

HOUSE BILL REPORT

ESB 5334

As Passed House - Amended:

April 4, 2019

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, Padden, Mullet, Fortunato, Carlyle, Rivers, Kuderer, Dhingra, Palumbo, Frockt, Wellman, Salomon, Saldaña, Keiser, O'Ban, Billig, Holy and Darneille.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/15/19, 3/22/19 [DPA].

Floor Activity:

Passed House - Amended: 4/4/19, 93-0.

Brief Summary of Engrossed Bill (As Amended by House)

- Amends the Washington Uniform Common Interest Ownership Act (WUCIOA) to:
 - revise the implied warranties applicable to condominiums; and
 - provide to association officers and board members the same immunity from liability as is provided to officers and directors of nonprofit corporations.
- Makes a number of other miscellaneous amendments and technical corrections to the WUCIOA and related chapters with respect to common interest communities created before and after the effective date of the WUCIOA.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 14 members: Representatives Jinkins, Chair; Thai, Vice Chair; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Cece Clynch (786-7195).

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.

Background:

Washington Uniform Common Interest Ownership Act.

Enacted in 2018, the Washington Uniform Common Interest Ownership Act (WUCIOA) took effect July 1, 2018, and is applicable to residential common interest communities (CICs) created after that date. "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of the persons' ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration. The term includes condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities.

Preexisting Common Interest Communities.

Common interest communities created prior to the effective date of the WUCIOA may choose to opt-in to the WUCIOA. However, two WUCIOA sections, one governing adoption of budgets and assessments and another providing a process for an existing CIC to elect the WUCIOA, apply to all CICs, whether created before or after the effective date, and regardless of election. Otherwise, CICs created before July 1, 2018, remain subject to the following acts:

- the Homeowners' Association Act, which provides a framework for the formation and legal administration of homeowners' associations;
- the Horizontal Property Regimes Act, which applies to residential condominiums created on or before July 1, 1990; and
- the Washington Condominium Act (WCA), which applies to condominiums created after July 1, 1990.

Creation of a Common Interest Community.

Under the WUCIOA, a CIC may be created only by recording a declaration and a map and, with respect to a cooperative, the real estate must be conveyed subject to that declaration to the association. A declaration must contain the 14 elements outlined in the WUCIOA, including: the name; the type of CIC; a legal description of the real estate; the number of units created and whether the declarant has reserved the right to create additional units; and any restrictions on alienation of units, including any restrictions on leasing units. The declaration must allocate interests to each unit and set forth the formula used to establish allocations. If there are limited common elements, these must be specified and the unit to which each is allocated identified.

Management of a Common Interest Community.

The WUCIOA also includes provisions regarding the management of a CIC. An association must be organized no later than the date the first unit is conveyed to a purchaser. The membership of the association at all times consists exclusively of all unit owners. The association must have a board and be organized as a for-profit or nonprofit corporation or limited liability company.

Regardless of the form in which the association is organized, association officers and board members are subject to the same standards of care and loyalty and conflict of interest rules as are officers and directors under the Nonprofit Miscellaneous and Mutual Corporation Act (Act). Under the Act, a director must discharge the duties of a director, including duties as a

member of a committee, and an officer with discretionary authority must discharge the officer's duties under that authority: in good faith; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation.

The WUCIOA includes provisions governing adoption of budgets, assessments, and special assessments. Within 30 days after adoption of any proposed budget, the board must provide a copy to all unit owners and set a date for a meeting to consider ratification. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated reject the budget, the budget and the assessments are ratified whether or not a quorum is present. If the budget is rejected, then the periodic budget last ratified by the unit owners continues until a new budget is ratified.

Reserve study requirements are also included. One or more unit owners may bring an action to enforce them. A court may order specific performance and may award reasonable attorneys' fees to the prevailing party.

Condominium Warranties.

The WUCIOA defines condominium as a CIC in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A CIC is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Under the WUCIOA (and the WCA), express warranties are written assertions, including descriptions, that are made by the declarant or dealer with respect to a condominium and that are relied upon by a purchaser in purchasing the unit.

Implied warranties are statutorily created in the WUCIOA (and the WCA) and apply only to condominiums. Both the WCA and the WUCIOA establish identical implied warranties that the condominium unit and the common areas are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by the declarant or the dealer will be:

1. free from defective materials;
2. constructed in accordance with sound engineering and construction standards;
3. constructed in a workmanlike manner; and
4. constructed in compliance with all laws then applicable to such improvements.

Any conveyance of a condominium unit transfers to the purchaser all of a declarant's or dealer's implied warranties of quality. The plaintiff in a proceeding for breach of an implied warranty must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. An adverse effect must be more than technical and must be significant to a reasonable person; however, to establish the adverse effect, the plaintiff is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

In addition to breach, a plaintiff must also prove damages. Damages awarded for breach of an obligation are the reasonable cost of repairs. However, if it is established that the cost of

repairs is clearly disproportionate to the loss in market value caused by the breach, damages are limited to the loss in market value.

Summary of Amended Bill:

Condominium Warranties.

