
Housing Committee

HB 1636

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

Sponsors: Representatives Orwall, Walsh and Timmons.

Brief Summary of Bill

- Requires an association of unit owners in a common interest community to include, when mailing to a unit owner the first notice of delinquency for past-due assessments, a preforeclosure notice that follows the same format and contains the same information as the notice that an association is required, as a prerequisite to commencing an action to foreclose a lien on a unit for past-due assessments, to mail to a unit owner on or after the date the assessments have become past due for at least 90 days.
- Delays the effective date of the requirement that an association must wait 90 days, rather than 180 days, from the date the minimum required amount of past-due assessments has accrued before commencing an action to foreclose a lien, such that the shift from a 180-day waiting period to a 90-day waiting period will occur January 1, 2025, instead of January 1, 2024.

Hearing Date: 2/7/23

Staff: Audrey Vasek (786-7383).

Background:

Common Interest Communities.

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.

Several statutes govern residential common interest communities (CICs), such as condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities. These communities are sometimes referred to as homeowners' associations.

The Washington Uniform Common Interest Ownership Act (WUCIOA) is applicable to CICs created on or after July 1, 2018. A CIC created prior to July 1, 2018, 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 (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.

Assessments and Charges.

An association of unit owners in a CIC organized under these acts 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. An association may also collect reasonable charges for late payments of assessments and establish a rate of interest to be charged on all subsequent delinquent assessments.

Collection of Past-due Assessments.

An association may be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments. Under the WUCIOA, the HPRA, and the WCA, 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. Under the HOAA, the governing documents of the CIC may provide for a lien on the lot of any owner for unpaid assessments. To collect unpaid assessments, an association may bring an action to collect unpaid assessments or foreclose its lien on the unit. All four CIC statutes require that every aspect of a collection, foreclosure, sale, or other conveyance to enforce a lien for unpaid assessments must be commercially reasonable.

Preforeclosure Requirements.

The WUCIOA, the HPRA, and the WCA prohibit an association from commencing an action to foreclose the association lien for past-due assessments, unless certain preforeclosure requirements are met. These preforeclosure 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 preforeclosure requirements include:

- the unit owner must owe at least three months or more of assessments or \$200 of assessments, whichever is greater. 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;

- on or after the date the assessments have become past due for at least 90 days, the association must mail to the unit owner a notice of delinquency. The notice of delinquency 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.

Summary of Bill:

When mailing the first notice of delinquency for past-due assessments to a unit owner, an association of unit owners in a CIC is required to include a 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.

Before commencing an action to foreclose a lien on a unit for past-due assessments, an association must mail to the unit owner, on or after the date that the assessments have become past due for at least 90 days, another notice of delinquency that includes the same preforeclosure notice required to be included with the first notice of delinquency.

Effective until January 1, 2025, instead of 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, 2025, instead of January 1, 2024, the waiting period is shortened to 90 days.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains multiple effective dates.