Joel B Gilman
2125 1st Ave, Unit 804
Seattle, WA 98121

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The Honorable Jamie Pedersen
Washington State Legislature
235 John A Cherberg Building
PO Box 4043
Olympia, WA 98504

Different interpretations of the Washington Uniform Common Interest Ownership Act

Dear Senator Pedersen,

Congratulations on your re-election to the Washington State Senate. I see that, as a result of this year's redistricting, I have moved from the 36th district to the 43rd district. I look forward to being one of your constituents.

You may recall that in August I emailed your office via my then-district senator, the Hon Reuven Carlyle, seeking clarification of a question that arose under 2018 legislation known as the Washington Uniform Common Interest Ownership Act ("WUCIOA"), RCW 64.90.

The issue was whether RCW 64.90 was in any way intended to alter or nullify provisions of a pre-existing condominium declaration made under either of the earlier condominium acts RCW 64.32 or RCW 64.32. Your office put me in touch with Mr Joe McCarthy, who headed the Drafting Committee assisting the legislature with SB 6175, the bill that became RCW 64.90. Mr McCarthy emphatically stated that nothing in RCW 64.90 was intended to have that effect.

My query to you arose from a situation emerging at the Belltown condominium where I live. Our condominium's declaration (made under RCW 64.34) includes a provision that appears to restrict the use of special assessments to only certain types of common expenses. However, the association board is pursuing a discretionary project for which they will propose a special assessment that is not permitted by the declaration. I wrote to each board member in April to explain the declaration restriction.

Our board sought legal advice from our association's lawyer, Ms Theresa Torgesen, who also served on the SB 6175 Drafting Committee with Mr McCarthy. Ms Torgesen insists that the 2018 legislation nullified the declaration's restrictions because RCW 64.90.525, which is inserted into the earlier condominium Acts, grants an association unrestricted power to levy special assessments. Ms Torgesen further argues that RCW 64.90.015 does not allow provisions of the 2018 Act, such as section 525, to be altered by an "agreement" such as a condominium declaration.

Accordingly, Ms Torgesen advised our association's board that any restrictions on special assessments found in our declaration has been nullified by RCW 64.90 and poses no bar to the planned special assessment .

Other experts on Washington condominium law I consulted, in addition to Mr McCarthy, insisted that Ms Torgesen's interpretation is incorrect, citing RCW 64.90.080(2). That subsection states that RCW 64.90.525 and three other provisions of WUCIOA inserted into the previous Acts do not invalidate contrary provisions of exiting governing documents of condominiums established under RCW 64.32 and RCW 64.34. I have pointed this out to Ms Torgesen but she apparently does not interpret RCW 64.90.080(2) the way other condominium law experts do.

Given that both Ms Torgesen and Mr McCarthy served on the committee advising the legislature on drafting WUCIOA, it would not seem to ask too much of those involved in drafting a bill to agree on clear and unambiguous interpretations of the resulting legislation. Accordingly, I asked Mr McCarthy to contact Ms Torgesen and try to arrive at a common interpretation of this issue but he refused to do so.

As a lawyer, I find it astonishing that members of the public will have to have to incur significant legal costs and litigation risks to resolve a relatively simple interpretation issue such as this solely because the specialist lawyers who helped draft WUCIOA cannot or will not agree on its meaning. It makes a mockery of the legislative process to the extent that legislation should be clear and unambiguous, yet here we have two experts who were intimately involved in creating this legislation argue profoundly different interpretations of a key aspect of WUCIOA.

To resolve this, could the Senator's office request an Attorney General's opinion interpreting the effect of RCW 64.90.525 and RCW 64.90.080(2) with respect to contrary provisions of pre-existing condominium declarations made under RCW 64.32 or RCW 64.34?

I would also ask that the Legislature adopt a policy whereby lawyers who participate in future advisory committees such as the SB 6175 Drafting Committee, with or without compensation, sign an agreement with the Legislature under which they commit to pro-actively attempt to resolve any differences between committee members in their interpretations of the resulting legislation that arise within five years of enactment. I shouldn't have to beg Mr McCarthy to simply talk to Ms Torgesen, who worked together on the legislation, and try to resolve their different interpretations. This isn't about their clients' interests or billable hours. This is about their work on the committee resulting in legislation that governs condominiums, a matter of widespread public interest.

If such differences become apparent during the drafting process they should be made known immediately to the Legislature and the Code Revisor's Office so that, hopefully, the differing interpretations can be resolved before the legislation becomes law and it is then a matter for the courts to sort out via costly litigation.

I appreciate that the Washington State chapter of the Community Association Institute ("WSCAI") takes a strong interest in legislation such as WUCIOA, but I cannot see how WSCAI could object to a policy such as I am suggesting, which can only reduce conflicts and legal disputes for condominiums and HOAs.

Thank you for taking the time to read my letter and consider the issues raised.

Kind regards,

Joel Gilman, Seattle
WSBA #13322