

**FULL Statement of Concerns as applies to Mount Vista Association, Clark County, WA, 17<sup>th</sup> LD**

*We have a request to better define the differences between the classes used in these definitions such as condominiums, cooperatives, and plat communities, etc.*

P2, Definitions/assessment: Assessment does not differentiate “dues” from “all other sums including potential fines and fees from those fines” which violates our specific CC&Rs. Currently, dues are privileged fees and by state law allow a lien to be placed against a property. This definition in 5263 gives specific liberties to Association Boards by this definition and could hurt homeowners’ rights in that all fines will become amounts that are eligible as liens.

P3, Definitions/association: By the notations connecting section 117; the law supersedes 59.18; 64.32, 64.38 – specific to 64.38: the Mount Vista association believes that association means the board of directors instead of meaning homeowners. In SB 5263 the definition gives specific authority to the association meaning board of directors and usurps the rights of homeowners as it does not consider them as the “association.”

Additionally, does item B&C in reference to interests in real estate: does this include non-judicial judgments? Our Association owns a property due to a lien placement.

P3, Definitions/common expense liability: Because the definition is pursuant to section 208, there are methods within SB 5263 by this definition that allocates votes and reduces a homeowner’s ability to be represented.

P5, Declarant: According to our CC&Rs , the declarant changes upon the completion of the development – this law makes provision to usurp our CC&Rs.

P5, Declarant control: By SB 5263, there is concern that the declarant will continue to control future interests which might not represent the homeowners; thus limiting the rights of the homeowners.

P6, Full funding plan: SB 5263 specifically refers to section 331 which depletes the homeowners’ right to vote on assessments and gives specific authority to a board of directors to budget and assess all homeowners without homeowner consent. This impacts Mount Vista and the homeowners desire to close their pool which has been voted on three times by homeowners over 8 years. The board of directors can decide for the residents without homeowner vote or input.

P6, Governing documents: The concern is that homeowners buy into a community with a specific set of CC&Rs. By listing rules or other written instruments in SB 5263 the association which this bill refers to association as the board of directors removes the right of the homeowner to amend its CC&Rs.

P7, Master association: Section 301 specifically notates that this law supersedes 23.86, 24.03, 24.06 and 25.15 thus limiting the rights of homeowners in regard to these laws. This appears to have unintended consequences through the privileges gained by a board of directors by this law allowing a board to act without a vote or input of its homeowners.

P7, Nominal reserve: By this definition, the Mount Vista homeowners may become subject to an assessment of over \$100,000. Most homeowners are seniors in this development and would be severely impacted by losing their right to vote for improvements as opposed to the privilege given to a board of directors to act without the vote or consent of homeowners.

P8, Remaining useful life, Replacement cost, Reserve component: The basis is not provided within the writing thus giving express authority to a board of directors through other components of SB 5263.

P9, Rule: This definition gives specific authority to the board of directors because they have defined association as the board which means they can make “rules” instead of being guided by CC&Rs or a vote of the homeowners to change the CC&Rs. This has impacted Mount Vista in that a number of board members have “paraphrased” our CC&Rs with their interpretation of state law subjecting homeowners to fines, emotional distress and ultimately resulted in the Liberty Counsel being involved on numerous occasions since 2012 with homeowner Lisa Schmidt to protect homeowner rights..

P9, lines 37 through lines 10 on P10: REMOVE, this is offensive to homeowner rights.

P12, lines 24 through 30: Clark County should review the specific to section 218 (2) – refers to page 38, 39, 40 and 41 and 42 through line 33. There are specific impingements, infringements and compromises of homeowner rights.

P13, New Section, 107: This section attempts to enhance itself as SB 5263 without knowing the unintended consequences. It is so broad that it’s virtually impossible to have any inconsistency.

P14, New Section, 108: THIS SECTION MAKES THIS LAW UN-REVOCABLE BY FUTURE LAW by this section.

P14, New Section, 109: THIS LAW SETS A PRECEDENT TO BE APPLIED TO OTHER STATES REGARDING FEDERAL APPLICATIONS by this section.

P14, New Section, 110: IF ANY PART BECOMES INVALID BY THIS SECTION, THE REMAINING PARTS ARE VALID.

P15, New Section, 114: Adjustment of Dollar Amounts: Refers to section 116 which lists applications of 58.19, 64.32, 64.34, and 64.38. This section should not supersede common interest properties that have and are exempt from the provisions of 64.38 because of CC&Rs. Again, this depletes the rights of homeowners by reducing their rights.

P17, New Section, 117: This is NOT clear regarding lines 29 through 31 that says this law supersedes provisions of governing documents [CC&Rs] and all communities subject to Chapter 64.38. Section 117 is not clear as to 1) the applicability of 5263 to common interest communities that are subject to 6438 and 2) that section 117 is also not clear as to preexisting common interest communities not subject to 64.38.

