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STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Hearing Testimony
Assembly Committee on Housing and Real Estate
Wednesday, February 9, 2022
11:00 A.M.
Wisconsin State Capitol, Room 300 Northeast

Chairman Summerfield and Members of the Assembly Committee on Housing and Real Estate, thank you for affording me the opportunity to provide testimony on Assembly Bill 917.

A homeowners association (HOA) is a subdivision organization that creates and enforces rules relating to properties within its control. Generally, when a property is purchased within an HOA, the property owner and property automatically become an HOA member and are required to pay dues.

Currently, HOAs are not regulated under Wis. Stat Ch. 703 as condominiums and, therefore, are not impacted by the obligations of the aforementioned statute. Condominiums and HOAs are separate and distinct, governed by different rules and statutes. The distinctions between these two entities are often difficult to identify. Thus, Assembly Bill 917 seeks to provide distinction and establish statutes specific HOAs.

HOAs can have a profound legal impact on the property and property owner's rights and, therefore, the rules and regulations governing HOAs are often included in a document referred to as covenants, conditions, and restrictions. However, Senate Bill 865 does not regulate the rules and regulations homeowners' associations may place on property owners.

After nearly two years of research and collaboration with stakeholders on all sides of the issue, we are introducing legislation establishing a simple, straightforward statutory structure for HOAs that allow those residing in, or purchasing properties within an HOA, to understand their contractual obligations, among many other things. Assembly Bill 917 is an important first step in the process in establishing clarity between HOAs and condominiums and cogent guidelines for owners of HOAs to abide by.

Following discussions with stakeholders on all sides of the issue, an amendment was drafted to further improve the bill by creating additional streamlining of process and recognizing practices in technology.



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LLCs and HOAs are often established or renewed at the same time. Thus, item one of the amendment includes a directive for the Department of Financial Institutions to establish a process to allow corporate filings to be accomplished simultaneously or in conjunction with HOA filings, thus streamlining the registration process for HOAs that are also corporations, by inserting clarification language beginning on page three at the end of line seven.

The bill, as originally drafted, did not intend to extend any liability to management companies who are hired by HOAs, therefore, item two removes line seventeen of page four of the bill in the definition of association.

The objective of the bill is to provide transparency of information and decisions of the HOA that impact the use of the property and any fees associated for those living within the HOA. These following changes maintain this objective. The meeting notice and distribution of decisions by the board after an HOA meeting, was intended to be posted and communicated to the members of the HOA, not to the general public. Therefore, items three and four delete the references "that is available to the public on page seven, line six, and page 8, line four, respectively. HOAs may have a mobile device app where members of the HOA can have information communicated to them. Item four substitutes "that is available to the public" on page eight, line four, with "or a mobile device application to identify this practice."

As drafted, the bill establishes a \$25 cap on the amount of money an HOA can charge for the property owner to receive copies of the rules and regulations/ covenants and restrictions impacting the use of the property and fees that could be charged. If the HOA has a website they cannot charge that amount and instead must post that information on the website. However, item five clarifies the cap is limited to rules and regulations/covenants and restrictions and is not attempting to restrict other fees that could be charged by the HOA regarding documents or other information a property owner may wish to obtain from the HOA. Therefore, on page eight, line ten, the amendment deletes the limiting language.

I would be happy to answer any questions you might as it relates to this legislation.



Assembly Bill 917: Homeowner Associations Regulations
Assembly Committee on Housing and Real Estate
Testimony of Senator Joan Ballweg
February 9, 2022

Good morning, members of the committee. Thank you for hearing this important piece of legislation.

A homeowner's association (HOA) is an organization that is entered into by property owners in residential communities that can create and enforce rules for the properties that are in the HOA. When someone purchases a property in an HOA, the owner often automatically becomes a member of the HOA, which also means they must abide by the HOA rules and pay the established fees. This is similar to how condominiums operate. However, HOAs and condominiums are separate and distinct structures, and HOAs are not covered in statute, while condominiums are regulated under Chapter 703.

HOAs can have a large impact on the residents who live in them, from assessing monthly fees or special assessments to making rules on what color you can paint your house. These fees and rules are established through covenants, conditions and restrictions, as well as the HOA's bylaws. HOAs vary in size, quality of management by the board and whether or not they hire a professional management company, and all have different rules and regulations. For condominiums, the state provides a statutory structure so there is some consistency, which helps condominium boards and owners understand their obligations before and after they purchase the property. AB 917 also creates a simple statutory structure for HOAs to accomplish those same goals.

