

# HOUSE BILL REPORT

## EHB 1482

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### As Passed Legislature

**Title:** An act relating to foreclosure protections for homeowners in common interest communities.

**Brief Description:** Addressing foreclosure protections for homeowners in common interest communities.

**Sponsors:** Representatives Walsh, Orwall, Lekanoff, Leavitt, Sutherland, Jacobsen, Dufault and Pollet.

**Brief History:**

**Committee Activity:**

Civil Rights & Judiciary: 2/9/21, 2/12/21 [DP].

**Floor Activity:**

Passed House: 3/8/21, 97-0.

Senate Amended.

Passed Senate: 4/5/21, 48-0.

House Concurred.

Passed House: 4/22/21, 97-0.

Passed Legislature.

### Brief Summary of Engrossed Bill

- Prohibits commencing an action to foreclose an association lien for past-due assessments against a unit owner in a common interest community unless: the unit owner owes a specified minimum amount; the association provides to the unit owner a notice of delinquency; and at least 180 days have elapsed from the date the minimum required amount of past-due assessments has accrued.
- Provides that, effective January 1, 2024, an association must wait at least 90 days from the date the minimum required amount of past-due assessments is accrued before commencing an action to foreclose a lien.

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*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.*

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## HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** Do pass. Signed by 17 members: Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez, Walen and Ybarra.

**Staff:** Yelena Baker (786-7301).

### **Background:**

In Washington, several statutes govern residential common interest communities (CICs), such as condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities, sometimes referred to as homeowners' associations.

The Washington Uniform Common Interest Ownership Act (WUCIOA) took effect July 1, 2018, and is applicable to CICs created after that date. A CIC created prior to the effective date of the WUCIOA may choose to opt-in to the WUCIOA, which contains comprehensive provisions addressing the management of property under its jurisdiction. Otherwise, CICs created before July 1, 2018, remain subject to the following acts, which generally leave much of the working of a CIC to the governing documents:

- 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.

An association of unit owners in a CIC organized under these statutes may impose assessments for common expenses, which usually include the association's expenditures for administration, maintenance, repair, and replacement of the common elements of a CIC, as well as any allocations to reserves. An association may also collect reasonable charges for late payments of assessments and establish a rate of interest to be charged on all subsequent delinquent assessments. An association may be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments.

Under the WUCIOA, the HPRA, and the WCA 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.

The WUCIOA prohibits an association from foreclosing a lien for past-due assessments unless the unit owner, at the time the action is commenced, owes a sum equal to at least

three months of common expense assessments and the board approves commencement of a foreclosure action specifically against that unit. Additionally, the WUCIOA requires that every aspect of a collection, foreclosure, sale, or other conveyance to enforce a lien for unpaid assessments must be commercially reasonable.

**Summary of Engrossed Bill:**

The WUCIOA, the HPRA, and the WCA are amended to prohibit an association from commencing an action to foreclose the association lien for past-due assessments, unless:

- the unit owner owes at least three months or more of assessments or \$200 of assessments, whichever is greater;
- at or after the date the assessments have become past due for at least 90 days, the association provides to the unit owner a notice of delinquency; and
- at least 180 days have elapsed from the date the minimum required amount of past-due assessments has accrued.

The required minimum amount of past-due assessments owed does not include fines, late charges, interest, attorneys' fees, or costs incurred by the association in connecting with the collection of a delinquent owner's account.

The notice of delinquency must follow a specific format and contain information about housing counseling and legal assistance that may be available to the unit owner.

Effective January 1, 2024, an association must wait 90 days, rather than 180 days, from the date the minimum required amount of past-due assessment has accrued before commencing an action for foreclose a lien.

These provisions 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.

The WUCIOA requirement that every aspect of a collection, foreclosure, sale, or other conveyance under the lien foreclosure provisions must be commercially reasonable is extended to the HPRA, the WCA, and the HOAA.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately, except for sections 2, 4, 6, and 9 related to reducing the wait period from 180 to 90 days, which take effect January 1, 2024.

**Staff Summary of Public Testimony:**

(In support) This narrowly focused bill helps ensure that associations do not foreclose over trivial amounts and encourages a repayment schedule. This helps keep people in their homes and protect homeowners from foreclosure, while also keeping community associations whole for their neighbors.

People who are about to lose their homes to foreclosure are unlikely to have the funds to hire an attorney to enforce this law, so there must be penalties for board members, mortgage lenders, and property managers that violate this law. The penalty should not be to the mortgage lending or property managing company, but to the individuals who broke the laws.

The bill needs to provide clarity for homeowners and associations as to when a notice of foreclosure may be issued, what happens if the payment plan is not followed, and what the notice needs to contain. The bill goes beyond protecting homeowners who are experiencing financial hardships due to the COVID-19 pandemic and falling behind on their assessments.

The very effective process of foreclosure mediation under the Foreclosure Fairness Program is often fatally interrupted when an association moves to foreclose for nonpayment of assessments. The bill helps mitigate the relative power advantage of an association over a homeowner and provides additional time for the homeowner to resolve their arrears before the association forecloses.

(Opposed) None.

**Persons Testifying:** Representative Walsh, prime sponsor; Patrick Johansen, Rise Up WA LLC; Raelene Schifano, Homeowners Association Fightclub; Krystelle Purkey, Washington State Chapter of Community Association Institute; and Marc Cote, Parkview Services.

**Persons Signed In To Testify But Not Testifying:** None.