

---

## Judiciary Committee

---

### HB 2423

**Title:** An act relating to the creation of an office of the homeowners' association ombuds.

**Brief Description:** Creating an office of the homeowners' association ombuds.

**Sponsors:** Representatives Kilduff, Wylie, Muri, Harris, Stokesbary, Moeller, Jinkins and Bergquist.

#### Brief Summary of Bill

- Creates an Office of the Homeowners' Association Ombuds within the Office of the Attorney General to resolve disputes and inform members, directors, and other interested parties of their legal rights and responsibilities concerning homeowners' associations.

**Hearing Date:** 1/19/16

**Staff:** Cece Clynch (786-7195) and Kelly Holler (786-7290).

#### Background:

A homeowners' association (HOA) is a legal entity with membership comprised of the owners of residential real property located within a development or other specified area. An HOA is typically created by a land developer or builder of a planned residential development pursuant to a declaration of covenants, conditions, and restrictions. Once the developer relinquishes control, HOAs are managed by a board of directors elected by the members. In general, the purpose of an HOA is to manage and maintain a subdivision's common areas and structures, to review design, and to maintain architectural control.

The power and duties of an HOA in Washington are defined by: (1) the Homeowners' Association Act; (2) the HOA's declaration, bylaws, rules, and other governing documents; and (3) the law governing the HOA's legal entity, such as the state Business Corporation Act or Nonprofit Corporation Act.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### HOA Powers and Duties.

Under the Homeowners' Association Act, an HOA may exercise many powers, including the following: adopt and amend bylaws, rules, regulations, and budgets; make hiring and personnel decisions; engage in legal actions on behalf of the HOA; make contracts and incur liabilities; regulate activities involving the maintenance and use of common areas; acquire and convey property rights; and impose and collect any payments, fees, or charges for the use, rental, or operation of common areas.

HOAs have the responsibility to hold meetings annually; furnish personal notice of meeting times to HOA members; provide for the number, duties, and terms of HOA officers and directors; set out procedures for officer elections; act with loyalty and care on behalf of the HOA; provide homeowners with notice and a ratification process for the annual budget; prepare annual financial statements; and fulfill other HOA duties required by law.

### HOA Dispute Resolution in Washington State.

A homeowner aggrieved by an HOA's violation of the Homeowners' Association Act may file a private lawsuit and may be awarded attorney's fees. In addition, the governing documents of an HOA may provide other means of dispute resolution.

The Secretary of State has authority to investigate corporations, including incorporated HOAs, and refer to the Office of the Attorney General (AGO) any potential legal violations revealed after an investigation. The AGO then has the discretion to take legal action against HOAs that are incorporated and engaged in certain conduct, such as: exceeding or abusing their legal authority; wasting corporate assets; acting illegally or fraudulently; or procuring articles of incorporation through fraud.

### **Summary of Bill:**

The Office of the Homeowners' Association Ombuds (Office) is established within the AGO. Certain requirements are provided for Office formation, powers, duties, and funding.

### Ombuds Appointment and Qualifications.

The ombuds, responsible for managing the Office, is appointed by and serves at the pleasure of the Attorney General. The ombuds is not the attorney for any Homeowners' Association or other interested party to which it provides information or services. To qualify for appointment, the ombuds must:

- be a member in good standing of the Washington State Bar;
- have at least 5 years' experience practicing law in Washington, including experience in real estate law, homeowners' association law, and conflict and alternative dispute resolution;
- refrain from engaging in professional and commercial activities that conflict with the powers and duties of the Office; and
- comply with restrictions on political activity applicable to all employees of the AGO.

### Ombuds Power and Duty to Educate Parties of Rights and Responsibilities.

The ombuds must inform homeowners' associations, including their boards of directors and individual owners, of services available through the Office and parties' rights and responsibilities and processes available to them under the law, rules, regulations, and governing documents of their respective HOAs. To this end, the Office must:

- maintain a website containing certain information about the Office, including services it offers;
- host and conduct meetings to educate interested parties;
- prepare and publish print and web-based reference materials, including general information about the roles, rights and responsibilities of the various parties; suggestions for orderly operation of HOAs; and mechanisms for internal dispute resolution; and
- develop and publicize procedures facilitating fair elections for HOA members and officers.

#### Ombuds Power and Duty to Offer Services.

The office must provide certain services to HOAs, their boards of directors, individual owners, and other interested parties, including:

- election monitoring and vote counting services to facilitate fair HOA elections when a certain number of members request such services;
- acceptance and investigation of complaints regarding potential violations of the law, rules, regulations or HOA governing documents pursuant to forms and procedural rules developed by the Office and published on the Office website;
- provision of alternative dispute resolution, when appropriate, to parties to resolve meritorious complaints pursuant to procedural rules developed by the Office and published in print and on the Office website; and
- referral of legal violations to the appropriate law enforcement agency for prosecution.

To carry out the duties of the Office, the ombuds and other employees of the Office who are members of the bar of the state have authority to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence, and require production of evidence.

#### Ombuds Power and Duty to Collect, Document, and Report Information.

The ombuds has certain authority and obligations to collect, record, and publish information regarding Office services, activities, and recommendations. The ombuds:

- must provide an annual report to the Governor, Attorney General, Legislature, and Chief Justice of the Supreme Court by December 1st of each year that includes certain information regarding complaints handled by the Office, educational and outreach efforts of the Office, and recommendations for reform of law or rules related to HOA regulation and operation; and
- may organize and hold public meetings as necessary to gain a comprehensive sense of the issues facing HOAs in the state, but if such a meeting is held, a meeting must be held in each county in the state and the information obtained at the meetings must be included in the annual report.

All inquiries, requests for services, and complaints filed with the Office must include specific information regarding the HOA at issue, including contact information for the HOA and its board

of directors, the name of the property manager for the HOA, the governing documents and budget for the HOA, the number of units in the HOA, and the annual assessment made by the HOA.

Other Powers and Duties of the Ombuds.

The Office has the general authority to perform any functions necessary to carry out its powers and duties. Furthermore, staff must be employed, supervised, and directed as necessary to carry out the work of the Office.

Funding

The ombuds must establish an annual fee by rule to be levied on each HOA in the state for alternative dispute resolution, election monitoring, vote counting, or other services provided by the ombuds. The fee amount must be adjusted according to the size of the HOA. The fee is to be deposited into the Office of the Homeowners' Association Ombuds Account created in the state treasury.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.