
SENATE BILL 5559

State of Washington

59th Legislature

2005 Regular Session

By Senators Pflug, Kline, Schmidt and Roach

Read first time 01/28/2005. Referred to Committee on Financial Institutions, Housing & Consumer Protection.

1 AN ACT Relating to amendment of governing documents of a
2 homeowners' association; and adding a new section to chapter 64.38 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.38 RCW
5 to read as follows:

6 (1) If in order to amend a declaration of covenants, conditions,
7 and restrictions, the declaration requires owners having more than
8 fifty percent of the votes in the association, in a single class voting
9 structure, or owners having more than fifty percent of the votes in
10 more than one class in a voting structure with more than one class, to
11 vote in favor of the amendment, the association, or any owner of a
12 separate interest, may petition the superior court of the county in
13 which the homeowners' association is located for an order reducing the
14 percentage of the affirmative votes necessary to approve such an
15 amendment. The petition shall describe the effort that has been made
16 to solicit approval of the association members in the manner provided
17 in the declaration, the number of affirmative and negative votes
18 actually received, the number or percentage of affirmative votes
19 required to approve the amendment in accordance with the existing

1 declaration, and other matters the petitioner considers relevant to the
2 court's determination. The petition shall also contain, as exhibits
3 thereto, copies of all of the following:

4 (a) The governing documents;

5 (b) A complete text of the amendment;

6 (c) Copies of any notice and solicitation materials utilized in the
7 solicitation of owner approvals;

8 (d) A short explanation of the reason for the amendment, such as
9 the amendment is necessary to update or amend an outdated or obsolete
10 provision in the declaration;

11 (e) Any other documentation relevant to the court's determination.

12 (2) Upon filing the petition, the court shall set the matter for
13 hearing and issue an ex parte order setting forth the manner in which
14 notice shall be given.

15 (3) The court may, but is not required to, grant the petition if it
16 finds all of the following:

17 (a) The petitioner has given not less than fifteen days' written
18 notice of the court hearing to all members of the association, or to
19 any mortgagee of a mortgage or beneficiary of a deed of trust who is
20 entitled to notice under the terms of the declaration, and to the city,
21 county, or city and county in which the homeowners' association is
22 located that is entitled to notice under the terms of the declaration.

23 (b) Balloting on the proposed amendment was conducted in accordance
24 with all applicable provisions of the governing documents.

25 (c) A diligent effort was made to permit all eligible members to
26 vote on the proposed amendment.

27 (d) Owners having more than fifty percent of the votes, in a single
28 class voting structure, voted in favor of the amendment. In a voting
29 structure with more than one class, where the declaration requires a
30 majority of more than one class to vote in favor of the amendment,
31 owners having more than fifty percent of the votes in each class
32 required by the declaration to vote in favor of the amendment voted in
33 favor of the amendment.

34 (e) The amendment is reasonable.

35 (f) Granting the petition is not improper for any reason stated in
36 subsection (5) of this section.

37 (4) If the court makes the findings required by subsection (3) of
38 this section, any order issued pursuant to this section may confirm the

1 amendment as being validly approved on the basis of the affirmative
2 votes actually received during the balloting period or the order may
3 dispense with any requirement relating to quorums or to the number or
4 percentage of votes needed for approval of the amendment that would
5 otherwise exist under the governing documents.

6 (5) The court may not approve any amendment to the declaration
7 that:

8 (a) Changes provisions in the declaration requiring the approval of
9 owners having more than fifty percent of the votes in more than one
10 class to vote in favor of the amendment, unless owners having more than
11 fifty percent of the votes in each affected class approved the
12 amendment.

13 (b) Eliminates any special rights, preferences, or privileges
14 designated in the declaration as belonging to the declarant, without
15 the consent of the declarant.

16 (c) Impairs the security interest of a mortgagee of a mortgage or
17 the beneficiary of a deed of trust without the approval of the
18 percentage of the mortgagees and beneficiaries specified in the
19 declaration, if the declaration requires the approval of a specified
20 percentage of the mortgagees and beneficiaries.

21 (6) An amendment is not effective pursuant to this section until
22 the court order and amendment have been recorded in every county in
23 which a portion of the homeowners' association is located. The
24 amendment may be acknowledged by, and the court order and amendment may
25 be recorded by, any person designated in the declaration or by the
26 association for that purpose, or if no one is designated for that
27 purpose, by the president of the association. Upon recording of the
28 amendment and court order, the declaration, as amended in accordance
29 with this section, has the same force and effect as if the amendment
30 were adopted in compliance with every requirement imposed by the
31 governing documents.

32 (7) Within a reasonable time after the amendment is recorded, the
33 association shall mail a copy of the amendment to each member of the
34 association, together with a statement that the amendment has been
35 recorded.

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