

HOUSE BILL REPORT

SHB 1043

As Amended by the Senate

Title: An act relating to association records in common interest communities.

Brief Description: Concerning association records in common interest communities.

Sponsors: House Committee on Housing (originally sponsored by Representatives McEntire, Leavitt and Walsh).

Brief History:

Committee Activity:

Housing: 1/9/23, 1/16/23 [DPS].

Floor Activity:

Passed House: 2/13/23, 96-0.

Senate Amended.

Passed Senate: 4/11/23, 49-0.

Brief Summary of Substitute Bill

- Amends association recordkeeping requirements in the Homeowners' Association Act, the Washington Condominium Act, and the Horizontal Property Regimes Act to align with association recordkeeping requirements for lists of unit owners under the Washington Uniform Common Interest Ownership Act (WUCIOA), with certain modifications to the WUCIOA recordkeeping requirements.
- Amends the WUCIOA association recordkeeping requirements for lists of unit owners and revises WUCIOA withholding requirements for other association records.

HOUSE COMMITTEE ON HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

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.

Signed by 13 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Bateman, Chopp, Entenman, Hutchins, Low, Reed and Taylor.

Staff: Audrey Vasek (786-7383).

Background:

A common interest community (CIC) is a form of real estate in which each unit owner or homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common area property. In Washington, several statutes govern residential CICs, such as condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities, sometimes referred to as homeowners' associations.

The Washington Uniform Common Interest Ownership Act (WUCIOA) took effect July 1, 2018, and is applicable to CICs created after that date. A CIC created prior to the effective date of the WUCIOA may choose to opt in to the WUCIOA, which contains comprehensive provisions addressing the management of property under its jurisdiction.

Otherwise, CICs created before July 1, 2018, remain subject to the following acts, which generally leave much of the working of a CIC to the governing documents:

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

A CIC is administered by an association of unit owners or a homeowners' association—an organization consisting of property owners and homeowners within the CIC. An association of unit owners derives its authority from several documents, including the declaration of covenants, conditions, and restrictions, the association's bylaws and articles of incorporation, and the deeds to the property within a development.

The primary functions of a unit owners' association include: managing and maintaining common areas, such as parks, roads, and community centers for the benefit of the community; imposing and collecting assessments on unit owners; and enforcing restrictive covenants that govern the community. In addition, a unit owners' association may adopt rules and regulations concerning property use in the community and impose fines for violations of those rules.

All four statutes governing CICs contain association recordkeeping requirements, but only the WUCIOA and the Homeowners' Association Act contain a requirement to keep a list of the names and addresses of unit owners.

Recordkeeping Requirements for Lists of Unit Owners Under the Washington Uniform Common Interest Ownership Act.

An association subject to the WUCIOA must retain, among other records, the names of current unit owners, addresses used by the association to communicate with them, and the number of votes allocated to each unit.

As with other association records, an association must make the list of unit owners available for examination and copying by all unit owners, unit mortgage holders, and their respective authorized agents during reasonable business hours or at a mutually convenient time and location, and at the offices of the association or its managing agent.

Information that an association provides for examination and copying by unit owners may not be used for commercial purposes.

An association may charge a reasonable fee for producing and providing copies of records and for supervising inspection of records. The right to copy records includes the right to receive copies by photocopying or other means, including through electronic transmission if available upon request by the unit owner.

An association may withhold certain records from inspection and copying to the extent that the records concern certain subjects, such as information the disclosure of which would violate a court order or law, records of an executive session of the board, unlisted telephone number or electronic address of any unit owner or resident, or agreements that for good cause prohibit disclosure to the members.

Recordkeeping Requirements for Lists of Lot Owners under the Homeowners' Association Act.

An association subject to the Homeowners' Association Act must retain, among other records, the names and addresses of owners and occupants of the lots.

As with other association records, an association must make the list of lot owners available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent.

An association may collect a reasonable charge for copies and any reasonable costs related to providing access to the records.

An association may not release the unlisted telephone number of any owner.