P17, Section 118: This is ambiguous because of correlations to issues raised in section 117. This regards the governing documents and the ability of homeowners to have control through voting. The board is given control by these sections.

P18, Section 120: This section in its entirety is incompatible with the preservation and protection of homeowner rights. THIS SECTION OVERRIDES CC&RS AND THE ABILITY OF HOMEOWNERS TO PROTECT THEIR RIGHTS.

P20, II Creation, Alteration and Terminations of common interest communities: THIS BLANKET SECTION SUPERSEDES ALL CC&RS, ARTICLES OF INCORPORATION AND BY-LAWS THAT ARE NOT SUBJECT TO 64.38 AND SUBSCRIBED TO BY HOMEOWNERS. Mount Vista is currently protected by its cc&r's, articles of incorporation and by-laws.

P22, Section 204, Construction and validity of governing documents: THIS LAW PREVAILS to the extent that a declaration is inconsistent with this chapter. The burden is on the homeowner to prove the inconsistency. It does not protect the rights of the homeowner.

The section limits the exposure of any error made by the declarant limiting recourse for the homeowner.

P26, New Section, 208: This appears to limit the voting ability of the homeowner by offering formulas. It does not give equal and proportionate voting privilege to the owners.

P34, New Section, 212: Government should not be able to tell me that I cannot change the appearance of my home without approval of the board. REMOVE this section.

P35, New Section 213: Define unit...if I have a boundary issue with my neighbor, I have to involve the board. I must make application to the board – and must provide any other items required by the board. The homeowners' rights are usurped by the authorities given to the board of directors; especially, when a board like Mount Vista's board of directors has pounded the homeowners by overzealous interpretations of the laws.

P38, New Section 218: Regarding Amendment of Declaration. This severely limits the rights of homeowners to change their CC&Rs by this section. It overrides any CC&R subscribed by a homeowner at purchase and severely impacts the resale ability of the property because the rules will change after the purchase. This depletes property values potentially. In essence, you would be bound under one law and then become subject to something else.

P40, Paragraph 9, 10: Aborts our rights under our CC&Rs, articles of incorporation and by-laws and unilaterally, without a vote of the membership compromises and subjects the owners to a new law or forces the owners into a contract without a say.

Beginning P38 through 41, Entire pages: Allows the Board of Directors to make decisions without a vote of the homeowners to amend the declaration, to remove language and to deal with other persons

through their actions by this law. This could be through disagreement by the board of one person. The absence of rejection grants the board the right to change.

P42, C, Notice of proposed amendments: Votes not received allow a board to assign the votes in effect becoming an assignment of votes to the board. The homeowners' rights are extremely compromised.

P42, NEW SECTION, Section 219, beginning of the section at line 34 to page 47, line 27: This supersedes CC&Rs. This is too broad of a section. It covers too many different areas. It gives the board uncontrolled power to encumber the association members. It potentially places a huge liability on individual homeowners because of the potential of the board to overextend financing of common properties. If an association were terminated, the debt of the board would need to be paid by each and all homeowners.

Under termination of common areas, the proceeds of the sale of those areas [line 21, page 44] appears to be in conflict with IRS 501 C3 dissolution.

P48: Increases common charges to amortize the loan to create less of an opportunity for a homeowner to fulfill his right to homeownership.

P48, NEW SECTION, Section 221: We would like the law to be clear that an association such as ours is not subject to allowing adherence to a Master Association under any circumstances.

P51, NEW SECTION, Section 224: In regard to adding additional real estate, this section is ambiguous and appears to potentially encumber homeowners without their consent or vote.

P53, III, Management of the common interest community, NEW SECTION, 301: This could compromise and limit homeowner rights.

P54, NEW SECTION, Section 302: This section beginning at line 8 limits and compromises homeowner rights and protection currently provided for and delineated by our CC&Rs, articles of incorporation and bylaws. To cite a critical example, section 302, subsection 1, subsection b: completely takes away the power and the right of a homeowner to approve or disapprove budgets by actively voting either for or against it.

Line 26: The association could intervene on behalf of itself or two other owners. The association in this law means the board of directors. The board can sue on behalf of other owners. The board is given super rights over homeowners and in the case of one homeowner being in disagreement with another, the board can take up the fight against a homeowner it disagrees.

P58, NEW SECTION, Section 303: This section is a violation of homeowners' rights and privileges by obligating care and loyalty by the board to the association [the board of directors as defined by this law is the association]. This redefines the duty of a board member to the board itself as opposed to the homeowners.

