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## Housing Committee

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### HB 1569

**Brief Description:** Protecting unit owners in common interest communities.

**Sponsors:** Representatives Leavitt and McEntire.

**Brief Summary of Bill**

- Requires an association of unit owners in a common interest community (CIC) subject to the Homeowners' Association Act, the Washington Condominium Act, or the Horizontal Property Regimes Act to comply with the association records requirements in the Washington Uniform Common Interest Ownership Act, excluding requirements related to resale certificates.
- Provides that a violation of any of the four CIC statutes by a unit owners association or an agent of the association is a violation of the Consumer Protection Act.
- Requires an association of unit owners in a CIC subject to any of the four CIC statutes to make unit owners third-party beneficiaries of any contract with a managing agent.

**Hearing Date:** 1/31/23

**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

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condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities. These communities are 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, which applies to residential condominiums created on or before July 1, 1990;
- the Washington Condominium Act, which applies to condominiums created after July 1, 1990; and
- the Homeowners' Association Act, which provides a framework for the formation and legal administration of homeowners' associations.

#### *Management and Duties of Common Interest Communities.*

A CIC is administered by an association of unit owners or a homeowners' association consisting of property owners and homeowners within the CIC. An association of unit owners derives its authority from several 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. Generally, an association may hire, contract with, and discharge managing agents and other employees, agents, and independent contractors, subject to the provisions of the declaration or governing documents.

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.

#### *Qualifications for Common Interest Community Officers and Board Members.*

An officer or board member of a CIC unit owners' association must meet the requirements imposed by the organizing documents or the board and generally must be a unit owner in the community. The board and officers for an association have the authority to act on behalf of the association. In performing their duties, officers and board members generally must exercise a degree of care and loyalty to the association and are subject to the conflict of interest rules and immunity from liability provisions applicable to officers and directors of a corporation, regardless of the form in which the association is organized.

For example, officers and board members of an association subject to the WUCIOA are entitled to the immunities from liability available to officers and directors under the Nonprofit Miscellaneous and Mutual Corporations Act, which states that an officer of the corporation is not individually liable to the corporation or its members for conduct within their official capacity as

an officer except for acts or omissions that involve intentional misconduct or a knowing violation of the law, or that involve a transaction from which the officer will personally receive a benefit to which the officer is not legally entitled.

*Recordkeeping Requirements.*

All four statutes governing CICs contain some association recordkeeping requirements, but the requirements in the WUCIOA are more extensive than in the other three CIC statutes.

An association subject to the WUCIOA must retain a number of records, including the current budget and association accounting records within the last seven years; meeting minutes and records of association actions; the names and contact addresses of current unit owners and the number of votes allocated to each unit; the declaration, organizational documents, amendments, and all rules currently in effect; all association financial statements and tax returns for the past seven years; a list of the names and addresses of current board members and officers; the most recent annual report delivered to the secretary of state, if any; financial and other records needed to satisfy resale certificate requirements; copies of association contracts in the last seven years; materials relied upon by the board to approve or deny requests for design or architectural approval for a period of seven years; materials relied upon by the board concerning a decision to enforce the governing documents for a period of seven years; copies of the association's insurance policies; any current warranties provided to the association; copies of notices provided to unit owners or the association; and ballots, proxies, and other unit owner voting records for one year.

An association subject to the WUCIOA must make records available for examination and copying by all unit owners, unit mortgage holders, 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. Information that an association provides for examination and copying by unit owners may not be used for commercial purposes.

An association subject to the WUCIOA 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 subject to the WUCIOA may withhold certain records from inspection and copying to the extent that the records concern certain subjects, such as information the disclosure of which would violate a court order or law, records of an executive session of the board, unlisted telephone number or electronic address of any unit owner or resident, or agreements that for good cause prohibit disclosure to the members.

Third-party Beneficiary Contract Rights.

Generally, a person has no legal right to enforce a contract that the person did not make. However, courts have found that a person can enforce a contract that the person did not make if the person is a third-party beneficiary to the contract. Contract enforcement by a third party is controlled largely by the facts of the case. In determining whether a third party has the legal

right to enforce a contract that the person did not make, courts generally consider whether the contracting parties intended to confer a benefit on the third party.

**Summary of Bill:**

An association of unit owners in a CIC subject to the Homeowners' Association Act, the Washington Condominium Act, or the Horizontal Property Regimes Act must comply with the association records requirements in the WUCIOA, excluding the requirement to retain records necessary to satisfy WUCIOA resale certificate requirements.

A violation of any of the four CIC statutes by a unit owners association or agent of the association is a violation of the Consumer Protection Act.

An association of unit owners in a CIC subject to any of the four CIC statutes must make unit owners third-party beneficiaries of any contract with a managing agent.

The bill may be known and cited as the Common Interest Community Unit Owners Protection Act.

**Appropriation:** None.

**Fiscal Note:** Requested on January 27, 2023.

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