

HOUSE BILL REPORT

EHB 1636

As Passed House:

March 8, 2023

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

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

Sponsors: Representatives Orwall, Walsh and Timmons.

Brief History:

Committee Activity:

Housing: 2/7/23, 2/14/23 [DP].

Floor Activity:

Passed House: 3/8/23, 95-0.

Brief Summary of Engrossed Bill

- Requires an association of unit owners in a common interest community to include a first preforeclosure notice, when mailing to a unit owner the first notice of delinquency for past-due assessments, that follows the same format and contains the same information about housing counseling and legal assistance as the second preforeclosure notice that an association is required to mail to a unit owner with the second notice of delinquency for past-due assessments.
- Delays the effective date to January 1, 2025, instead of January 1, 2024, of the shift from a 180-day waiting period to a 90-day waiting period from when the minimum amount of past-due assessments has accrued before an association may commence an action to foreclose a lien.

HOUSE COMMITTEE ON HOUSING

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.

Majority Report: 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.

Several statutes govern residential common interest communities (CICs), such as 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) is applicable to CICs created on or after July 1, 2018. A CIC created prior to July 1, 2018, 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.

Assessments and Charges.

An association of unit owners in a CIC organized under these acts 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.

Collection of Past-due 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. Under the HOAA, the governing documents of the CIC may provide for a lien on the lot of any owner for unpaid assessments. To collect unpaid assessments, an association may bring an action to collect unpaid assessments or foreclose its lien on the unit. All four CIC statutes require

that every aspect of a collection, foreclosure, sale, or other conveyance to enforce a lien for unpaid assessments must be commercially reasonable.

Preforeclosure Requirements.

The WUCIOA, the HPRA, and the WCA prohibit an association from commencing an action to foreclose the association's lien for past-due assessments, unless certain preforeclosure requirements are met. These preforeclosure requirements 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. These preforeclosure requirements include the following:

- The unit owner must owe at least three months or more of assessments or \$200 of assessments, whichever is greater. 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 connection with the collection of a delinquent owner's account.
- On or after the date the assessments have become past due for at least 90 days, the association must mail to the unit owner a notice of delinquency. The notice of delinquency must follow a specific format and contain certain information about housing counseling and legal assistance that may be available to the unit owner.
- Effective until January 1, 2024, an association must wait 180 days from the date the minimum required amount of past-due assessments has accrued before commencing an action to foreclose a lien. Beginning January 1, 2024, the waiting period is shortened to 90 days.
- The board of the association must approve commencement of the foreclosure action specifically against the unit.

Summary of Engrossed Bill:

When mailing the first notice of delinquency for past-due assessments to a unit owner in a CIC, an association of unit owners is required to include a first preforeclosure notice that follows a specific format and contains certain information about housing counseling and legal assistance that may be available to the unit owner.

If the first preforeclosure notice has not yet been mailed to the unit owner by the time that the delinquent account is referred to the association's attorney, the association or the association's attorney must mail the first preforeclosure notice to the unit owner.

Before an association may commence an action to foreclose a lien on a unit for past-due assessments, an association must mail a second notice of delinquency and second preforeclosure notice to the unit owner containing the same information as the first notice. The second notice of delinquency and preforeclosure notice must be mailed to the unit owner on or after the date that the assessments have become past due for at least 90 days but no sooner than 60 days after the first preforeclosure notice is mailed.

Effective until January 1, 2025, instead of January 1, 2024, an association must wait 180 days from the date the minimum required amount of past-due assessments has accrued before commencing an action to foreclose a lien. Beginning January 1, 2025, instead of January 1, 2024, the waiting period is shortened to 90 days.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) The Foreclosure Fairness Act is a little different for CICs, such as condominium owners' and homeowners' associations. The CIC unit owners can access counseling but not mediation. They were carved out because of the complexity of the shared property, but they hold risk too. One of the differences is that a person could be paying their mortgage but be behind on their homeowners' or unit owners' association fines and fees and have their home foreclosed. It is concerning that foreclosures are currently increasing.

This bill would add additional foreclosure protections for people who live in CICs. People should know about the access to housing counselors, and the preforeclosure notice in the bill helps make sure people know as early as possible. A housing counselor can help with all of the financial pieces of the foreclosure process as well as help homeowners access the federal Homeowner Assistance Fund and other resources that could potentially save their homes. The bill also extends certain timelines to facilitate resolutions when these fees are past-due. Giving people more time to fix thorny problems helps homeowners and associations.

The Legislature needs to do everything it can to keep people out of foreclosure. Ninety percent of all sheriff's sales in Washington are happening in homeowners' and condominium owners' associations. It is concerning that these associations can shut off utilities. Any protections that the Legislature can add will only benefit these homeowners. Most homeowners cannot afford to take association boards to court and sue them. There should be penalties for associations that violate these laws.

There is support for the overall intent behind the bill to protect homeowners and keep CIC associations financially healthy for all their members. However, the bill should be modified to allow an association to send out the first preforeclosure notice at a later time as long as that notice is sent out at least 60 days before the second preforeclosure notice is sent.

(Opposed) None.

Persons Testifying: Representative Tina Orwall, prime sponsor; Representative Jim Walsh; Raelene Schifano, HOA Fightclub; Patrick Johansen, RiseUp Washington and Housing Justice Committee; and Patrick McDonald, Washington State Chapter of Community Associations Institute.

Persons Signed In To Testify But Not Testifying: None.