

# SENATE BILL REPORT

## ESSB 5798

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As Passed Senate, March 1, 2011

**Title:** An act relating to homeowners' associations.

**Brief Description:** Concerning homeowners' associations.

**Sponsors:** Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Fraser and Benton).

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Insurance: 2/15/11, 2/16/11 [DPS, w/oRec].

Passed Senate: 3/01/11, 39-9.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Majority Report:** That Substitute Senate Bill No. 5798 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Haugen and Keiser.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Fain and Litzow.

**Staff:** Alison Mendiola (786-7483)

**Background:** A homeowners' association (HOA) is an organization consisting of the homeowners and property owners within a residential development. HOAs are usually created by a land developer or builder of a planned residential development pursuant to a declaration of covenants, conditions, and restrictions. That land developer or builder may also be referred to as the declarant. HOAs may be organized in different ways, including incorporation under the Business Corporation Act, the Nonprofit Corporation Act, or as an unincorporated association. The duties and powers of an HOA are defined by the Homeowners' Association Act (HOAA), the HOA's declaration and other governing documents, and the law governing the HOA's legal entity (e.g., nonprofit corporation law).

Powers. Under the HOAA, an HOA may exercise the following powers: adopt and amend bylaws and rules; adopt and amend budgets; impose assessments on homeowners; involve

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itself in litigation; enter into contracts; improve and maintain the common areas; acquire and convey property; levy reasonable fines on members for late payment of assessments or violations of rules; and any other power necessary and proper to carry out its duties. However, these powers may be supplemented or superceded by an HOA's governing documents and by the law governing the HOA's legal entity.

Meetings. An HOA must hold meetings annually. Additional special meetings may be called by the HOA board president, a majority of the board, or by homeowners holding 10 percent of the votes in the HOA. HOA meetings must be open to homeowners and minutes must be taken. The HOA board may go into closed session if it votes to do so in an open meeting and only does so to consider personal matters, discuss legal matters, prepare for litigation, or to discuss a possible violation of the governing documents. Notice of meetings must be given to homeowners between 14 and 60 days before the meeting is held. Notice must be by either hand delivery or firstclass mail to the homeowner's designated address. Meeting quorum requires the presence of owners representing 34 percent of the votes of the HOA unless the HOA's governing documents provide for a different percentage.

Duties. HOA governing documents must provide for the number, duties, and terms of the HOA's officers and directors, procedures for electing the officers, and the directors and officers' delegation powers. HOA officers and directors must act with loyalty and care when acting on behalf of the HOA. In addition, an HOA's officers and directors must carry out the following duties: provide homeowners with notice and a ratification process for the annual budget; keep sufficient records; prepare annual financial statements; provide homeowners with notice and an opportunity to be heard before levying a fine. Other duties may be required by the HOA's governing documents and the law governing the HOA's legal entity.

Task Force. In 2006 the Legislature passed SSB 6201, which created a HOAA committee. The committee consisted of two legislators, a representative from the Community Association Institute, a representative from the Washington Homeowner's Coalition, a representative of the residential development industry, a lawyer experienced in representing HOAs, a lawyer experienced in representing homeowners, a person with expertise in HOA law, and two members of an HOA who are not on the HOA's board of directors.

The committee was directed to review the HOAA, the Uniform Common Ownership Interest Act, and current issues concerning HOAs. Moreover, the committee was charged with specifically considering these issues: the method of amending declarations; voting; alternative dispute resolution mechanisms; communication between HOAs and homeowners; the budget ratification process; conflicts of law; the process of placing liens on property for a previous homeowners' unpaid association dues; and disclosures on the sale of real property within the association. After a review of the relevant law and statutes, the committee was required to report back to the Legislature with its findings and its proposed legislation for amending the HOAA in September 2007.

**Summary of Engrossed Substitute Bill:** Many portions of this act are based on recommendations by the HOAA committee.

General Provisions.

- The HOAA supersedes any conflicting provisions in the law governing the HOA's legal entity.
- Good faith must be exercised by all participants in transactions relating to HOAs.

HOAs may give statutorily required notices via email or other means if they choose.

Fines. An HOA may not place a lien on a homeowner's lot to secure the payment of a fine even if the HOA's governing documents purport to give it that authority.

Governance. Bylaws adopted, amended, or rescinded by the board are not enforceable or valid until approved by the homeowners. A bylaw adoption or amendment is approved if, after timely notice, a majority of the votes of the HOA approve the adoption or amendment.

The HOA board may adopt and amend rules and policies. Rules adopted by the board are valid and enforceable only if the board substantially complies with the HOAA, including that the rule must be in writing, consistent with the governing documents, and within the authority of the board as conferred by law or the declaration. Rules adopted or amended by the board are effective 30 days after the board action so long as the homeowners are given notice of the rule and an opportunity to be heard. However, homeowners comprising 20 percent of the total votes may demand that the rule be ratified by the other homeowners. The board is deemed to have substantially complied with the requirements of the HOAA if it follows specific rulemaking procedures contained in the HOAA.

Emergency rules are rules that are necessary for the immediate preservation of health and safety or that are necessary to comply with law. Though emergency rules go into effect immediately upon HOA board adoption, homeowners may demand ratification procedures.

HOA members may vote in any manner allowed by their governing documents or other law that is applicable to their legal entity. Mail-in voting is permitted.

There is a six year statute of limitations for the collection of assessments. If a collection action has not been filed within six years, any associated liens are also extinguished.

An HOA's budget may be rejected by a majority vote in person, by proxy, or by mail at a meeting regardless of whether there is quorum.

Meetings. The HOAA's provisions on special meetings supersede any conflicting provisions in an HOA's governing documents. The person or group that calls a special meeting determines the first piece of business on the agenda; the board may put additional items on the agenda, but they must be heard last.

The person or group calling a meeting must provide notice to each homeowner via hand delivery or first class mail between 10 and 60 days before the meeting.

**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 Original Bill:** PRO: This bill has to do with homeowner's associations and goes back to issues addressed by a task force created by statute in 2006. There are a lot of issues to be addressed with HOA's, and this bill is an attempt to look at a narrow portion of the group's recommendations. More and more associations are created but there is no model or uniform HOA Act which can result in a lot of problems for homeowners.

CON: After legislation was introduced in 2008, there was lots of fighting. Since then a section of the Washington State Bar Association has created a group to look at the uniform act relating to community associations and will be proposing legislation next year. The group is literally debating every word. Rather than acting now, the Legislature should defer until that work is done. We've waited five to six years, waiting one more year will make the product that much better.

**Persons Testifying:** PRO: Senator Fraser, prime sponsor.

CON: Kathryn Hedrick, Community Associations Institute; Bob Mitchell, Washington Realtors.