

SENATE BILL REPORT

SB 5727

As of February 13, 2023

Title: An act relating to providing protections for consumers engaging with common interest communities.

Brief Description: Providing protections for consumers engaging with common interest communities.

Sponsors: Senator Trudeau.

Brief History:

Committee Activity: Law & Justice: 2/13/23.

Brief Summary of Bill

- Prevents common interest community (CIC) associations from nonjudicially foreclosing on liens for assessments on residential real property.
- Requires associations to retain unit owner and board member lists, and changes procedures related to the disclosure and copying of records retained by associations.
- Changes seller disclosure requirements related to residential real property.
- Makes patterns of violations of statutory requirements regulating CICs by associations violations of the Consumer Protection Act.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: Common Interest Communities. A common interest community (CIC) is a

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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 may choose to opt in to WUCIOA, which contains comprehensive provisions addressing the management of property under its jurisdiction.

Otherwise, 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.

Organizational Documents. A CIC is administered by an association of unit owners or a homeowners' association—an organization consisting of property owners and homeowners within the CIC. An association of unit owners derives its authority from several documents, including the declaration of covenants, conditions, and restrictions, the association's bylaws and articles of incorporation, and the deeds to the property within a development.

Association Duties and Powers. A unit owners' association's duties include managing and maintaining common areas for the benefit of the community, 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.

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.

Generally, 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;
- 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.

Recordkeeping Requirements. All four statutes governing CICs contain association recordkeeping requirements, but only the WUCIOA and the HOAA contain a requirement to keep a list of the names and addresses of unit owners. An association subject to WUCIOA must make records available for examination and copying by all unit owners, unit mortgage holders, and their respective authorized agents during reasonable business hours or at a mutually convenient time and location, and at the offices of the association or its managing agent. An association may charge a reasonable fee for producing and providing copies of records and for supervising inspection of records. The right to copy records includes the right to receive copies by photocopying or other means, including through electronic transmission if available upon request by the unit owner. An association may withhold certain records from inspection and copying to the extent that the records concern certain subjects.

Information to Property Buyers. Disclosure Statement. A seller of residential real property must provide a buyer with a disclosure statement about the property within five business days after mutual acceptance of a written purchase agreement. The disclosure statement requires the seller to disclose certain information about the property, including information about any homeowners' association.

Within three business days of receipt of the disclosure statement, the buyer may approve and accept the disclosure statement or rescind the purchase agreement. If the disclosure statement is delivered late or not delivered, the buyer's right to rescind expires the earlier of three days after receipt of the disclosure statement or the date the transfer closes. The failure of an association to provide any requested information related to the homeowners'

association or common interest community does not constitute a seller's failure or refusal to provide the seller disclosure form.

Public Offering Statement. For buyers of newly constructed CIC property, a detailed public offering statement must be provided to the buyers by a declarant—usually the builders or developer—before conveyance of the unit. The public offering statement provides certain information to the buyer, including copies of the organizational documents and declaration. After receipt of a public offering statement, a buyer has seven days to cancel the sale and may extend a sale to not more than seven days after receipt.

Resale Certificate. A unit owner reselling CIC property must provide a resale certificate to a buyer before executing a sale contract, or before conveyance. The resale certificate provides certain information to the buyer, including copies of the governing documents and disclosures about assessments and fees. The contract is voidable by the buyer for five days after receipt. Within ten days after an owner's request, the association must provide a resale certificate and may charge a fee not to exceed \$275 for the certificate and \$100 for updates. A unit owner is not liable for erroneous information in the certificate.

Washington Consumer Protection Act. The Consumer Protection Act (CPA) prohibits unfair methods of competition, or unfair or deceptive practices in the conduct of any trade or commerce. The attorney general is authorized to investigate and prosecute claims under the CPA on behalf of the state or individuals in the state. A person injured by a violation of the CPA may bring a civil action for injunctive relief, recovery of actual damages, and reasonable attorneys' fees. The courts may increase awarded damages up to three times the actual damages sustained.

Summary of Bill: Foreclosure of Common Interest Community Property. Nonjudicial foreclosure on liens for assessments are not permitted. Associations may only foreclose on liens for assessments through judicial foreclosure.

Recordkeeping Requirements. All associations are required to create and maintain complete and accurate unit owner lists which must include unit owners' names, listed telephone numbers, addresses, email addresses, and number of votes allocated to each unit. Similarly, all associations must maintain a complete and accurate list of their current board of directors and officers.

Associations must retain the original or restated declarations, organizational documents, all amendments to the declaration and organizational documents, and all rules currently in effect, including information regarding assessments.

