

SENATE BILL REPORT

SHB 3071

As Reported By Senate Committee On:
Consumer Protection & Housing, February 28, 2008

Title: An act relating to harmonizing statutes dealing with the termination of condominiums.

Brief Description: Harmonizing statutes that address the termination of condominiums.

Sponsors: House Committee on Housing (originally sponsored by Representatives Goodman, Rodne and Williams).

Brief History: Passed House: 2/18/08, 52-43.

Committee Activity: Consumer Protection & Housing: 2/26/08, 2/28/08 [DP, DNP].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: Do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Haugen, Jacobsen, Kilmer and Tom.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; McCaslin.

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: The Horizontal Property Regimes Act (HPRA), enacted in 1963, governs the management of all residential condominiums built before July 1, 1990. The Washington Condominium Act (WCA), enacted in 1990, governs condominiums built in Washington after July 1, 1990.

There are a number of specific statutes within the WCA that also apply to condominiums built before July 1, 1990, including statutes that address titles and taxation, applicability of local ordinances, tort and contract liability, lien for assessments and association records, and definitions. However, these statutes do not supercede or invalidate inconsistent declarations or bylaws of HPRA-governed condominiums.

The HPRA and the WCA contain different policies and procedures regarding the termination and sale of condominiums for properties.

Termination Under the Horizontal Property Regimes Act. Percent Necessary to Terminate. Residential condominiums built before July 1, 1990, may only be terminated through an agreement by 100 percent of the condominium owners.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Also, the mortgagees and holders of all liens affecting any of the apartments must also consent that their mortgages and liens be transferred to the percentage of the undivided interest of that apartment owner in the property.

Property Owner Interests Post-Termination. After termination, the property must be deemed to be owned in common by the apartment owners. For each owner, the undivided interest in the property owned in common must be the percentage of the undivided interest previously owned by each owner in the common areas and facilities.

Sales of Terminated Condominiums. There is no specific method for selling terminated condominium properties in the HPRA.

Termination Under the WCA. Percent Necessary to Terminate. Residential condominiums built after July 1, 1990, may be terminated by agreement of 80 percent of the condominium owners (unless the condominium declaration sets forth a greater requirement).

The agreement must contain a description of the manner in which creditors of the association will be paid or provided for.

Property Owner Interests Post-Termination. Interests of unit owners consist of: the fair-market values of their units, limited common elements, and common element interests immediately before termination, as determined by one or more independent appraisers selected by the association. The appraisal decision must be disapproved within 30 days after distribution, by unit owners of units to which 25 percent of the votes in the association are allocated, or the decision becomes final.

The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair-market value of that unit owner's unit and common element interest by the total fair-market values of all the units and common elements.

Sales of Terminated Condominiums under the WCA. Property Not to be Sold. If the real property is not to be sold following termination, title to all real property vests in the unit owners as tenants in common in proportion to their respective interests.

Property to be Sold.

- (1) The termination agreement may provide that all common elements and units be sold following termination and, if so, must set forth the minimum terms for the sale.
- (2) The association may contract for the sale of real property in the condominium. Title to the real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has the powers necessary and appropriate to effect the sale. Until the sale has concluded and proceeds distributed, the association continues to exist with all its previous powers.
- (3) The proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and credits of the association as their interests may appear. After all creditors have been paid or provided for, the proceeds or assets may be disbursed to the owners.
- (4) Proceeds of the sale must be distributed to unit owners and lien holders according to their interests, in proportion to the respective interests of unit owners.

Suspension of Right of Partition. The right of partition is suspended if an agreement to sell the property is provided for in the termination agreement. The suspension continues unless and until:

- (1) no binding obligation to sell exists three months after the recording of the termination agreement;
- (2) the binding sale agreement is terminated; or
- (3) one year after the termination agreement is recorded.

Rights of Partition. Under Chapter 7.52, when several persons hold and are in possession of real property as tenants in common, an action may be maintained by one or more of them for a partition of that property, according to the respective rights of the persons with interests in the property.

Summary of Bill: The WCA subsections that allow for termination of condominiums with 80 percent owner agreement and that include a number of other policies and procedures regarding the sale of properties, valuation of interests, and distribution of assets are included in the list of statutes that also apply to condominiums built before July 1, 1990.

Subject to the rights of mortgagees and lien holders affected and the condominium's declarations and bylaws, condominium owners in buildings built prior to July 1, 1990 have two choices of how to terminate, sell, value interests, and manage the distribution of proceeds from the condominium which consist of:

- (1) termination as provided for in the HPR: consent of 100 percent of owners and the ownership and interest policies described in RCW 64.32.150 (1) and (2); or
- (2) termination as provided for in the WCA: consent of 80 percent of owners and the ownership, sales, interest valuation, and suspension of partition policies as described in RCW 64.34.268 (1) - (7) and (10).

The termination, sale, interests valuation, and distribution of proceeds' provisions do not invalidate or supersede inconsistent provisions of a condominium's declaration or bylaws.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute Bill: PRO: The bill harmonizes the rules that apply to condos built before and after 1990. This bill is not an unconstitutional takings because condo owners buy their units subject to the declarations and subject to the statute. Owners of condo units do not have the same expansive property rights as owners of real estate because condo unit owners also agree to be subject to the decisions of the collective. Since the Washington Condominium Act passed in 1990, there are no known instances of it being applied unfairly. The 100 percent rule allows one condominium owner to impair the interests of all of the other owners who would like to sell their units for a very good price. Children's Hospital is offering the Laurelon residents a sale price that is three times the market value of their units; most of the residents would like to take advantage of this offer and better their lives with that windfall, but a few holdouts are making that very difficult. Eighty

percent is a democratic way to resolve things. Many attorneys with expertise in condominium law approve of this bill.

CON: It is not fair that a unit owner, who does not want to sell, has to lose her home just because her neighbors want to sell. This effect of this bill is to create forced sales of homes, and to make people move out of their homes against their will. The right to sell your home when you decide to is a valuable property right; therefore, this change in the law is an unconstitutional takings because owners of units in condominiums built before 1990 had no notice that this 80 percent rule could be imposed on them. This bill gives developers an unfair advantage and will put pressure on many other condo unit owners. The situation with Laurelton and Children's Hospital is a dispute that should be resolved by the Laurelton residents and not the Legislature. Demolishing Laurelton will have a negative effect on affordable housing in the Laurelhurst neighborhood.

OTHER: Children's Hospital wants to expand its number of beds. Expanding into Laurelton's property would make for a better hospital and make it easier to manage the impact of the hospital's growth on the surrounding neighborhood.

Persons Testifying: PRO: Representative Roger Goodman, prime sponsor; Joe McCarthy, attorney representing Laurelton Terrace residents; Julie Watts, Jan Kirkwood Waszau, James Cole, Laurelton Terrace residents; Mike Ryherd, on behalf of Laurelton Terrace residents.

CON: Representative Jamie Pedersen; Lois Jones, Laurelton Terrace resident; Jeannie Hale, Laurelhurst Community Club; Rick Barrett, Seattle Community Council Federation.

OTHER: Suzanne Petersen, Children's Hospital.