

HOUSE BILL REPORT

SSB 5011

As Passed House - Amended:

April 6, 2021

Title: An act relating to notice, meeting, and voting provisions for common interest communities, condominiums, and homeowners' associations.

Brief Description: Addressing electronic meetings and notice provisions for common interest communities, condominiums, and homeowners' associations.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Wilson, L., Brown, Kuderer, Mullet and Warnick).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/10/21, 3/12/21 [DPA].

Floor Activity:

Passed House: 4/6/21, 96-2.

Brief Summary of Substitute Bill (As Amended By House)

- Amends the Washington Uniform Common Interest Ownership Act (WUCIOA) to allow meetings of unit owners to be conducted remotely unless otherwise restricted by organizational documents and if specified requirements are met.
- Adds the WUCIOA provisions related to notice requirements, remote meetings, and voting procedures to the Horizontal Property Regimes Act.
- Modifies the Washington Condominium Act and the Homeowners' Association Act to align with the WUCIOA provisions related to notice requirements, remote meetings, and voting procedures.

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

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 16 members: Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez and Walen.

Staff: Yelena Baker (786-7301).

Background:

The Washington Uniform Common Interest Ownership Act (WUCIOA) took effect on July 1, 2018, and is applicable to residential common interest communities (CICs) created after that date. A CIC includes condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities.

A CIC created prior to July 1, 2018, may choose to opt in to the WUCIOA. Otherwise, CICs created before July 1, 2018, remain subject to the following acts:

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

While the acts preceding the WUCIOA generally leave much of the working of a CIC to the governing documents, the WUCIOA contains comprehensive provisions addressing the management of property under its jurisdiction and provides more detail with regard to notice requirements, remote meetings, and voting procedures than the HPRA, the WCA, or the HOAA.

Notice Requirements Under the Washington Uniform Common Interest Ownership Act. Notice to the association, board, or any owner or occupant may be provided in a tangible medium or in an electronic transmission. "Tangible medium" means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material. "Electronic transmission" means any electronic communication that does not directly involve the physical transfer of a record in a tangible medium, and that may be retained, retrieved, reviewed, or directly reproduced in a tangible medium by the sender and the recipient of the communication.

The WUCIOA specifies to which addresses a notice in a tangible medium must be sent depending on the recipient and lists the methods by which a notice in a tangible medium may be transmitted. Notice provided in a tangible medium is effective as of the date of hand delivery, deposit with the carrier, or when sent by fax.

Notice by electronic transmission may be provided only upon those unit owners or board members who have consented to receive electronically transmitted notices and designated an address or system to which notices may be electronically submitted. Previous consent to receive electronically transmitted notices may be revoked by delivering a revocation to the association. The consent of any unit owner or board member is revoked if the association is unable to electronically submit two consecutive notices and this inability becomes known to the association.

Electronically submitted notice is effective on the date it is:

- transmitted to an address or system designated by the recipient; or
- posted on an electronic network and a separate record of the posting is sent to the recipient, along with instructions on how to access the posting.

Notice of an association meeting must be provided to unit owners not less than 14 and not more than 50 days before the meeting date.

Notice Requirements Under the Statutes Preceding the Washington Uniform Common Interest Ownership Act.

The HPRA does not contain specific notice requirements.

The WCA has limited provisions related to notice and requires that a notice of any meeting of the association be sent to every unit owner not less than 10 and not more than 60 days in advance by hand-delivery or prepaid first-class mail. Notice by the same methods is also required to be provided to all unit owners if statutorily required property and liability insurance is not reasonably available, or is modified or canceled.

Similarly, the HOAA requires a notice of any association meeting to be hand-delivered or sent by prepaid first-class mail to owners not less than 14 and not more than 60 days in advance. In addition, notice by electronic transmission may be provided under the HOAA to those owners who have consented in a written record to receive electronically submitted notices. Previous consent to receive electronically transmitted notices may be revoked at any time by delivering a written record of the revocation. Consent is deemed revoked if the association is unable to electronically submit two consecutive notices.

Remote Meetings Under the Washington Uniform Common Interest Ownership Act.

Unless the organizational documents provide otherwise, board members may meet by telephonic, video, or other conferencing processes if the following requirements are met:

- the meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate; and
- the process provides all unit owners the opportunity to hear or perceive and to comment on the discussion.

The WUCIOA does not expressly authorize remote owner meetings and instead provides

that the declaration or organizational documents may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing processes, subject to the same requirements as remote board meetings.

Remote Meetings Under the Statutes Preceding the Washington Uniform Common Interest Ownership Act.

No remote meeting requirements are specified under the HPRA, the WCA, or the HOAA.

Voting Procedures Under the Washington Uniform Common Interest Ownership Act.

Voting at a Meeting.

Unit owners may vote at a meeting in person, by a duly executed absentee ballot, or by a proxy.

Voting in person may be by voice vote, a show of hands, written ballot, or any other designated method, and specific rules regarding the casting of votes apply to units with more than one owner.

A unit owner may revoke a previously given proxy only by actual notice of revocation or by delivery of a subsequent proxy. The death or disability of the owner does not revoke a proxy unless the person presiding over the meeting has actual notice of the death or disability. A proxy is void if it is not dated or purports to be revocable without notice. Unless otherwise provided by the proxy, a proxy terminates 11 months after its issuance. When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner who has the right to do so. A majority of the votes cast at a meeting determines the outcome of any action of the association unless the declaration or organizational documents provide otherwise.

Voting Without a Meeting.

