

HOUSE BILL REPORT

HB 1569

As Reported by House Committee On:
Housing

Title: An act relating to protecting unit owners in common interest communities.

Brief Description: Protecting unit owners in common interest communities.

Sponsors: Representatives Leavitt and McEntire.

Brief History:

Committee Activity:

Housing: 1/31/23, 2/9/23 [DP].

Brief Summary of Bill

- Requires an association of unit owners in a common interest community (CIC) subject to the Homeowners' Association Act, the Washington Condominium Act, or the Horizontal Property Regimes Act to comply with the association records requirements in the Washington Uniform Common Interest Ownership Act, excluding requirements related to resale certificates.
- Provides that a violation of any of the four CIC statutes by a unit owners association or an agent of the association is a violation of the Consumer Protection Act.
- Requires an association of unit owners in a CIC subject to any of the four CIC statutes to make unit owners' third-party beneficiaries of any contract with a managing agent.

HOUSE COMMITTEE ON HOUSING

Majority Report: Do pass. Signed by 9 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Bateman,

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.

Chopp, Entenman, Reed and Taylor.

Minority Report: Without recommendation. Signed by 4 members: Representatives Connors, Assistant Ranking Minority Member; Barkis, Hutchins and Low.

Staff: Audrey Vasek (786-7383).

Background:

Common Interest Communities.

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. These communities are sometimes referred to as homeowners' associations (HOA).

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 HOAs.

Management and Duties of Common Interest Communities.

A CIC is administered by an association of unit owners or an HOA 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. Generally, an association may hire, contract with, and discharge managing agents and other employees, agents, and independent contractors, subject to the provisions of the declaration or governing documents.

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.

Qualifications for Common Interest Community Officers and Board Members.

An officer or board member of a CIC unit owners' association must meet the requirements imposed by the organizing documents or the board and generally must be a unit owner in the community. The board and officers for an association have the authority to act on behalf of the association. In performing their duties, officers and board members generally must exercise a degree of care and loyalty to the association and are subject to the conflict of interest rules and immunity from liability provisions applicable to officers and directors of a corporation, regardless of the form in which the association is organized.

For example, officers and board members of an association subject to the WUCIOA are entitled to the immunities from liability available to officers and directors under the Nonprofit Miscellaneous and Mutual Corporations Act, which states that an officer of the corporation is not individually liable to the corporation or its members for conduct within their official capacity as an 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 officer will personally receive a benefit to which the officer is not legally entitled.

Recordkeeping Requirements.

All four statutes governing CICs contain some association recordkeeping requirements, but the requirements in the WUCIOA are more extensive than in the other three CIC statutes.

An association subject to the WUCIOA must retain a number of records, including the current budget and association accounting records within the last seven years; meeting minutes and records of association actions; the names and contact addresses of current unit owners and the number of votes allocated to each unit; the declaration, organizational documents, amendments, and all rules currently in effect; all association financial statements and tax returns for the past seven years; a list of the names and addresses of current board members and officers; the most recent annual report delivered to the secretary of state, if any; financial and other records needed to satisfy resale certificate requirements; copies of association contracts in the last seven years; materials relied upon by the board to approve or deny requests for design or architectural approval for a period of seven years; materials relied upon by the board concerning a decision to enforce the governing documents for a period of seven years; copies of the association's insurance policies; any current warranties provided to the association; copies of notices provided to unit owners or the association; and ballots, proxies, and other unit owner voting records for one year.

An association subject to the WUCIOA must make records 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 subject to the WUCIOA 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 subject to the WUCIOA 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.

Third-Party Beneficiary Contract Rights.

Generally, a person has no legal right to enforce a contract that the person did not make. However, courts have found that a person can enforce a contract that the person did not make if the person is a third-party beneficiary to the contract. Contract enforcement by a third party is controlled largely by the facts of the case. In determining whether a third party has the legal right to enforce a contract that the person did not make, courts generally consider whether the contracting parties intended to confer a benefit on the third party.

Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits: unfair or deceptive acts or practices in trade or commerce; the formation of contracts, combinations, and conspiracies in restraint of trade or commerce; and monopolies. A person injured by a violation of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorneys' fees.

The Attorney General (AG) may bring an action in the name of the state, or on behalf of persons residing in the state, against any person to enjoin violations of the CPA and obtain restitution. The AG may seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA. Civil penalties are paid to the state.

Summary of Bill:

An association of unit owners in a CIC subject to the Homeowners' Association Act, the Washington Condominium Act, or the Horizontal Property Regimes Act must comply with the association records requirements in the WUCIOA, excluding the requirement to retain records necessary to satisfy WUCIOA resale certificate requirements.

A violation of any of the four CIC statutes by a unit owners' association or agent of the association is a violation of the CPA.

An association of unit owners in a CIC subject to any of the four CIC statutes must make

unit owners third-party beneficiaries of any contract with a managing agent.

The bill may be known and cited as the Common Interest Community Unit Owners Protection Act.

Appropriation: None.

Fiscal Note: Available.

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) Homeownership can be difficult, and it can be even more difficult in CICs. Homeowners need to be protected from bad actors and HOA governance that goes awry. When the board is not acting in good faith, there are damages to homeowners and unit owners.

Statewide there have been many stories about abuse by HOA boards. Boards sometimes serve only their own interests. Some of these HOAs have become dictatorships. The board controls what covenants are created and how they are enforced. The board has almost total control of the money, the elections, and the email distribution lists. Additionally, these associations are not currently required to allow community members to inspect true and correct copies of financial documents.

If an HOA does not complete an annual audit, the homeowners do not know where the money is going. In one HOA, the board did not do an annual audit for years and hundreds of thousands of dollars went missing. It was a huge sacrifice of time and money for the homeowners to remove the board and fix the situation. In another HOA, the board has been negligent and allows the management company to operate in a vacuum.

Homeowners do not have the same power as their HOAs. Many homeowners cannot afford to risk their life savings or retirement savings to challenge these associations in protracted legal battles. It should not be so hard to hold HOAs accountable for their actions. There should be penalties for associations that violate the laws.

This bill is long-awaited and much appreciated. It will bring value to CICs and give homeowners the power to stand up to their HOAs.

(Opposed) By making any violation of the CIC statutes a CPA violation, the bill's application is very broad. The bill would treat all violations of the CIC statutes by an association the same way. Technical violations should not be treated the same way as other

violations. There are also objections to saying that a single violation of the CIC statutes is a violation of the CPA. Other statutes require a pattern of violations.

Millions of people live in HOAs. Some people have problems with their HOAs, but most do not. Board members are elected officials, so boards are self-correcting in the same way that government is self-correcting.

Board members are also homeowners and volunteers. Some board members are committed to the well-being of their communities. This bill could result in individual liability for volunteers and undue pressure on the board by community members. Volunteer board members acting in good faith might sometimes violate the CIC statutes and should not be subjected to liability for these mistakes. These CPA claims are not covered by insurance.

Making unit owners third-party beneficiaries of management contracts is concerning and will increase liability for property managers, which could lead to increased costs for all unit owners in the community due to rising insurance costs. This will increase the costs of living in HOAs.

There is support for making the WUCIOA recordkeeping requirements applicable to all three older CIC statutes.

(Other) Homeowners should be allowed to inspect true and correct copies of financial documents, such as leases and other commercial agreements to purchase or provide goods or services, along with related legal documents. Homeowners should be able to know what is going on with HOA funds.

Persons Testifying: (In support) Representative Mari Leavitt, prime sponsor; Raelene Schifano; Patrick Johansen, RiseUp Washington, Housing Justice Committee; Sherry Stacy; Linda Yue; Candace Carteen; and Dannela Garcia.

(Opposed) Jeffery Isrel; Patrick McDonald, Washington State Chapter of Community Associations Institute; MaryAnn Smith; Liz Tidyman; and Krystelle Purkey.

(Other) Laila Possani.

Persons Signed In To Testify But Not Testifying: None.