P60, Line 5-7: Committees of only two board members may take action thereby usurping the authority of a full board of directors. Mount Vista currently has this situation in that sometimes more than one half of the full board may be unknowledgeable of any action. These committees are not required to report and are sometimes referred to in Mount Vista as the “secret society.”

P66, NEW SECTION, Section 308: This section in its entirety looks to abate homeowner rights and privileges by its scope and actions. This is in conjunction with Section 303 which empowers the board as opposed to the homeowner. It gives the board the authority to amend without homeowners voting.

P66, NEW SECTION, Section 309: This section removes the right of the homeowner to take action on any component that might be at risk of being considered a hazard. IN THIS SECTION, THE BOARD HAS THE AUTHORITY TO ENTER UPON YOUR PROPERTY AND PRESCRIBE WHAT IS IN THEIR OPINION REMEDIAL ACTION. SHOULD THIS BE REFUSED BY THE HOMEOWNER, THEY CAN PERFORM THE PRESCRIPTION AT THEIR WILL AND INVOICE THE HOMEOWNER. Even police and firemen have limitations on entering properties, but this section gives the board express rights to enter upon a homeowner’s property.

P67, NEW SECTION, Section 310: If a board member acts out of compliance, the board is correct until corrected by a court of law according to 5263. This is not correct thinking. Homeowners should have the right to rectify actions that are deemed incorrect.

P69, lines 2 through 4: Giving a board the ability to expel or prohibit attendance is not a good idea. First off, I’ve personally {Lisa Schmidt} felt compelled to bring my husband to meetings for my protection from other board members who yell, use profanity and have physically entered my space. Intimidation is a tactic of many of the board members. Being able to expel or prohibit my attendance would have limited my ability to protect myself under the first amendment of the constitution in 2012. THE HOMEOWNERS should have the right to expel a board member – currently; our CC&Rs explain how to remove a board member from office.

P71, NEW SECTION, Section 311: While the section says organizational documents, one must remember that in SB 5263, organizational documents can be changed by as few as two of the members of the board when done by committee. This section needs clarification because it suggests that an association is something more than a board. The board is the association in SB 5263. Homeowners are already being abused in Mount Vista by trying on this action.

P73, Section 312 (6): Homeowners rights are compromised by the board conducting a vote without a meeting....additionally there are notations that if an association does not receive an acceptable number of votes or a quorum that the board may extend a voting period to “lobby” for its interests.

P74, Line 19: The homeowner loses his or her right to vote when the property is leased out. The homeowner can be excluded in regard to notifications.

P74, Section 313: This section completely gives luxury to an association's board of directors. Section 313 appears to impose a liability on homeowners for a civil wrongdoing committed by the association or board of directors.

P80, Line 2: There is a continued thinking that is prevalent throughout this bill that presumes that an association could get 80 percent of its owners to vote; even with the lobbying ability of the board in section 312 – basically, homeowners are left with no remedy to ever take a disagreement...they can be thrown out of a meeting ...they can be refused their ability to participate in a meeting because action can be taken by the board without notice of meeting...this gets to the point that you cannot serve the purpose of a homeowner on page 80 without taking the entirety of the bill into account. **There is little means for a homeowner to be represented by the law.**

P81, NEW SECTION, 317: It appears to impose a greater burden on homeowners than the association's board of directors.

P83, NEW SECTION, 318: Assessments are identified for placing a lien. Under previous law, the lien powers of the organization only included being able to lien for unpaid dues. Here the rights of the homeowners are at the mercy of the board when it comes to fine authority and the board can make the rules per this legislation as opposed to being voted on by the membership. There are no membership references anywhere in this bill – members are homeowners.

P85, Continued in Section 318: This empowers the association and its board of directors to attack homeowners by lien and provides little or no defense for homeowners. It appears that the bill on page 85 might be trying to show mercy by giving six years to pay assessments; however, previous legislation does not limit by time a homeowner's ability to recover.

Further, an association or board of directors can sell by a public sale or a private sale after foreclosing judicially. The association may buy [giving authority over homeowners] and make the owner liable for a deficiency. Whoever acquires the property is free and clear. This gives a board of directors the ability to purchase without the memberships approval or input.

P 89, NEW SECTION, 319: Judgments against the association are not a lien on the common elements but are a lien against all other real estate of the association and all of the units of the common interest association at the time of the judgment.

P92, NEW SECTION, 320: SB 5263 comprises the rights of homeowners to view documents. The greater issue is whether the homeowners should have knowledge if the association, board of directors or its agents have sought and received any legal counsel. In Mount Vista, homeowners have asked if legal counsel was sought and or obtained and the answer when yes to a request of the document was then denied.

