
Judiciary Committee

ESB 6745

Title: An act relating to homeowners' associations.

Brief Description: Concerning homeowners' associations.

Sponsors: Senator Fraser.

<p style="text-align: center;">Brief Summary of Engrossed Bill</p> <ul style="list-style-type: none">• Makes changes to the law governing homeowners' associations.
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Hearing Date: 2/26/08

Staff: Lara Zarowsky (786-7123).

Background:

Homeowners' Associations

A homeowners' association (association) is a legal entity with membership comprised of the owners of residential real property located within a development or other specified area. An association typically arises from a declaration of covenants, restrictions, and conditions recorded by a developer against property in a subdivision. Once a developer relinquishes control, associations are managed by a board of directors, which is elected by association members. In general, the purpose of an association is to manage and maintain a subdivision's common areas and structures, to review design, and to maintain architectural control.

The Uniform Common Interest Ownership Act (UCIOA) is a comprehensive act governing the formation, management, and termination of a common interest community, originally promulgated in 1982 and amended in 1994 by the National Conference of Commissioners on Uniform State Laws.

The Homeowners' Association Act (HOAA) was enacted by the Legislature in 1995 to "provide consistent laws regarding the formation and legal administration of homeowners' associations." Associations are governed by: (1) the HOAA, which identifies the duties and powers of an association, (2) restrictive covenants pursuant to which an association is established, and (3) the

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by-laws, rules and regulations adopted by a particular association. In addition, depending on how a particular association is legally organized, its activities and management may be governed by the state Business Corporation Act or Nonprofit Corporation Act. However, the HOAA does not require an association to be incorporated.

Association Powers

An association may: adopt and amend bylaws, rules and regulations; adopt and amend budgets; impose and collect assessments; employ managing agents and contractors; engage in litigation or administrative proceedings on matters affecting the association; make contracts and incur liabilities; regulate and maintain common areas; acquire and convey any right or interest in real or personal property; grant easements and licenses and impose and collect fees related to use of common areas; impose and collect charges for late payments and levy reasonable fines; and exercise any other powers conferred by the bylaws or other applicable statutes necessary and proper for the governance and operation of the association.

Rules and Bylaws

The bylaws of an association shall provide for the powers, qualification and election of the board of directors and officers. The bylaws shall also provide for the method of amending bylaws, and any other matters deemed necessary and appropriate.

Board of Directors

The board of directors is required to act at all times on behalf of the association. The board may not amend the articles of incorporation or take any unilateral action requiring the vote or approval of the owners except to fill vacancies of membership for the unexpired portion of any term. A majority of the owners, or other percentage provided in the governing documents, must ratify any budget adopted by the board within a specified time period. Any member of the board may be removed with or without cause through a majority vote of the owners.

Association Membership

The membership of an association consists exclusively of the owners of developed or undeveloped real property over which the association has jurisdiction.

Meetings

A meeting of the association must be held at least once a year. Special meetings may be called by the president, a majority of the board of directors, or by owners having **10 percent** of the votes of the association. Notice of the meeting shall be provided at least **14 days** in advance and must include an explanation of any proposed amendment to the articles of incorporation, bylaws, budget changes, or proposal to remove a director.

Meetings of the board are generally **open** for observation by owners of record. Upon a motion stating reasons for doing so, a **closed** executive session may be conducted to consider personnel matters, consult with legal counsel, discuss likely or pending litigation, and matters involving possible liability.

Quorum

A quorum is present if **34** percent of the votes of the association are present in person or by proxy at the beginning of the meeting, unless the governing documents specify a **different** percentage.

Standards

Officers and members of the board shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under the Nonprofit Corporation Act. The Nonprofit Corporation Act requires a director to act in good faith and in the best interest of the corporation, with such care as an ordinarily prudent person in a like position would use under similar circumstances.

Homeowners' Association Act Committee (HOAAC)

The Homeowners' Association Act Committee (HOAAC) was established by the Legislature in 2006 to study current issues related to homeowners' associations, and to review the HOAA and the UCIOA. The HOAAC was directed to consider: the method and manner of amending restrictive covenants; voting provisions; alternative dispute resolution mechanisms; communication between an association's board and its members; the budget ratification process; and provisions of other laws governing associations that conflict with the HOAAC.

The HOAAC submitted a final report to the Legislature in December 2007 recommending the following changes:

- conform notice periods to those set forth in the corporations laws for like activities;
- impose a duty of good faith for performance or enforcement of duties under the Act;
- create optional "safe harbor" provisions that, if used, constitute per se compliance with the standards required under the HOAA;
- establish standards to determine the validity of a rule adopted by an association's board;
- lower the percentage of member votes required to call a special meeting from 10 to five;
- provide that 25 percent of an association's membership constitutes a quorum for purposes of conducting association business;
- authorize the board of directors to incorporate an association;
- impose a one-year statute of limitations to challenge a board amendment to a declaration;
- allow existing declarations to be amended by 67 percent of the members upon a judicial determination that the current 75 percent requirement is an unreasonable burden;
- require owner ratification of any bylaw amendments made by a board of directors;
- prevent a rule change from taking effect until owners are notified of the change, and given opportunities to comment and request a ratification vote;
- create optional "safe harbor" procedures that an association may employ which constitute per se provision of due process to owners;
- require mediation of most prospective disputes, with certain claims not amenable to mediation exempted;
- require sellers to provide prospective buyers with a notice that property is within an association, and that the association may collect dues and regulate use of the property;
- distribute a buyer's information pamphlet that answers commonly asked questions;
- require a resale certificate for all transfers of residential real estate subject to the HOAA; and
- establish a study to determine the feasibility of an ombudsman program to address problems that may arise which are not amenable to resolution through legislation, litigation, and mediation.

