

SENATE BILL REPORT

SB 5129

As Reported by Senate Committee On:
Housing, January 22, 2025

Title: An act relating to common interest communities.

Brief Description: Concerning common interest communities.

Sponsors: Senators Pedersen, Harris and Nobles.

Brief History:

Committee Activity: Housing: 1/15/25, 1/22/25 [DPS].

Brief Summary of First Substitute Bill

- Requires all common-interest communities abide by the Washington Uniform Common Interest Ownership Act (WUCIOA) related to conducting meetings, performing during government declared emergencies, accepting payment of assessments, and siting of electric vehicle charging stations and heat pumps.
- Updates certain provisions related to meetings, voting, management of common interest communities, and protection of purchasers under the WUCIOA.
- Expands the definition of plat or miscellaneous communities exempt from certain provisions of the WUCIOA.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 5129 be substituted therefor, and the substitute bill do pass.

Signed by Senators Bateman, Chair; Goehner, Ranking Member; Alvarado, Gildon, Orwall, Salomon and Trudeau.

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.

Staff: Bill Fosbre (786-7531)

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.

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 at the time could choose to opt into the WUCIOA.

Prior to WUCIOA, CICs were regulated by different statutes depending on their ownership structure and the date they were created:

- the Horizontal Property Regimes Act (HPRA) governed residential condominiums created on or before July 1, 1990;
- the Washington Condominium Act (WCA) governed condominiums created after July 1, 1990; and
- the Homeowners' Association Act (HOAA) provided a framework for the formation and legal administration of homeowners' associations created before July 1, 2018.

In case of a conflict with similar provisions contained in the Washington Business Corporations Act, Washington Nonprofit Corporations Act, Nonprofit Miscellaneous and Mutual Corporations Act, and laws related to limited liability companies and cooperative associations, provisions of the WCA and WUCIOA are controlling.

In 2024, the Legislature passed SB 5796, which repeals the older CIC statutes and applies WUCIOA to all CICs regardless of their creation date, effective January 1, 2028.

Washington Uniform Common Interest Ownership Act. Under WUCIOA, a CIC is administered by an association of unit owners. The primary function of an association includes:

- managing and maintaining common areas;
- imposing and collecting assessments on unit owners; and
- enforcing restrictive covenants governing the community.

An association may adopt rules and regulations concerning management of the common interest community.

Meetings and Content of Meeting Notices. Associations must hold a meeting at least once a year. Associations must provide notice of annual and special unit owners meetings at least 14 days but no more than 50 days before the meeting date. The notice must state the time, date, and place of the meeting and items on the agenda, including:

- the text of any proposed amendment to the declaration or organizational documents;

- any changes in the previously approved budget resulting in a change in the assessment obligations; and
- any proposal to remove a board member or officer.

Unless organizational documents provide otherwise:

- a meeting is not required to be held at a physical location if the meeting is conducted by a method allowing for owner participation from different locations in real time as if they were present with an option for owners to communicate by telephone; and
- all board members may participate by telephone, video, or other conferencing process if: the meeting notice states the process to be used and provides information on how to participate; and the process provides opportunities for all participants to hear or perceive the discussion and comment.

Owners must be provided with a reasonable opportunity to comment at each meeting.

Voting. Whenever proposals or the election of board members are to be voted upon at a meeting the unit owner may vote by absentee ballot if:

- the name of each candidate and text of each proposal is set forth in writing accompanying or contained in the meeting notice; and
- the ballot is provided by the association.

Votes of unit owners must be conducted by secret ballot for election of board members, removal of board members or officers, amendments to the declaration or governing documents, or unit owner approval of an amendment to the declaration for reallocation of a common element as a limited common element.

Exemptions. Small communities, with less than 13 units and annual assessments below \$300 per unit, are exempt from certain provisions of WUCIOA.

Nonjudicial Foreclosure Requirements Involving Successors In Interest. Unlike a mortgage, which requires judicial foreclosure, a deed of trust may be nonjudicially foreclosed. The Deeds of Trust Act establishes procedures for foreclosure and imposes certain requirements on beneficiaries and trustees, including a requirement that the trustee not record a notice of sale until certain requirements are met when someone claims to be a successor in interest to the property rights who is not a party to the loan, promissory note or other obligation secured by the deed of trust, however some of these requirements do not apply to HPRA, WCA and HOAA beneficiaries.

Summary of Bill (First Substitute): Common Interest Communities. In case of a conflict over similar provisions contained in the Washington Business Corporations Act, Washington Nonprofit Corporations Act, Nonprofit Miscellaneous and Mutual Corporations Act, and laws related to limited liability companies and cooperative associations, provisions of the HPRA and the HOAA are controlling.

Effective January 1, 2026, WUCIOA meeting requirements, board response and powers related to a government declaration of emergency, the method of accepting payment of assessments, siting of electric vehicle charging stations, and approval of heat pumps are made applicable to HPRA, WCA, and HOAA.

Washington Uniform Common Interest Ownership Act. The WUCIOA definition of "specifically allocated expense" is changed to include any common expense of the association. An association may delegate any enumerated power to a master association.

Meetings and Changes in the Content of Meeting Notices. The ability for unit owners to amend the organizational documents to vary the procedures for meetings conducted by telephone, video or other conferencing process is removed and the following requirements are added:

- the board members must conduct any vote by roll call or other verbal vote; and
- any person entitled to participate is given the option of participating by telephone.

An association board is required to provide at least 15 minutes for unit owners to comment about an agenda item before the board votes.

