

SENATE BILL REPORT

SB 5796

As Reported by Senate Committee On:
Law & Justice, January 25, 2024

Title: An act relating to common interest communities.

Brief Description: Concerning common interest communities.

Sponsors: Senators Pedersen, Rivers, Kuderer, Nobles and Shewmake; by request of Uniform Law Commission.

Brief History:

Committee Activity: Law & Justice: 1/18/24, 1/25/24 [DPS, DNP].

Brief Summary of First Substitute Bill

- Applies the Washington Uniform Common Interest Ownership Act (WUCIOA) to all common interest communities beginning January 1, 2028.
- Amends WUCIOA to incorporate updates to the Uniform Common Interest Ownership Act (UCIOA) and other changes.
- Repeals the Horizontal Property Regimes Act, the Washington Condominium Act, the Homeowners' Association Act, and the Land Development Act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5796 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, Pedersen, Salomon, Torres and Valdez.

Minority Report: Do not pass.

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.

Signed by Senators McCune, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

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.

The Washington Uniform Common Interest Ownership Act (WUCIOA) took effect July 1, 2018, and is applicable to CICs created on or after that date. A CIC created prior to the effective date of WUCIOA may choose to opt in to WUCIOA.

CICs created before July 1, 2018, typically are regulated by their governing documents and remain subject to the following acts:

- 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 created before July 1, 2018.

Uniform Common Interest Ownership Act. The Uniform Common Interest Ownership Act (UCIOA) establishes rules for the creation, management, alteration, and termination of CICs. UCIOA has been periodically amended in the years since its approval in 1982. In 2021, the Uniform Law Commission (ULC) approved a new set of amendments to UCIOA. The amendments are designed to further modernize the law on CICs and incorporate best practices established by the real property industry.

Uniform Unlawful Restrictions in Land Records Act. In 2023, the ULC approved the Uniform Unlawful Restrictions in Land Records Act which allows homeowners to remove unlawful restrictive covenants from the deeds in their homes and allows the removal of unlawful restrictive covenants from the governing documents of condominiums and other homeowner associations.

Summary of Bill (First Substitute): Unlawful Restrictions in Governing Documents. The board of associations may remove unlawful restrictions in the association's governing documents without a vote of the unit owners. A unit owner may request a restriction be removed and requires the board to act within 90 days of receiving such a request.

An unlawful restriction is defined to be a prohibition, restriction, covenant, or condition in a governing document that purports to interfere with or restrict the transfer, use, or occupancy

of a unit on the basis of race, color, religion, national origin, sex, familial status, disability, or other personal characteristics; and in violation of other law of this state or federal law.

Certain information must be included in the amendment that removes an unlawful restriction. Lawful restrictions may still be enforced. The amendment must be recorded in each county where the unlawful restrictions were previously recorded.

2021 Uniform Common Interest Ownership Act Amendments. Amendments to WUCIOA apply to all common interest communities.

Certain requirements for public offering statements apply to certain out-of-state contracts signed in this state for the sale of a unit in an out-of-state common interest community unless exemptions apply.

A declaration may delegate certain powers including to a master association. The board may delegate powers to a master association without amending the declaration through notice and majority vote of the unit owners. Procedures for declarant control of a master association are established.

Two or more common interest communities may be merged or consolidated into a single community by agreement of the unit owners or by an exercise of a special declarant right that does not require unit owner approval.

Adverse possession claims for common elements are prohibited.

Quorum for a meeting of unit owners is achieved if, at the beginning of a meeting, 20 percent of the votes in the association attend in person; by proxy; by means of communication that enables owners in different locations to communicate in real time provided that such means must have an option for owners to communicate by telephone; or have voted by absentee ballot. Unit owners may attend meetings via telephone, video, or other conferencing process.

Certain common expenses may be assessed exclusively against a unit owner after notice and hearing, such as liability of a unit owner or unit owner's tenant, guest, invitee, or occupant for expenses related to damage or loss of property as a result of either gross negligence, or for negligence if the declaration contains a statement that an owner may be liable for damage or loss caused by such negligence.

A public offering statement must contain a statement whether a unit described in the declaration that does not have horizontal boundaries may be sold without consent of the unit owners after termination of the common interest community.

Additional Amendments to Washington Uniform Common Interest Ownership Act. New definitions are added. Clarifications are made to existing definitions.

The governing documents may not vary provisions of law that give a right to or impose an obligation or liability on a unit owner, declarant, association, or board, except as provided in such provisions of law.

The declaration must contain a legal description of real property to which each development right applies. A declaration does not need to contain a description of real estate boundaries affected by development rights.

