

SENATE BILL REPORT

EHB 1636

As of March 27, 2023

Title: An act relating to foreclosure protections for homeowners in common interest communities.

Brief Description: Concerning foreclosure protections for homeowners in common interest communities.

Sponsors: Representatives Orwall, Walsh and Timmons.

Brief History: Passed House: 3/8/23, 95-0.

Committee Activity: Law & Justice: 3/27/23.

Brief Summary of Bill

- Requires an association of unit owners in a common interest community to mail a second preforeclosure notice that follows the same format and contains the same information as the first preforeclosure notice before commencing an action to foreclose a lien on a unit for past-due assessments.
- Delays the effective date of the shift from a 180-day waiting period to a 90-day waiting period from when the minimum amount of past-due assessments has accrued before an association may commence an action to foreclose a lien.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

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,

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several statutes govern residential CICs, such as condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities.

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

CICs created before July 1, 2018, typically are regulated by their governing documents and 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 created before July 1, 2018.

Association Duties and Powers. A unit owners' association's duties include imposing and collecting assessments on unit owners and enforcing restrictive covenants that govern the community. A unit owners' association may adopt rules and regulations concerning property use in the community and impose fines for violations of those rules.

Assessments and Charges. An association of unit owners in a CIC may impose assessments for common expenses, which usually include the association's expenditures for administration, maintenance, repair, and replacement of the common elements of a CIC, as well as any allocations to reserves.

Past-due Assessments. When a unit owner does not pay assessments as required, an association may collect reasonable charges for late payments and establish a rate of interest to be charged on all subsequent delinquent assessments. An association is entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments.

An association has a statutory lien on each unit for any unpaid assessment against the unit from the time the assessment is due. With some exceptions, the association's lien takes priority over all other liens and encumbrances. To collect unpaid assessments, an association may bring an action to collect unpaid assessments or foreclose its lien on the unit.

Foreclosure of Common Interest Community Property. Liens on CIC property may be foreclosed either judicially in the same manner as mortgages or nonjudicially in the same manner as deeds of trust.

The WUCIOA, HPRA, and WCA prohibit an association from commencing an action to foreclose the association lien for past-due assessments, unless certain pre-foreclosure requirements are met. These pre-foreclosure requirements also apply to a CIC organized under the HOAA if the governing documents of the CIC provide for a lien on the lot of any owner for unpaid assessments. These pre-foreclosure requirements include:

- the unit owner must owe at least three months or more of assessments or \$200 of assessments, whichever is greater;
- the association must mail to the unit owner a notice of delinquency on or after the date the assessments have become past due for at least 90 days, and the notice must follow a specific format and contain certain information about housing counseling and legal assistance that may be available to the unit owner;
- effective until January 1, 2024, an association must wait 180 days from the date the minimum required amount of past-due assessments has accrued before commencing an action to foreclose a lien—beginning January 1, 2024, the waiting period is shortened to 90 days; and
- the board of the association must approve commencement of the foreclosure action specifically against the unit.

The required minimum amount of past-due assessments owed does not include fines, late charges, interest, attorneys' fees, or costs incurred by the association in connection with the collection of a delinquent owner's account.

Summary of Bill: When mailing the first notice of delinquency for past-due assessments to a unit owner in a CIC, an association of unit owners is required to include a first preforeclosure notice that follows a specific format and contains certain information about housing counseling and legal assistance that may be available to the unit owner.

If the first preforeclosure notice has not yet been mailed to the unit owner by the time that the delinquent account is referred to the association's attorney, the association or the association's attorney must mail the first preforeclosure notice to the unit owner.

Before an association may commence an action to foreclose a lien on a unit for past-due assessments, an association must mail a second notice of delinquency and second preforeclosure notice to the unit owner containing the same information as the first notice. The second notice of delinquency and preforeclosure notice must be mailed to the unit owner on or after the date that the assessments have become past due for at least 90 days but no sooner than 60 days after the first preforeclosure notice is mailed.

Effective until January 1, 2025, an association must wait 180 days from the date the minimum required amount of past-due assessments has accrued before commencing an action to foreclose a lien. Beginning January 1, 2025, the waiting period is shortened to 90 days.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: A common interest community owner can access counseling services under the Foreclosure Fairness Act, but not mediation. It is important to have additional protections. Owners should be made aware of the existence of counseling services and have time to get assistance from the Homeowner Assistance Fund (HAF). Condominiums have a lot of damages and owners are usually one special assessment away from foreclosure. This bill will help common interest community owners take part in systems that exist for single-family home owners to avoid foreclosure. This bill adds reasonable protections for owners by connecting delinquent owners with information about housing counseling. Associations must provide housing counseling information twice before initiating foreclosure proceedings. This gives meaningful time for owners to explore their options. The requirement to provide these pre-foreclosure notices is not overly burdensome on associations. People should be able to retain their homes without being put into impossible debt with late fees, interest and attorneys' fees. This bill should be amended to also include a cap on attorneys' fees and modified so that homes are not foreclosed for unpaid assessments of \$200.

Persons Testifying: PRO: Representative Tina Orwall, Prime Sponsor; Raelene Schifano; Patrick McDonald, Washington State Chapter of Community Association Institute; Patrick Johansen, RiseUpWA, Housing Justice Committee; Representative Jim Walsh.

Persons Signed In To Testify But Not Testifying: No one.