Unless prohibited or limited by the declaration or organizational documents, an association may conduct a vote without a meeting and unit owners may vote by ballot.

The association must provide every unit owner with a notice that meets certain requirements and specifies that the vote will be by ballot. Additionally, the association must deliver to every unit owner a ballot that sets forth each proposed action and provides an opportunity to vote for or against the action.

A cast ballot may be revoked only by actual notice of revocation. The death or disability of the owner does not revoke a ballot unless the association has actual notice of the death or disability prior to the date established for the return of ballots.

Approval of an action by ballot is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action. If the association does not receive a sufficient number of votes to constitute a quorum or to approve the proposal by the date and time established for the return of ballots, the board

may extend the deadline for a reasonable period, not to exceed 11 months, upon further notice to all members. In that event, all votes previously cast on the proposed action must be counted unless subsequently revoked.

If the governing documents require that votes on specified matters affecting the CIC be cast by lessees rather than unit owners of leased units, the voting procedures apply to lessees as if they were unit owners. Unit owners that have leased their units may not vote on those specified matters but must be given notice of all meetings at which lessees may be entitled to vote.

In any vote of the unit owners, votes allocated to a unit owned by the association must be cast in the same proportion as the votes cast on the matter by unit owners other than the association.

Voting Procedures Under the Statutes Preceding the Washington Uniform Common Interest Ownership Act.

No voting procedures are specified under the HPRA or the HOAA.

The WCA has limited provisions related to voting by proxy and voting by lessees; these provisions are substantively identical to the WUCIOA.

By contrast with the WUCIOA, the WCA provides that no votes allocated to a unit owned by the association may be cast, and that in determining the percentage of votes required to act on any matter, the votes allocated to units owned by the association must be disregarded.

Summary of Amended Bill:

The WUCIOA is amended to allow meetings of unit owners to be conducted by telephonic, video, or other conferencing processes unless otherwise restricted by the declaration or organizational documents.

The HPRA is amended to adopt the WUCIOA definitions of "electronic transmission" and "tangible medium" and the provisions related to notice requirements, remote meetings, and voting procedures.

The WCA is amended as follows to align with the WUCIOA provisions related to notice requirements, remote meetings, and voting procedures:

- Notice requirements and definitions of "electronic transmission" and "tangible medium" are adopted.
- The timeline to provide notice of an association meeting is modified to require notice not less than 14 and not more than 50 days before the meeting date.
- Remote meetings of unit owners may be conducted unless otherwise restricted by the declaration, bylaws, or articles of incorporation, and if the specified requirements are met.

- The existing voting procedures are supplemented with those set forth in the WUCIOA.
- The prohibition on allocation and casting of votes to a unit owned by the association is replaced with the requirement that votes allocated to a unit owned by the association be cast in the same proportion as the votes cast by other unit owners.

The HOAA is amended as follows to align with the WUCIOA provisions related to notice requirements, remote meetings, and voting procedures:

- Definitions of "electronic transmission" and "tangible medium" are added.
- The existing notice requirements are supplemented with the more detailed requirements for notice in a tangible medium or by electronic transmission.
- The timeline to provide notice of an association meeting is modified to require notice not less than 14 and not more than 50 days before the meeting date.
- Remote meetings of unit owners may be conducted unless otherwise restricted by the declaration, bylaws, or articles of incorporation and if the specified requirements are met.
- The WUCIOA voting procedures are adopted.

Additionally, the notice provisions in the HPRA, the WCA, and the HOAA each include a subsection that responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

Technical revisions are made in the WCA provisions regarding notice of insurance to eliminate a redundant reference to unit owners and in two definitions of the HOAA to correct references to the relevant sections of that act rather than the substantively identical sections in the WCA.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill is really about democracy and guaranteeing the right to participate without having to show up at the meeting in person. About 2 million Washingtonians live in community associations, many of which are governed by the older statutes that preceded the WUCIOA. While the WUCIOA guarantees voting rights to members of the communities organized under that law, there are no guarantees of any ability to vote by mail or by proxy under the older statutes, and community members may be denied their vote on important decisions, such as a budget vote.

In recognition of the fact that the WUCIOA enactment represented a big change, the associations that were created before its effective date were not required to be subject to it. Now that people are more and more familiar with the WUCIOA and the deficiencies of the preceding statutes, there has been a lot of interest in starting to gradually align the provisions of these older statutes with the WUCIOA, so that the 10,000 community associations around the state can continue to adapt to the more dispersed living situations, both now during the pandemic and in the future when working environments and living space continue to converge and people need to juggle their daily lives even more than in the past.

Community associations rose to the challenge created by the pandemic by working with board members and residents to move to online platforms to disseminate information and conduct annual meetings, board elections, and budget meetings, as required by their governing documents and state law. The silver lining has been the increased engagement of homeowners, which means more members become more knowledgeable about the scope of duties and responsibilities of their association and receive correct information at the time of the meeting, instead of misinformation. An option to attend meetings online increases regular attendance. Community and board members find it easier to log into meetings after work or when out of town. Members with young families find it easier to work their volunteer time while attending to family obligations. Engaging in an online meeting makes members more likely to speak up than if they were at the meeting in person. The bill will also enable people with physical limitations or medical issues to attend the meetings they have not been able to attend in person in the past.

(Opposed) None.

Persons Testifying: Senator Pedersen, prime sponsor; Hilary Bublitz and Jill Cheeseman, Mill Creek Community Association; and Michael Brandt, Washington State Chapter of Community Association Institute.

Persons Signed In To Testify But Not Testifying: None.