses the inconsistencies in the current law and will improve life for both developers and homeowners including addressing developer control, dysfunctional boards, and boards subject to hostile members.

CON: The bill does not address that there is no due process, and a homeowner has the right to be heard. There needs to be an impartial tribunal to resolve disputes. The statute of limitation for bad acts by boards is only 90 days. Homeowners have no recourse, and homeowner boards have all of the power.

OTHER: Community associations support adopting a uniform law and they see a lot of benefits, however, there are concerns about lien priorities, warranties, and applicability to existing communities. The warranty provisions only apply to condos and there is a concern over the disclaimers from damage and how disclaimers are signed. There are concerns about allowing attorneys' fees to have super lien priority, with costs that exceed the six months assessments. It is important to maintain the current warranty provisions in the bill.

Persons Testifying: PRO: Senator Pedersen, prime sponsor; Joseph McCarthy, Stoel Rives LLP; David Rockwell, citizen; Gary Ackernan, Foster Pepper LLP; Hugh Lewis, citizen.

CON: Ralene Schifano, citizen; Joseph Mendoza, citizen.

OTHER: Jan Himebaugh, Building Industry Association of Washington; Theresa Torgesen, Community Association Institute; Jeremy Stillwell, Community Association Institute; Carrie Tellefson, Washington Bankers Association, United Financial Lobby; Lance Olsen, United Financial Lobby.

Persons Signed In To Testify But Not Testifying: No one.