

SENATE BILL REPORT

SSB 5011

As Passed Senate, February 3, 2021

Title: An act relating to notice, meeting, and voting provisions for common interest communities, condominiums, and homeowners' associations.

Brief Description: Addressing electronic meetings and notice provisions for common interest communities, condominiums, and homeowners' associations.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Wilson, L., Brown, Kuderer, Mullet and Warnick).

Brief History:

Committee Activity: Law & Justice: 1/12/21, 1/14/21 [DPS].

Floor Activity: Passed Senate: 2/3/21, 49-0.

Brief Summary of First Substitute Bill

- Aligns the Homeowners' Association Act, Horizontal Property Regimes Act, and Washington Condominium Act with provisions in the Washington Uniform Common Interest Ownership Act with regard to the electronic transmission of documents; conducting meetings by telephonic, video, or other conferencing process; and unit owner voting in person, by absentee ballot, or by proxy.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5011 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Darneille, Holy, Kuderer, Salomon and Wagoner.

Staff: Shani Bauer (786-7468)

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.

Background: In 2018, the Legislature adopted the Washington Uniform Common Interest Ownership Act (WUCIOA). WUCIOA applies to all residential common interest communities (CICs) created after the effective date of WUCIOA. A CIC includes condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities.

CICs created prior to the effective date of WUCIOA may choose to opt-in to WUCIOA. However, two WUCIOA sections, one governing adoption of budgets and assessments and another providing a process for an existing CIC to elect the WUCIOA, apply to all CICs, whether created before or after the effective date, and regardless of election. Otherwise, CICs created before July 1, 2018, remain subject to the following acts:

- the Homeowners' Association Act, which provides a framework for the formation and legal administration of homeowners' associations;
- the Horizontal Property Regimes Act, which applies to residential condominiums created on or before July 1, 1990; and
- the Washington Condominium Act, which applies to condominiums created after July 1, 1990.

WUCIOA contains more detail addressing processes than any of the preceding acts. Those acts left much of the workings of a CIC to the governing documents. WUCIOA contains provisions addressing electronic transmissions, unit owner voting, and board and owner meetings.

Electronic Transmissions. Electronic transmission is defined as any electronic communication not directly involving the physical transfer of a record in a tangible medium, and may be retained, retrieved, and reviewed by the sender and the recipient of the communication, and may be directly reproduced in a tangible medium by a sender and recipient. It also defines tangible medium as a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible medium.

WUCIOA addresses how notices are to be provided to the association, board members, and unit owners. Notices may be provided by electronic transmission so long as the recipient has consented to receive notice in that manner. A unit owner or board member may revoke consent to receive notices by electronic transmission at any time.

Meetings. Unless the organizational documents provide otherwise, the board may meet by participation of all board members by telephonic, video, or other conferencing process if unit owners are informed as to how they may participate. Additionally, the organizational documents may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process.

Unit Owner Voting. Unit owners may vote at a meeting in person, by absentee ballot, or by proxy. The act addresses acceptable methods of voting at a meeting, verification of absentee ballots, and the process for exercising proxy votes. If the declaration or

organizational documents specifically address the method of voting, the declaration or organizational documents will control.

Summary of First Substitute Bill: WUCIOA is amended to allow meetings of unit owners to be conducted by telephonic, video, or other conferencing process unless conducting meetings in that manner is restricted by the declaration or organizational documents.

Consistent with WUCIOA, provisions are adopted in the Homeowners' Association Act, Horizontal Regimes Act, and the Condominium Act as follows:

- adopting definitions of electronic transmission and tangible medium;
- addressing notices to the association, board members, and owners and authorizing notice by electronic transmission with the consent of the owner;
- authorizing participation in meetings of board members and owners by telephonic, video, or other conferencing process to the extent such participation is not inconsistent with the terms of the declaration or organizational documents; and
- addressing how owners may vote and authorizing voting in person, by absentee ballot, or by proxy unless the declaration or organizational documents provide otherwise.

Appropriation: None.

Fiscal Note: Not requested.

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

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

Staff Summary of Public Testimony on First Substitute: PRO: Some homeowners' associations have taken the position that people may no longer vote by proxy. The ability to do that is not clear under the old Homeowners' Association Act. This would clarify that ability by aligning the act with WUCIOA. The pandemic has necessitated the need to move to online platforms. The silver lining has been an increase in participation of owners. These will be positive long term changes for people with disabilities, those that need to commute long distances, or those that have other barriers to participation.

OTHER: Increased communication between owners and board members is a good thing. Lease holders should not be able to participate.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Jill Cheeseman, Mill Creek Community Association; Hilary Bublitz, Mill Creek Community Association; Michael Brandt, Washington Chapter Community Association Institute, Legislative Action Committee.

OTHER: Raelene Schifano, citizen.

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