

HOUSE BILL REPORT

SHB 1043

As Passed Legislature

Title: An act relating to association records in common interest communities.

Brief Description: Concerning association records in common interest communities.

Sponsors: House Committee on Housing (originally sponsored by Representatives McEntire, Leavitt and Walsh).

Brief History:

Committee Activity:

Housing: 1/9/23, 1/16/23 [DPS].

Floor Activity:

Passed House: 2/13/23, 96-0.

Senate Amended.

Passed Senate: 4/11/23, 49-0.

House Concurred.

Passed House: 4/14/23, 96-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Requires all common interest community associations to follow the same recordkeeping requirements by amending the Homeowners' Association Act, the Washington Condominium Act, and the Horizontal Property Regimes Act to align with the Washington Uniform Common Interest Ownership Act (WUCIOA).
- Makes several changes to the WUCIOA recordkeeping requirements, including requiring redaction or removal of certain information from association records prior to disclosure, establishing that an association's unit owner list is not required to be made available for examination and copying by holders of mortgages on the units, and allowing unit owners to receive a free annual electronic or paper copy of their association's

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.

unit owner list.

HOUSE COMMITTEE ON HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Bateman, Chopp, Entenman, Hutchins, Low, Reed and Taylor.

Staff: Audrey Vasek (786-7383).

Background:

Common Interest Communities.

A common interest community (CIC) is a form of real estate in which each unit owner or homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common area property. In Washington, several statutes govern residential 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.

Duties and Powers of Common Interest Community Associations.

A CIC is administered by an association of unit owners or a homeowners' association—an organization consisting of property owners and homeowners within the CIC. An association of unit owners derives its authority from several governing documents, including the declaration of covenants, conditions, and restrictions, the association's bylaws and articles of incorporation, and the deeds to the property within a development.

The primary functions of a unit owners' association include: managing and maintaining

common areas, such as parks, roads, and community centers for the benefit of the community; imposing and collecting assessments on unit owners; and enforcing restrictive covenants that govern the community. In addition, a unit owners' association may adopt rules and regulations concerning property use in the community and impose fines for violations of those rules.

Recordkeeping Requirements for Common Interest Community Associations.

All four statutes governing CICs contain association recordkeeping requirements, but these requirements vary depending on the statute. For example, only the WUCIOA and the HOAA contain a requirement to keep a list of the names and addresses of unit owners. Out of the four CIC governing statutes, the WUCIOA's recordkeeping requirements are the most comprehensive.

Recordkeeping Requirements Under the Washington Uniform Common Interest Ownership Act.

An association subject to the WUCIOA must retain the following records:

- the current budget, detailed records of receipts and expenditures, and other accounting records within the last seven years;
- minutes of all meetings of its unit owners and board except for executive sessions, a record of all actions taken by the unit owners or board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association;
- names of current unit owners, addresses used by the association to communicate with them, and the number of votes allocated to each unit;
- its original or restated declaration, organizational documents, amendments, and all rules currently in effect;
- all financial statements and tax returns of the association for the past seven years;
- a list of the names and addresses of its current board members and officers;
- its most recent annual report delivered to the secretary of state, if any;
- financial and other records sufficiently detailed to enable the association to comply with unit resale certificate requirements;
- copies of contracts that the association is or was a party to within the last seven years;
- materials relied upon by the board or any committee related to requests for design or architectural approval for seven years;
- materials relied upon by the board or any committee concerning a decision to enforce the governing documents for seven years;
- copies of insurance policies under which the association is a named insured;
- current warranties provided to the association;
- copies of all notices provided to unit owners or the association; and
- ballots and other records related to voting by unit owners for one year.

An association must make its records available for examination and copying by all unit owners, holders of mortgages on the units, and their respective authorized agents during reasonable business hours or at a mutually convenient time and location, and at the offices

of the association or its managing agent.

An association may withhold certain records from inspection and copying to the extent that the records concern the following subjects:

- personnel and medical records for specific individuals;
- contracts, leases, and other commercial transactions for goods or services currently being negotiated;
- existing or potential litigation or mediation, arbitration, or administrative proceedings;
- legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;
- information the disclosure of which would violate a court order or law;
- records of an executive session of the board;
- individual unit files other than those of the requesting unit owner;
- unlisted telephone numbers or electronic addresses of any unit owner or resident;
- security access information provided to the association for emergency purposes; or
- agreements that for good cause prohibit disclosure to the members.

An association may charge a reasonable fee for producing and providing copies of records and for supervising inspection of records. The right to copy records includes the right to receive copies by photocopying or other means, including through electronic transmission if available upon request by the unit owner. An association is not obligated to compile or synthesize information. Information that an association provides for examination and copying by unit owners may not be used for commercial purposes.

An association's managing agent must deliver the association's original books and records to the association immediately upon termination of its management relationship with the association, or upon demand of the board. An association's managing agent may keep copies of the association records at its own expense.

Summary of Substitute Bill:

All CIC associations are required to follow the same recordkeeping requirements. The recordkeeping requirements in the HOAA, the WCA, and the HPRA are amended to align with the WUCIOA recordkeeping requirements.

The following changes are made to the WUCIOA recordkeeping requirements:

- An association must redact or otherwise remove certain information from association records prior to disclosure, instead of withholding records from inspection and copying to the extent that the records concern certain information.
- An association must redact or otherwise remove the address of any unit owner or resident who is known to the association to be a participant in the address confidentiality program or other similar program from the association's unit owner list prior to disclosure.

- An association's unit owner list is not required to be made available for examination and copying by holders of mortgages on the units.
- Unit owners are entitled to receive a free annual electronic or paper copy of their association's unit owner list.

The recordkeeping requirements added to the HOAA, the WCA, and the HPRA apply to records in the possession of the association on the effective date of the bill, and to records created or maintained by the association after the effective date of the bill. An association is exempt from liability for records disposed of prior to the effective date of the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) It is often difficult for members in a common interest community to know who the other members are and how to contact them. This bill will allow homeowners to contact other homeowners, which will make outreach more focused and lead to a better electoral process.

The Washington Uniform Common Interest Ownership Act (WUCIOA) has requirements about keeping lists, but the other common interest community (CIC) statutes do not. This will align the CIC statutes.

(Opposed) This bill tries to align the CIC statutes, but not all the exemptions from WUCIOA are included. All the exemptions in the WUCIOA should be added, such as exemptions for medical records and attorney-client privileged material. The CICs should be governed by a common set of rules.

(Other) All association records and information should be made available to association members, not just the lists of unit owners. Any exceptions to the disclosure requirements should be clear so that the association does not abuse the exceptions.

Persons Testifying: (In support) Representative Joel McEntire, prime sponsor; and Toby Nixon.

(Opposed) Valerie Oman, Condominium Law Group and Washington State Chapter of Community Associations Institute; Krystelle Purkey, Washington State Chapter of Community Associations Institute; and Brian Mackey, Wynbrook II Homeowners' Association.

(Other) Patrick Johansen, RiseUpWA and Housing Justice Committee.

Persons Signed In To Testify But Not Testifying: None.