Rather than state four separate implied warranties, the implied warranties provision found in the Washington Uniform Common Interest Ownership Act (WUCIOA) is amended to provide that improvements to condominium units and common areas made or contracted for by the declarant or dealer will be:

1. free from defective materials;
2. constructed in accordance with engineering and construction standards, including applicable building codes generally accepted in the state at the time of construction; and
3. constructed in a workmanlike manner.

Reference to the "plaintiff" in a proceeding for breach of an implied warranty is changed to "purchaser." Language is added to provide that nothing in the implied warranties section limits the ability of a board to bring claims on behalf of two or more unit owners. Finally, rather than refer to "damages awarded for a breach of an obligation," the reference is made more explicit to refer to "breach of a warranty" and to the specific subsection in which the implied warranties are stated.

Immunity from Liability.

Regardless of the form in which the association is organized, association officers and board members under the WUCIOA are entitled to the same immunities from liability as are officers and directors under the Nonprofit Miscellaneous and Mutual Corporation Act (Act). Under the Act, a board member or an officer is not individually liable to the corporation or its shareholders or members in their capacity as shareholders or members for conduct within his or her official capacity as a director or officer, except for acts or omissions that involve intentional misconduct or a knowing violation of the law, or that involve a transaction from which the director or officer will personally receive a benefit in money, property, or services to which he or she is not legally entitled.

Preexisting Common Interest Communities.

In addition to the two WUCIOA sections already expressly applicable to preexisting common interest communities (CICs) created before July 1, 2018, the following are also made applicable to those preexisting CICs:

- additional subsections regarding budgets and assessments; and,
- a section regarding preparation and updating of a reserve study.

Conforming provisions are added to chapters 64.32 (Horizontal Properties Regime Act), 64.34 (Condominium Act), and 64.38 (Homeowners' Association Act) to set forth the sections in WUCIOA that are made applicable to preexisting CICs created before July 1, 2018.

Miscellaneous Amendments and Technical Corrections.

A variety of other miscellaneous amendments and technical corrections are made, as follows:

- A reference is added to a specific type of CIC that was omitted from a list of other CICs.
- Provision is made for CICs created after the WUCIOA's effective date but which were made part of a CIC created prior to the effective date and included in the declaration of the preexisting CIC.
- Provision is made for a CIC created after the WUCIOA's effective date but for which public offering statements were delivered prior to the effective date.
- A declaration is required to include on the first page a statement as to whether the CIC is subject to the WUCIOA.
- A map must include references to unit numbers.
- The time for holding a meeting with respect to borrowing is changed from 60 days to 50 days after mailing of the notice.
- In the case of cooperatives, a provision requiring the seller to release all liens that encumber a unit before selling that unit are made inapplicable to liens securing indebtedness that represents a common expense liability for which the purchaser expressly agrees in writing to be responsible.
- In the context of the homestead exemption, it is specified that "association" refers to homeowners', condominium, and CIC associations.
- Conversion buildings, as defined in the WUCIOA, are subject to the same design and inspection requirements as conversion condominiums under the Washington Condominium Act.
- References to specific statutes, statutory subsections, terms, and function words are corrected.
- The WUCIOA is made effective to CICs created on or after July 1, 2018, and not just after that date.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) One of the principles that was behind the Washington Uniform Common Interest Ownership Act (WUCIOA) legislation last year was that the third-rail of warranties not be touched. So, that legislation kept the condominium warranties as is and did not expand them to other types of common interest communities. However, it has become clear that very few condominiums are being built in this state. There was a work session that was held in Vancouver, and over the interim many stakeholders have been working on the big reforms that are included in this bill. The hope is that these reforms will spur the building of more condominiums, and not just condominiums in the \$1-2 million range. Unlike Senate Bill 5333, this bill has a very broad title. However, despite this broad title, it has been the policy behind this bill not to include any changes that are not agreed to by all of the stakeholders. There have been some concerns expressed since the WUCIOA passed last year, particularly by some persons who live in one large homeowners' association, with respect to the budget provisions made applicable to preexisting common interest communities.

Discussion of controversial provisions is always welcome, but it is hoped that unrelated controversial items not be included in this bill in order to get this bill to the Governor's desk and get the reforms that are included in the bill in place. All of Senator Pedersen's work on the bill is much appreciated. The technical corrections will be helpful. More importantly, it takes a step forward with respect to the need for more condominiums. There is a need for affordable condominiums. Everyone is aware that there is a housing shortage. The bill makes the warranties more objective and less subjective. Homeowners are still protected if there is a defect. The bill provides another tool to address the "missing middle." The bill will increase housing affordability and put another rung on the ladder to homeownership.

(Opposed) None.

(Other) Thanks are due for keeping protections in place for homeowners. The Community Association Institute is signed in as "Other" in order to stay neutral.

Persons Testifying: (In support) Senator Pedersen, prime sponsor; Jan Himebaugh, Building Industry Association of Washington; Bill Clarke, Washington Realtors; and Alex Hur, Master Builders Association of King and Snohomish Counties.

(Other) Krystelle Purkey, Washington State Community Association Institute.

Persons Signed In To Testify But Not Testifying: None.