Line 26 states that a board may decide not to disclose agreements at its discretion for good cause. Good cause is a legal term. This enables a board to abuse homeowners.

P93, NEW SECTION, 322: RULES: this section highlights the problem of SB5263 being written by attorneys. The law is so encompassing that there is at least one homeowner that is having difficulty in Mount Vista currently in obtaining legal counsel. Such was also the case in regards to a notorious 2012 legal battle in Mount Vista whereby the homeowner became represented by a firm authorized to practice federally and represent the homeowner. SB 5263 removes the ability for federal protections by certain limitations written in previous sections.

In this section, rules in Mount Vista are considered the same as CC&Rs. The impacts of a board being able to make rules without a vote by homeowners to amend the CC&Rs create a dictatorship of the board of directors.

Lack of business procedures as stated in line 34 creates an opportunity for fraud. Line 36 states that every rule must be reasonable....how is reasonable defined?

P94, Section 323: This is UNNECESSARY. These are rights by federal legislation that protect most items; however, page 95 at line 28 limit the use of assembly by rules determined by the board of directors. These are attempts to limit the rights of homeowners as prescribed by our constitution.

P95, line 32 continues to list that the board [association] can affect **behaviors** in units [homes]. There are already cases in Texas where Bible studies were being restricted because of associations. Rights given by our US Constitution are invalidated by these sections.

P95, line 39 restricts the ability of a homeowner or investor to lease out a property.

P97, NEW SECTION, 325: This conflicts earlier writing about rules and quorums. Because SB 5263 says that this legislation supersedes CC&Rs, our [Mount Vista] CC&Rs would not be applicable in the means to remove a board member. This section could potentially be enacted by 6 people if 10 people are present at a meeting. Control by a board would easily be taken.

P99, NEW SECTION, 326: This is the process whereby not voting means that the budget passes. The board at any time may propose an assessment by placing an item into the budget. By adopting the budget the board may make the assessment due by homeowners without a vote of the homeowners. The Mount Vista board attempted this process in the spring of 2013 and the board backed down after the homeowners complained that there was no authority for this.

P99, NEW SECTION, 327: Why would accrual based accounting be specified?

P101, line 14: Here the governing documents may impose greater requirements on the board...this contradicts earlier parts of the law that says this law will supersede CC&Rs as well as previous laws.

P103, NEW SECTION, 333: This section gives IMMUNITY from LIABILITY...in our Mount Vista neighborhood, our past manager, Vicki Sparks failed to create or inform members that a reserve might be necessary to keep the pool property open. This was 8 years ago, but this law will give her immunity forever. Interestingly, Vicki Sparks testified as the ONLY person not representing an organization but as a citizen in FAVOR of this bill. Vicki Sparks continues to lead board decisions of board members who

have been long-standing board members. New board members have introduced resolutions and motions to not have her involvement; yet, there are actions by committee whereby the previous boards made resolutions that two board members could make decisions. Thus, the new board members are ineffective and usurped by the authority that is legitimized in this proposed legislation.

P116, NEW SECTION, 409: This section gives the Association an ability to charge it's homeowners to enumerate an indicated list to new purchasers. Thus the board now has prepared an income stream for itself from its homeowners.

P117, a statement must be disclosed of any restrictions of the rights of the property must be disclosed.

P118, line 24: "Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost ..." THIS SPECIFICALLY IMPACTS MOUNT VISTA'S HOMEOWNERS RIGHT TO NOT REPLACE THEIR POOL. This vote has been taken three times and not passed; the board of directors continues to utilize legislation to abuse these homeowners. This is proof by Vicki Sparks' testimony in her interest to force homeowners to pay for this assessment and not represent the homeowners of Mount Vista.

P130, New Section, 418: In addition to the award of attorney's fees and costs, damages should also be imposed by the court.

P131, Section 501: Does a homestead exemption compromise a homeowner's right in any way?

P132, NEW SECTION, 502: SB 5263, this section compromises protections and rights and privileges given under 64.38 to homeowners by superseding that law; specifically, for MOUNT VISTA whereby we are excluded in certain sections because of preambles that respect our CC&RS as our governing documents. Vicki Sparks testimony given at the hearing specifically addresses that the board members disagree that 64.38 protects homeowners. Senator Don Benton and State Representative Paul Harris have reduced this law to writing for Mount Vista Homeowners between 2012 and 2014 on more than one occasion.

More so, Rick Stellfox, Vice President and board member of Mount Vista and Rules Committee chair [which makes rules by two people and submits homeowners to fines without board action of due process] accompanied Vicki Sparks to her testimony. Rick has informed homeowners that the purpose of his trip to Olympia was to seek clarification and has informed homeowners that their rights are not compromised by this proposed legislation in any way.