
Judiciary Committee

ESB 5377

Title: An act relating to homeowners' associations.

Brief Description: Concerning developer control of homeowners' associations.

Sponsors: Senators Morton, Swecker and Stevens.

<p style="text-align: center;">Brief Summary of Engrossed Bill</p> <ul style="list-style-type: none">• Amends the Homeowners' Association Act by creating procedures for and restrictions on (1) developer control of homeowners' associations; (2) transferring special developer rights, and (3) terminating developer control.
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Hearing Date: 3/21/11

Staff: Kelly Pfundheller (786-7289).

Background:

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, conditions, and restrictions (CC&Rs) recorded by a developer against property in a subdivision. The CC&Rs run with the land, which means that when a homeowner sells his or her home, the subsequent homeowner is bound by the same CC&Rs. 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 Homeowners' Association Act (HOAA) was enacted by the Legislature in 1995 to provide consistent laws regarding the legal administration of associations. Associations are governed by (1) the HOAA, which identifies the duties and powers of an association, (2) the CC&Rs pursuant to which an association is established, and (3) the bylaws, rules and regulations adopted by a particular association. In addition, depending on how a particular association is legally

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organized, its activities and management may be governed by Washington's Business Corporation Act or Nonprofit Corporation Act. However, the HOAA does not require an association to be incorporated.

A violation of the HOAA entitles an aggrieved party to any remedy provided by law or in equity. The court may award reasonable attorneys' fees to the prevailing party in an appropriate case.

Board of Directors.

Officers and members of the board of directors (board) of an association must 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.

The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which quorum is present, may remove any members of the board with or without cause.

Board Meetings.

All meetings of the board must be open for observation by all owners of record and their authorized agents. The board must keep minutes of all board actions, which must be available to the owners. Upon the affirmative vote in an open meeting, the board may convene in closed executive session to consider certain matters.

Summary of Bill:

The bill creates procedures for and restrictions on developer control of an association's board of directors, transferring special developer rights, and terminating developer control. An obligation of good faith is imposed in the performance and enforcement of all contracts and duties governed by the HOAA and in all other transactions involving developers, the board of directors, associations, and its members. Good faith means honesty in fact and the observation of reasonable standards of fair dealing.

"Developer" means any person who reserves developer control in the governing documents, or any person who exercises developer control or to whom developer control is transferred.

"Developer control" means the right of the developer or persons designated by the developer to appoint and remove officers and members of the board, or to veto and approve a proposed action of the board.

The governing documents of an association may provide for a period of developer control of the association where the developer, or person designated by the developer, may:

- appoint and remove the officers and members of the board; or
- veto or approve proposed actions of the board or association.

Board of Directors.

A developer has a fiduciary duty in appointing and removing non-owner members of the board. A developer is vicariously liable for the tortious acts of non-owner members of the board appointed by the developer.

With 60 days after conveyance of 25 percent of the lots to owners by the developer, at least one member and not less than 25 percent of the members of the board must be elected by owners. Within 60 days after conveyance of 50 percent of the units to owners by the developer, at least one-third of the members of the board must be elected by owners.

Within 30 days of the termination of developer control, the owners must elect a board of at least three members, the majority of whom must be owners. The board must elect officers.

Unless the governing documents provide otherwise, the owners with a two-thirds vote at any meeting where quorum is present, may remove a member of the board with or without cause, unless the member was appointed by the developer. The developer may not remove any member of the board elected by the members.

With respect to a developer's authority to approve board actions, a developer's failure to veto or approve a proposed action within 30 days after receipt of written notice is deemed as approval by the board.

Board Meetings.

Any meeting of the board must be held between 5:00 p.m. and 9:00 p.m. on a weekday or between 9:00 a.m. and 5:00 p.m. on a Saturday or Sunday. The meeting must be held within 20 miles from any property subject to the governing documents.

Transfer of Special Developer Rights.

Special developer rights are rights reserved for the benefit of the developer to:

- complete improvements indicated on survey maps;
- exercise any development right;
- maintain sales offices, management offices, and signs advertising the development;
- use easements through the common elements for the purposes of making improvements to the development; or
- appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association.

A special developer right reserved under the governing documents may not be transferred except by an instrument evidencing the transfer executed by the developer or their successor.

A transferor developer maintains the obligations or liability arising before the transfer. If a successor is an affiliate of the developer, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the HOAA. If a successor is not an affiliate, the successor is still subject to all obligations and liabilities under the HOAA but is not liable for any misrepresentations of a previous developer, a breach of the previous

developer's fiduciary obligation, or any liability or obligations imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

Termination of Developer Control.

Developer control terminates by the earlier of:

- 60 days after the conveyance of 75 percent of the lots in the association to owners other than the developer; or
- the date on which the developer records an amendment to the declaration where the developer voluntarily surrenders the right to further appoint and remove officers and members of the board.

After developer control terminates or, in the absence of developer control, after the first conveyance of a lot subject to the governing documents, the developer is required to deliver all property of the association to the association within 60 days. The bill provides a list of property that must be transferred.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect August 1, 2011.