Notice to address an event or condition that could not have reasonably been foreseen or where it is impractical to provide standard notice as required under the WUCIOA must be given at least seven days before the meeting and by means of electronic communication.

Voting. Any ballot provided by the association for the election of board members by unit owners must designate a blank space to vote for one or more write-in candidates.

The requirement to conduct votes of unit owners by secret ballot for approval of an amendment to the declaration for reallocation of a common element as a limited common element is removed. The association is required to open and count secret ballots physically received, or review, announce, and record the results received by electronic means in meeting minutes. The incumbent members of the board and each person named on the ballot may not possess, be given access to, or participate in the opening or counting of the secret ballots.

Management. Effective January 1, 2026, the association is allowed to charge the costs of service or utility charges on the same basis as such charges are made by the service or utility provider when the cost of one or more services or utilities are declared as a common expense.

The association may not require approval of the installation of an electric vehicle charging station in an association of single-family homes, site condominiums, or a planned use development where the units are not immediately adjacent unless the charging station is installed within a common element; is connected to a common electrical power supply; or is installed outside the envelope of the unit or the unit's garage and is visible from the street,

alley, or ground floor of another unit.

Unit owners and each successive owner of an electric vehicle charging station exclusively serving the owner's unit is responsible for inspection costs.

Approval by the board of an installation by a unit owner of heat pump equipment on or in common elements may not be unreasonably withheld by the board. Unit owners and each successive owner of a heat pump that exclusively serves the owner's unit is responsible for inspection costs.

The association is required to provide at least one method of accepting payment of assessments from unit owners at no charge or as a common expense.

Reserve Funds. The association is required, with certain exceptions, to invest reserve funds in an interest-bearing account at a financial institution domiciled in the United States regulated by the Financial Industry Regulatory Authority or by the Office of the Comptroller of the Currency. The board may hold reserve funds in cash or invest in money market funds, certificates of deposit, or United States treasury bills, notes, or bonds if certain conditions are met. The board may invest reserve funds in securities when the total value of reserve funds held in interest-bearing accounts are greater than \$250,000 and if new investments would not reduce such funds below 50 percent. The owners of the units to which at least 75 percent of the votes in the association may vote to invest up to 100 percent of any available reserve funds. Except for investments and transfers between separate reserve accounts held by the same association, every disbursement of reserve funds requires the signature of at least two people who are officers or directors of the association, and documentation of the expenses with supporting invoices.

Protection of Purchasers. The buyer of a unit may waive receipt of a resale certificate if the resale certificate is unavailable. A resale certificate is unavailable if the seller:

- attests the association failed to provide the resale certificate within ten days of the request and delivery of payment;
- indicates in the seller disclosure statement there is no homeowner's association and no regular periodic assessments;
- attests that they owned the property for at least 365 days and notice of an annual meeting, budget ratification or assessments, or attempt to enforce in the last five years or since the seller purchased the property, whichever is less; or
- attests they have made three good faith attempts to request the certificate and remit payment and has not received a response within three business days.

The buyer may cancel a contract for the purchase of a unit or extend the closing date if a resale certificate is provided five days or less before closing.

Exemptions. The list of WUCIOA statutes applicable to certain plat or miscellaneous communities has been expanded, and applies if the community contains no more than 50

units, previously 12 units, and its annual average assessment does not exceed \$1,000, previously \$300.

Nonjudicial Foreclosure Requirements Involving Successors In Interest. Beneficiaries governed by WUCIOA are added to the list of associations exempted from certain requirements related to trustee sales.

Conforming Amendments. Technical changes are made to update statutory references to WUCIOA, eliminate references to repealed acts, and correct errors and omissions in the varying provision reference lists.

EFFECT OF CHANGES MADE BY HOUSING COMMITTEE (First Substitute):

- Amends the list of references where an association may vary the governing documents to remove the statute related to non in-person meetings and adds the statute related to the remedies for the collection of assessments.
- Clarifies that an association of single-family homes, site condominiums, or a planned use development where the units are not immediately adjacent may not require approval of the installation of an electric vehicle charging station unless the station is installed in the common element, is connected to a common electrical power supply, or is installed outside the envelop of a primary or secondary dwelling or the unit's garage and is visible from the street, alley, or ground floor of another unit.
- Requires the seller to attest that they have owned the property for at least 365 days when a request for a resale certification will be waived due to the association not having an annual meeting, budget ratification, or assessments, or attempt to enforce the covenants in the last five years or since the seller purchased the property, whichever is less.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Last year's bill, SB 5796, mandated that all common interest communities (CICs) come under the Washington Uniform Common Interest Ownership Act (WUCIOA). There were concerns raised from some older CICs about converting their CICs to comply with the new requirements of WUCIOA. Last year's bill was amended to delay its effective date until January 1, 2028, which allowed a stakeholder group to work over the summer to propose fixes to any concerns. Two significant proposals were offered. First, is to allow a resale certificate to be waived in

certain circumstances—such as when there is no association—to allow the sale of the property to go through. Second, is to exempt more small communities from WUCIOA who may have limited resources or an inactive association. We support allowing associations to have options when investing their reserve funds, including investing them in securities.

This is needed because federally insured deposits have a very low rate of return that does not keep up with inflation, while the reserve funds are often used for long term projects. CICs under WUCIOA play an integral role in the cost of housing. The proposed changes to WUCIOA represent reasonable negotiations of the various stakeholders. We have some agreement from the stakeholders on a few other small technical fixes to the bill.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Joe Kunzler; Steve Horvath, HOA United; Theresa Torgesen, Community Associations Institute; John Kresge; Bill Clarke, WA REALTORS.

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