

Common Interest Community
Associations
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Disclaimer

This presentation does not constitute legal advice, either by the Presenter or by the Secretary of State's Office. If your Association has a specific legal issue or concern, then it should contact a licensed attorney.

Types of Associations



Condominium Associations (RCW 64.32 and/or RCW 64.34 and RCW 64.90 to limited extent)

Homeowners Associations (RCW 64.38 and RCW 64.90 to limited extent)

Cooperatives (RCW 23.86 and RCW 64.90 to limited extent)

Common Interest Community Associations (RCW 64.90)

Definitions

Association: Legal entity whose members are owners of certain residential real estate

Governing Documents: Articles of Incorporation, CCR's (covenants, restrictions and reservations), Declaration, Bylaws, Rules, and Plat

Board: The body with the primary authority to manage the association

Quorum: The number of persons who must be present in order to hold an official meeting and conduct business

Definitions (cont.)

Common Areas: Property owned, maintained, and administered by the association

Assessments: Money levied by a community association on unit owners; commonly known as “dues”

Reserve Studies: In-depth evaluation of the condition of a property's physical components and the amount of funds that will be needed to replace them at the end of their useful life

Incorporation

- ▶ Many community associations are legally required to stay incorporated in good standing (RCW 64.34 condominiums and RCW 64.90 common interest associations).
- ▶ Failure to maintain corporate entity may jeopardize association's ability to collect assessments, enforce covenants, and contract for desired services.
- ▶ Incorporation provides liability protection to owners.

Governing Documents

- ▶ Association Powers
- ▶ Use Restrictions
- ▶ Architectural Controls
- ▶ Assessments
- ▶ Notice, Meeting, and Voting Procedures
- ▶ Enforcement
- ▶ Dispute Resolution
- ▶ Amendment

Association Meetings



- ▶ Annual meetings are required.
- ▶ Special meetings may be called by president, majority of the board, or owners with 10% of the vote.
- ▶ Meetings must be open and minutes must be kept.
- ▶ Board may enter executive session in some situations, but any actions must be ratified in open session.
- ▶ Default meeting quorums are 34% (HOA) and 25% (condo).

Board of Directors



- ▶ Elected by owners
- ▶ Acts on association's behalf
- ▶ Duties of care and loyalty
- ▶ Responsible for enforcement of covenants
- ▶ Must keep meeting minutes regarding decisions

Board Powers

Unless otherwise provided in the governing documents, an association may:

- ▶ Adopt rules and regulations
- ▶ Enter into contracts
- ▶ Adopt proposed budgets and collect assessments
- ▶ Impose late fees on delinquent assessments and reasonable fines
- ▶ Regulate use, maintenance, repair, replacement and modification of common areas



Budget Ratification

Budget summary must be mailed to owners at least two weeks and up to two months before a budget ratification meeting. The budget approved by the board is deemed ratified unless it is rejected by majority of the owners at that meeting.



Reserve Study

- ▶ Associations are required to obtain and maintain reserve studies if they do not fall within an exception.
- ▶ If a community association has only nominal reserve costs or if the cost of the reserve study or update exceeds 10% of the association's annual budget, then it is not required to obtain a reserve study. "Nominal reserve costs" means that the current estimated total replacement costs of the reserve components are less than fifty percent of the annual budgeted expenses of the association, excluding contributions to the reserve fund, for a condominium or cooperative containing horizontal unit boundaries, and less than seventy-five percent of the annual budgeted expenses of the association, excluding contributions to the reserve fund, for all other common interest communities.

Reserve Study (cont.)

- ▶ Reserve study updates must be based on a site inspection by reserve study professional every 3 years. Initial reserve studies must be based on site inspection by a reserve study professional, and they must be updated annually.
- ▶ Association must disclose lack of reserve study on resale certificate.

Reserve Accounts

- ▶ State law encourages but does not require associations to maintain reserve accounts to fund major repairs, maintenance and replacement of common areas.
- ▶ Reserve funds may be withdrawn from reserve account to meet unexpected expenses, but such a withdrawal must be noted in minutes, notification of the withdrawal must be delivered to every owner, and the association must adopt a repayment schedule.



Financial Records

- ▶ Associations must keep financial records sufficient to demonstrate receipts and expenses.
- ▶ Annual financial statements are required.
- ▶ Association records must be made available to owners and their agents upon reasonable notice.