Processes for allocation and reallocation of limited common elements and unit boundaries are clarified. The existing physical boundaries of a unit are its legal boundaries, including an encroachment due to a divergence, unless certain exceptions apply.

The option for a declaration to require a higher percentage of unit owner approval in order to prohibit or restrict certain uses or protect certain interests is removed.

Termination of the entire common interest community requires at least 80 percent of the allocated votes in the association, but the declaration may require a larger percentage. At least 80 percent of the votes required to terminate a common interest community must not be owned by the declarant. A termination agreement may provide for the sale of some or all of the common elements, and procedures for such appraisal and sale are established. Procedures and conditions to terminate fewer than all of the units in a common interest community are established.

An association may grant easements, leases, and licenses through or over common elements, but such grants that benefits a unit owner's unit is only allowed by reallocation of the common elements to a limited common element. An association may suspend any right or privilege of a unit owner who fails to pay an assessment not to exceed one business day after such assessments have been fully paid, but may not deny a unit owner or other occupant access to any limited common elements allocated to that unit or any common elements necessary to access the unit.

Notice must be provided to all unit owners prior to the election of board members.

A declarant must provide all originals or copies of the most recent reserve study to the newly elected board at the transition meeting.

The process for creating and reserving a special declarant right is modified. The process for transferring special declarant rights, and any associated obligations and liabilities due to such transfer, are clarified.

Unit owners may discuss matters not included in a meeting notice as long as action is not taken on the matter without the consent of all unit owners. Meeting of unit owners may be conducted by means of communication that enables owners in different locations to

communicate in real time, provided that such means must have an option for owners to communicate by telephone and the declaration does not require a physical meeting.

Unit owners or their proxies may vote in person or remotely. An association must implement reasonable measures to verify the identity of the unit owner and proxy. The association must deliver voting ballot instructions, paper ballots for unit members who have not consented to electronic voting, and instructions for electronic voting if applicable. An association must implement reasonable measures to verify paper and electronic ballots. Majority vote determines the outcome of a vote, unless a different number or fraction of votes is required by law or the declaration. Election of board members, removal of board members or officers, amendments to the declaration or governing documents, or unit owner approval of an amendment to the declaration for the reallocation of a common element as a limited common element for the exclusive use of an owner's unit must be conducted by secret ballot.

An association board member, or the board member's immediate family members and affiliates, are ineligible to acquire an interest in a unit during a foreclosure process.

Originals or copies of plans and specifications, instruments of conveyance, or permits or certificates of occupancy delivered by a declarant must be retained by the association. A list of unit owners is not required to contain electronic addresses of unit owners who have elected to keep such addresses confidential. A managing agent must deliver all electronic records to an association within five days and all written records within ten business days of the management relationship ending or the board's demand.

The association may take various actions during an emergency that are necessary to protect the interests of the unit owners, including the use of association funds and fund reserves. Emergency is defined as an event or condition or a state of emergency declared by a government for an area that includes the common interest community that constitutes an imminent threat to the health or safety of the public or residents of the common interest community; threat to the habitability of units; or risk of substantial economic loss to the association.

The governing documents of plat communities subject to WUCIOA may not prohibit the installation of a flagpole, but may include reasonable rules and regulations regarding the location and size of the flagpole. Associations may not prohibit the display of signs, including outdoor signs, but may adopt reasonable rules governing the placement and manner of such displays. Associations are prohibited from restricting unit owners from storing compost, garbage, or recycling receptacles. The association may set requirements that receptacles are screened from view during periods they are not scheduled for collection.

A unit owner's electronic address may be kept confidential and exempt from disclosure by the association upon request. Information that would compromise the secrecy of a secret ballot must be redacted or removed prior to disclosure.

An association may require a family home child care or child day care center operating in the association to pay any costs or expenses arising from the operation of the facility.

A unit owners association may not prohibit the use of a unit as an adult family home. A unit owners association may impose reasonable rules, licensing, liability waiver, insurance, and facility access requirements. Associations that violate this prohibition are liable for a civil penalty of up to \$1,000.

Clarification on the preparation of a public offering statement prepared by a declarant or a successor declarant are provided. A dealer has the same responsibilities and liabilities of a declarant if the dealer helped prepare a public offering statement. A declarant or dealer must provide a purchaser with a copy of the public offering statement and all amendments before conveyance of the unit, and no later than the date of any contract of sale.

A resale certificate and public offering statement must include a conspicuous notice that a unit is located within a common interest community along with additional information.

Conforming Amendments. Technical changes are made to update statutory references to WUCIOA and eliminate references to repealed acts.

Applicability and Transition. The Horizontal Property Regimes Act, the Washington Condominium Act, the Homeowners' Association Act, and the Land Development Act are repealed, effective January 1, 2028.