Under the bill, the structure that is put into place does the following:

- **Creates a Scope:** this applies to HOAs with at least one residential lot. The requirements either apply to new associations 30 days after they are created, or to existing associations starting on January 1, 2023 or when they amend existing covenants and restrictions.
- **Requires Recording:** covenants and restrictions must be filed with the Register of Deeds.
- **Public Posting:** HOAs must notice meetings 48-hours in advance, and if the association has a website, they must post the covenant and restrictions on that website.
- **Department of Financial Institutions (DFI) Registration:** DFI must create a searchable database with information for people that can serve as the point of contact for the HOA, and the HOA must regularly register with the DFI to provide this information.
- **Caps Fees on Documents:** This provides a limit on the fees HOAs can charge for providing certain documents, such as the covenants and restrictions or a payoff statement. If the HOA fails to comply with some of the public posting and registration requirements, then they are not able to charge late fees or other fines for unpaid assessments.

The common thread throughout these changes is that they create clearer obligations for HOAs, and they provide transparency for people who are looking to purchase a home or who already live in an HOA. With these changes, people know who to contact for the HOA's rules and regulations or where to find them, and they are given public and advanced notice on how to participate in the HOA if they choose to.

Thank you for your consideration of AB 917.



To: Members, Assembly Housing and Real Estate
From: Cori Lamont, Senior Director of Legal and Public Affairs
Tom Larson, Executive Vice President
Date: February 9, 2022
RE: AB 917/ SB 865 – Homeowners' Associations

The Wisconsin REALTORS® Association (WRA) supports AB 917 as amended, legislation that creates a simple statutory structure for homeowners' associations (HOAs) allowing residents living in or purchasing properties within an HOA to have access to the rules and regulations impacting the property.

Background

An HOA is a subdivision organization that creates and enforces rules relating to properties within its control. Typically, when a property is purchased within an HOA, the property owner and the property automatically become a member of the HOA and often are required to regularly pay fees.

Generally, Wisconsin law does not regulate HOAs. Contrary to popular belief, HOA documents are not required to meet the same deadlines and obligations established by Wisconsin condominium law.

HOAs can regulate the use and have a great impact on the property owner's rights. Therefore, a buyer must understand any obligations, limitations, or fees when considering purchasing a property in an HOA. The rules and regulations of HOAs are often included in covenants, conditions and restrictions (CC&Rs), subdivision covenants or deed restrictions.

Understanding what type of fence, how tall and how close to the property line, as well as what type of mailbox or landscaping that may be used, are just some of the examples of how properties and their owners are regulated by HOAs.

Therefore, HOA rules and regulations should be readily available to those living in, or purchasing, a property within an HOA.

This legislation:

- **Does not regulate HOAs or limit the assessments charged.**

AB 917 does not restrict how HOAs can regulate property or limit the ability or amount of any special assessment or periodic association fees an HOA may charge.

- **AB 917 does two things:**
 1. **Makes regulations more transparent to property owners and prospective buyers by requiring HOAs to:**
 - Record covenants and restrictions with the county register of deeds.
 - Post covenants and restrictions if an HOA has a website.
 - Provide a 48-hour notice to HOA members of upcoming meetings and decisions made by the board.
 2. **Creates a reasonable statutory framework for HOAs for consumers to gain information.**
 - Registration of HOAs with the Department of Financial Institutions (DFI).
 - Searchable DFI database, with information such as the name of the association, the location, a contact person and the HOA's internet site.
 - Cap on document fees. Creates a \$25 fee cap charged by the DFI to file registration forms and \$50 by the HOA to deliver covenants and restrictions to the property owner, if not posted on the website.
 - If the HOA fails to comply with the law, any one-time fees resulting from the transfer of the property or any late fees are unenforceable.

Assembly Amendment 1:

- Creates additional streamlining of the DFI registration process when an HOA is also a corporation.
- Removes liability to management companies hired by HOAs.
- Recognizes notifications of meeting notices and communications are made to HOA members, not the public and could be made via a mobile app.
- Clarifies the \$25 cap on the fees HOAs may charge property owners for copies is limited to CC&Rs.

We respectfully request your support for AB 917, as amended.