Summary of Substitute Bill:

Provisions related to association recordkeeping requirements in the Homeowners' Association Act, the Washington Condominium Act, and the Horizontal Property Regimes Act are amended to align with association recordkeeping requirements for lists of unit owners under the Washington Uniform Common Interest Ownership Act (WUCIOA), with certain modifications to the WUCIOA recordkeeping requirements.

Recordkeeping Requirements for Lists of Owners Under the Homeowners' Association Act, the Washington Condominium Act, and the Horizontal Property Regimes Act.

An association of unit owners in a common interest community must keep a complete and accurate list of unit owners, including the names of the current unit owners, addresses used for communication, and the number of votes allocated to each unit.

An association must make the list of unit owners available for examination and copying by all unit owners and their authorized agents during reasonable business hours or at a mutually convenient time and location, and at the offices of the association or its managing agent.

Information that an association provides for examination and copying by unit owners may not be used for commercial purposes.

An association is not obligated to compile or synthesize information for the purposes of the recordkeeping requirements.

An association may charge a reasonable fee for producing and providing copies of the list of unit owners and for supervising inspection of the list. The right to copy the list of unit owners includes the right to receive copies by photocopying or other means, including through electronic transmission if available upon request by the unit owner.

An association must redact or otherwise remove the following information from the list of unit owners:

- the unlisted telephone number or electronic address of a unit owner or resident;
- the address of a unit owner or resident who is known to the association to participate in an address confidentiality program for victims of domestic violence, sexual assault, and stalking;
- agreements that for good cause prohibit disclosure; and
- information the disclosure of which would violate a law or a court order.

Recordkeeping Requirements for Lists of Unit Owners Under the Washington Uniform Common Interest Ownership Act.

For associations subject to the WUCIOA:

- The provision authorizing an association to withhold association records is revised to instead require an association to redact certain information or otherwise remove it

- from the records prior to disclosure.
- The provision requiring that association records be made available for examination and copying by all unit owners, holders of mortgages on the units, and their respective authorized agents is revised to create an exception for lists of unit owners. The list of unit owners is not required to be made available for examination and copying by holders of mortgages on the units.
 - In addition to other redacting requirements, an association must redact or otherwise remove the address of any unit owner or resident who is known to the association to be a participant in an address confidentiality program from the list of unit owners prior to disclosure of the list.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment requires all common interest communities (CICs) to follow the same recordkeeping requirements. The Homeowners' Association Act, the Washington Condominium Act, and the Horizontal Property Regimes Act are revised to align with the Washington Uniform Common Interest Ownership Act (WUCIOA) recordkeeping requirements as modified by the bill. These requirements apply to records in the possession of the association on the effective date of the bill, and to records created or maintained by the association after the effective date of the bill. An association is exempt from liability for records disposed of prior to the effective date of the bill.

The Senate amendment also provides that unit owners are entitled to receive a free annual electronic or paper copy of their association's unit owner list.

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) It is often difficult for members in a common interest community to know who the other members are and how to contact them. This bill will allow homeowners to contact other homeowners, which will make outreach more focused and lead to a better electoral process.

The Washington Uniform Common Interest Ownership Act (WUCIOA) has requirements about keeping lists, but the other common interest community (CIC) statutes do not. This will align the CIC statutes.

(Opposed) This bill tries to align the CIC statutes, but not all the exemptions from

WUCIOA are included. All the exemptions in the WUCIOA should be added, such as exemptions for medical records and attorney-client privileged material. The CICs should be governed by a common set of rules.

(Other) All association records and information should be made available to association members, not just the lists of unit owners. Any exceptions to the disclosure requirements should be clear so that the association does not abuse the exceptions.

Persons Testifying: (In support) Representative Joel McEntire, prime sponsor; and Toby Nixon.

(Opposed) Valerie Oman, Condominium Law Group and Washington State Chapter of Community Associations Institute; Krystelle Purkey, Washington State Chapter of Community Associations Institute; and Brian Mackey, Wynbrook II Homeowners' Association.

(Other) Patrick Johansen, RiseUpWA and Housing Justice Committee.

Persons Signed In To Testify But Not Testifying: None.