WUCIOA applies to all common interest communities beginning January 1, 2028. Communities not governed by WUCIOA may continue to be governed by other applicable acts until January 1, 2028.

When a common interest community created before January 1, 2018, becomes subject to WUCIOA, any inconsistent provision of the community's governing document is invalid unless certain exceptions apply.

The declaration of any common interest community created before July 1, 2018, may be amended to provide that certain enumerated requirements of WUCIOA apply to the common interest community.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Prohibits the governing documents of plat communities subject to WUCIOA from prohibiting the installation of a flagpole, but allows for reasonable rules and regulations regarding the location and size of the flagpole.
- Clarifies that associations may not prohibit displays of outdoor signs, but association

- may adopt reasonable rules governing the placement and manner of those displays.
- Restores liability of a unit owner or unit owner's tenant, guest, invitee, or occupant for expenses related to damage or loss of property as a result of either gross negligence, or for negligence if the declaration contains a statement that an owner may be liable for damage or loss caused by such negligence.
 - Provides that an assessment for gross negligence or negligence may be imposed even if the association maintains insurance with respect to the damage or common expense.
 - Clarifies association approval process for reallocation of limited common elements.
 - Provides that written records must be provided within ten days of termination of an association's managing agent or the board's demand.
 - Clarifies that new law on divergence of physical boundaries replaces current law on divergence of physical boundaries.
 - Requires disclosure notice in public offering statements.
 - Clarifies that government-declared states of emergency must constitute an imminent threat to the health or safety of the public or residents, threat to the habitability of units, or risk of substantial economic loss to the association.
 - Requires election of board members, removal of board members or officers, amendments to the declaration or governing documents, or unit owner approval of an amendment to the declaration for the reallocation of a common element as a limited common element for the exclusive use of an owner's unit to be conducted by secret ballot.
 - Requires information that would compromise the secrecy of a secret ballot to be redacted or removed prior to disclosure.
 - Extends the date for the repeal of the older common interest community statutes and retroactive application of the Washington Uniform Common Interest Ownership Act to January 1, 2028.
 - Makes various technical changes.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: It is time to have a single statute govern all common interest communities instead of having a patchwork of laws. The current regulatory framework is confusing because there are four separate laws governing common interest communities. Having only one law eliminates confusion. Bringing all condominiums under WUCIOA will modernize governance of condos. WUCIOA is not new law, and has been applied to large and small communities since 2018. WUCIOA is

being newly applied to preexisting communities. It is an easy to understand framework and will provide clarity and transparency. WUCIOA strikes a balance between governance and the rights of individuals in an association. When the law goes into effect, it is possible for associations to comply with the new requirements without having to amend their governing documents. There is enough time to educate people on the new requirements of WUCIOA. There are concerns about the emergency association powers in the act that seem to give the board complete discretion to impose special assessments for likely economic loss.

CON: This is a one-size-fits-all bill. The plain language of the HOAA helps homeowners manage their associations effectively. No other state has adopted the 2021 UCIOA amendments. If this bill is passed, it will increase the cost of homeownership for everyone in plat communities, inject uncertainty in purchases and sales in plat communities, and force homeowners to hire professional management in order to ensure that communities are in compliance with the requirements of WUCIOA. Hiring professional management means loss of autonomy for homeowners. Volunteer board members will not be able to comply with WUCIOA without some form of legal guidance, and associations will need to spend thousands of dollars to rewrite their controlling documents to ensure compliance. The WUCIOA requirement for seller-provided resale certificates gives buyers the unilateral right to cancel the sale within five days, and sellers do not have control when the resale certificate is given. Political yard signs make a difference in an association's election process, but WUCIOA would eliminate the guarantees in the HOAA regarding such signs.

OTHER: Voter privacy is a fundamental right. Unit owner votes should be confidential. Ballots should be able to be redacted if requested by the unit owner. Currently, there is no requirement for redaction of ballots in WUCIOA. As a result, successful and unsuccessful candidates for board positions can figure out who voted for whom. Having unlimited access to voting documents is not a good thing, and access to this data should be limited. Otherwise, access to this data may lead to intimidation, stalking, harassment, or worse. Every unit owner should feel at ease when voting. Votes should be conducted without intimidation or fear of reprisal from other unit owners.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Steve Horvath, HOA United; Raelene Schifano, HOA United; Joel Gilman; Nathan Luce; Theresa Torgesen.

CON: Janet Landesberg; Phil Landesberg; Natalie Whitcomb; Annette Fitzsimmons, Washington State Bar Assoc Real Property Section.

OTHER: Bea Nahon; Steve Brilling.

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