The documents and lists described above must be retained by the association, and made available for examination and copying to all unit owners, holders of mortgages on the units, and their respective authorizing agents. The documents must further be accessible on an association's website, if any.

The documents and lists described above may be withheld from inspection and copying to the extent that they concern:

- the unlisted telephone number of any owner;
- the email address of an owner upon request of the owner to the association;
- information which would violate a court order or law; or
- agreements that for good cause prohibit disclosure.

The association may charge the actual cost for producing and providing physical copies of any records and for supervising the unit owner's inspection. Associations may not charge any costs for providing copies of records through an electronic transmission. The documents and lists described above may not be used for commercial purposes.

Information to Property Buyers. Disclosure Statement. Sellers of residential real property are required to provide a disclosure statement to a prospective buyer upon request before mutual acceptance of a written contract to purchase residential real property. The disclosure statement must be provided within five business days of the request, or unless otherwise agreed to between the prospective buyer and seller. Providing the disclosure statement prior to a written agreement satisfies the seller's duty to provide a disclosure statement when a buyer and seller later enter into a written agreement. A prospective buyer who requests and receives a disclosure statement before mutual acceptance of a written agreement may not later rescind the written agreement due to the disclosure statement.

The seller must provide additional information in the disclosure statement about whether there are copies of a homeowners' association's declaration, organizational documents, or rules or regulations available to be provided to the prospective buyer. The seller must attach any such copies to the disclosure statement if they are available.

Failure of a homeowners' association to provide requested information related to the homeowners' association constitutes a seller's failure or refusal to provide a disclosure statement.

A seller must amend the disclosure statement if the seller learns of information that would make the disclosure inaccurate. No amendments are required if 30 days have passed since the disclosure statement was delivered to the prospective buyer and there has been no contact from the prospective buyer, or if corrective action is taken so that the information is accurate by the time the buyer and seller enter into a written agreement.

Public Offering Statement. If a purchaser of a unit subject to WUCIOA or the WCA receives a public offering statement prior to mutual acceptance of a written agreement for the purchase and sale of a unit upon request of the purchaser, the purchaser does not have a right to later cancel a contract due to the public offering statement.

Resale Certificate. A unit owner must provide a resale certificate to a purchaser of a unit

subject to WUCIOA or the WCA before mutual acceptance of a written agreement for the purchase and sale of a unit, before execution of any contract for sale of a unit, or before conveyance of the unit.

Washington Consumer Protection Act. Cease and Desist Letters. The attorney general may issue a cease-and-desist letter to any association to restrain and prevent a pattern of failure to follow the requirements of the WUCIOA, HOAA, HPRA, and HCA.

Violations. A pattern of violations, evidenced by the issuance of two or more cease-and-desist letters, is a violation of the CPA.

Appropriation: None.

Fiscal Note: Not requested.

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

Effective Date: The bill takes effect on April 1, 2024.

Staff Summary of Public Testimony: PRO: This is a complex area of the law. This work is a worthy one for those in homeowners' associations (HOAs). This bill provides standards that will allow a homeowner to know what they are agreeing to when they purchase a home, and provide accountability for board members who violate rules. There are penalties in place when there is a pattern of intentional violations which are very reasonable. Patterns of violations by HOAs are considered violations under the CPA . Penalties will only occur after the attorney general's office (AGO) finds a pattern of violations, a cease-and-desist letter is sent, and violations continue. Mandatory email lists are important to ensure communication between all members of the association, and will help prevent association boards from self-electing their members. This bill ensures board members and associations are held accountable.

CON: One primary concern with the bill involves the AGO authority to sue a community association for an alleged pattern of violations. The CPA is designed to protect the public and promote fair honest competition in trade or commerce. Nonprofit community associations are not actively engaged in commerce and should not be subject to this. There are concerns with procedure which allows the AGO to sue a community association five days after sending a cease-and-desist letter. Because members of the board are mainly volunteers who have full-time jobs, it is difficult for them to respond to such letters. Serving on a community association is a thankless job. This bill will make it difficult to find willing volunteers to serve on the board because they are subject to lawsuits filed by the state.

OTHER: There is interest in the sections of the bill that deal with seller disclosure law. The modifications to the questions on the seller disclosure statement may conflict with existing seller disclosure requirements. The changes to the rights of rescission for a buyer based on

when they receive the seller disclosure form may not be in the best interest of buyers.

Persons Testifying: PRO: Senator Yasmin Trudeau, Prime Sponsor; Steve Horvath, Condo Connection; Patrick Johansen, RiseUpWA, Housing Justice Committee; Sherry Stacy; Candace Carteen.

CON: Patrick McDonald, Washington State Chapter of Community Association Institute.

OTHER: Bill Clarke, Washington REALTORS.

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