Summary of Bill:

Association Powers

The association may exercise any powers conferred by the bylaws or other applicable statutes necessary and proper for the governance and operation of the association, **provided** that those powers do not conflict with any duties imposed on an association by the HOAA.

An association may impose a **lien** for unpaid assessments if proceedings are initiated within six years of the sum becoming due. An association *may not* impose a lien for unpaid fines. This provision is retroactive and supersedes any inconsistent provisions in an association's governing documents.

A "land use approval organization" is a legal entity, other than the original declarant or grantor, that does not meet the definition of an association under the HOAA but asserts the authority to approve construction, regulate the use of property, or grant or deny variances from requirements pertaining to real property. A land use approval organization **may not** exercise the authority it seeks to assert **unless**: (1) membership in the organization is open to the owners of all real property subject to its authority, (2) the membership elects the organization's board of directors, and (3) the board holds periodic open membership meetings. The board must exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation.

Time periods and circumstances giving rise to the termination of the original declarant's control of an association are provided.

Rules and Bylaws

The bylaws, resolutions, rules and regulations adopted by an association must be consistent with the association's declaration and the HOAA.

Where an association's declaration or bylaws authorize *only* the board of directors to adopt, amend or rescind bylaws *without* a vote of the members, all prospective actions by the board must be ratified by the members in order to be valid and enforceable.

The board must provide members with notice and an opportunity to comment on any proposed rule before it may be adopted or enforced. However, emergency rules are effective immediately subject to the owners' right to request a ratification vote. A rule adopted by the board is valid and enforceable if it is: (1) in writing, (2) required or authorized by law or the association's declaration, (3) consistent with the governing documents, and (4) adopted or amended in substantial compliance with the procedural requirements of this chapter.

Board of Directors

The board may incorporate an unincorporated association as a nonprofit corporation.

The owners may remove of any member of the board of directors by a majority vote, with or without cause, notwithstanding any inconsistent provision in the governing documents or other applicable statutes.

Declaration Amendments

If an association's declaration requires a vote greater than 75 percent to approve an amendment to the declaration, the association may bring a court action on behalf of the owners constituting at least 67 percent of the voting membership for a finding that the percentage required is unreasonably burdensome.

Declarations recorded prospectively may be amended by 67 percent of the association votes. A declarant may make certain amendments unilaterally if the right to amend is clearly stated in the declaration.

The declaration may require "eligible mortgagees" who hold first lien security interests in property within the association to approve certain actions, provided that such approval does not deny or delegate control of the association or prevent it from engaging in certain acts related to insurance and litigation.

Association Membership

The HOAA applies to cooperatives. The membership of an association involving a cooperative consists of those with exclusive possession of a lot by virtue of their ownership interest.

Meetings

Special meetings may be called by the president, a majority of the board of directors, or by owners having **five percent** of the votes of the association. Notice of the meeting shall be provided at least **10 days** in advance.

The presumption of open meetings and provision for closed sessions supersedes any conflicting provisions in the governing documents, Business Corporation Act, or Nonprofit Corporation Act.

Owners may vote in person, by proxy, or by any method permitted in the governing documents or the law applicable to the association's legal entity.

Quorum

A quorum is present if **25** percent of the votes of the association are present in person or by proxy at the beginning of the meeting, unless the governing documents specify a **lower** percentage.

Disclosures

A seller of residential property subject to an association must furnish the provided notice to the buyer. In addition, the seller must provide the buyer with a pamphlet including the provided questions and answers related to homeowners association. The sellers disclosure statement must provide the name and contact information for the association governing the subject property.

Standards

An obligation of good faith is imposed in the performance and enforcement of all contracts, duties, and transactions involving declarants, associations, and their members. Good faith means honesty in fact and the observance of reasonable standards of fair dealing.

Voluntary procedures are provided for: (1) rule-making, and (2) enforcement of the governing documents. An association electing to follow the voluntary enforcement procedures is deemed to have provided owners an adequate level of due process. Rules promulgated according to the voluntary rule-making procedures are deemed valid and enforceable.

Mediation

All disputes involving an association's governing documents, except those specifically excepted, must be submitted to mediation before any party may pursue the claim in a court proceeding. The following claims are exempted from the pre-litigation mediation requirement: claims in which the statute of limitations will soon expire; claims seeking injunctive relief or declaratory judgment;

claims involving construction defect; and claims involving parties not subject to the association's governing documents.

Appropriation: None.

Fiscal Note: Not requested.

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