Architectural Controls

- ▶ Restrict owners' ability to build new structures and modify existing structures
- ▶ Must act promptly and follow required procedures
- ▶ Must enforce standards in same manner for all similarly situated owners
- ▶ Maintain records to demonstrate that procedures have been followed and reasonable decisions have been made



Covenant Violations



- ▶ Association and owners have right to sue for damages or an injunction if covenants are violated. The court may award reasonable attorney fees to the prevailing party in such an action.
- ▶ Association may impose fines based on schedule previously approved by board and distributed to the owners after providing owner with notice and an opportunity to be heard.

Waiver/Abandonment

- ▶ Courts sometimes do not enforce restrictive covenants if they have been regularly and substantially violated in a manner that indicates that they have been abandoned.
- ▶ Minor or occasional violations are insufficient to show abandonment/waiver.



Mediation and Arbitration

- ▶ Mediation and/or arbitration may be required by an association's governing documents.
- ▶ Mediation during litigation is required in many counties.
- ▶ Arbitration is also required in many counties in civil, non-domestic lawsuits if they are filed in superior court, the relief requested is for money damages only, and no claim exceeds \$50,000 in value.

Mediation and Arbitration (cont.)

- ▶ During mediation, a person attempts to help the parties reach a voluntary agreement.
- ▶ Most counties have programs that provide low-cost mediation services. The website for the King County Dispute Resolution Center is <https://kcdrc.org>. Resolution Washington (<https://resolutionwa.org>) also provides resources for those seeking mediation services.

Mediation and Arbitration (cont.)

- ▶ Arbitration is a more complicated and expensive process which involves identifying an arbitrator acceptable to both parties, submitting written statements and evidence, and presenting oral arguments at a hearing.
- ▶ Washington Arbitration & Mediation Service (<https://usamwa.com>) is a major provider of arbitration services in Washington.

WUCIOA

- ▶ The Washington Uniform Common Interest Ownership Act (“WUCIOA”) took effect on July 1, 2018 and is codified as RCW 64.90.
- ▶ WUCIOA is a comprehensive statute that governs the creation, amendment, operation, termination, and sale of “common interest communities” (“CIC”s). A CIC is a real estate regime where an owner of real estate, by virtue of that ownership, is obligated to pay a share of expenses related to other real estate.

WUCIOA (cont.)

- ▶ The effect of WUCIOA's provisions can not be changed except where expressly allowed by that law.
- ▶ WUCIOA applies in full to any CIC created after July 1, 2018.
- ▶ Five sections of WUCIOA apply to CICs created on or before July 1, 2018.
- ▶ First, RCW 64.90.095 states that CICs may opt-in to WUCIOA in its entirety with a 67% vote of those present if at least 30% of the owners participate in the vote.

WUCIOA (cont.)

- ▶ Second, RCW 64.90.100 states that CICs that are restricted to nonresidential use are not subject to WUCIOA.
- ▶ Third, RCW 64.90.405 states that CICs have the power to adopt budgets and impose assessments in accordance with WUCIOA.
- ▶ Fourth, RCW 64.90.525 states that CICs must prepare annual budgets and ratify them. Budgets must be provided to owners and meetings must be scheduled 14 to 60 days later. Unless owners holding at least 51% of the voting power reject the budget, it is ratified, whether or not a quorum is present.

WUCIOA (cont.)

- ▶ Fifth, RCW 64.90.545 states that CICs must obtain reserve studies based on visual inspections by reserve professionals, update them annually, and update them every 3 years based on visual inspections by reserve professionals unless they have nominal reserve costs or the cost of the reserve study or update exceeds 10% of their annual budget.

WUCIOA (cont.)

- ▶ One significant benefit when WCUIOA is adopted is that rental caps may be approved with a 67% vote.
- ▶ Another WUCIOA benefit is that association liens are given priority over mortgages in amount of six months of assessments plus the association's costs and attorney fees (not to exceed the lesser of the unpaid assessments or \$2,000) incurred in foreclosing its priority lien.

WUCIOA (cont.)

- ▶ Standards regarding notice and rule-making are established.
- ▶ Standards regarding delinquent assessment collection are established.
- ▶ Limits on associations' ability to limit flags and solar panels are established.
- ▶ Public offering statements or resale certificates are required when a CIC unit is sold.

New Electronic Notice/Meeting Law

- ▶ Applies to all common interest associations (including pre-WUCIOA communities)
- ▶ Amends existing state statutes governing common interest associations
- ▶ Provides extensive framework for different types of notice, meeting, and voting procedures, including electronic methods
- ▶ Applies despite any contrary provisions in association's governing documents except for electronic meeting sections

New Notice/Meeting Law (cont.)

- ▶ Associations may notify specific owners of meetings and other matters by electronic transmission with their prior consent to be notified in that manner. Associations may meet remotely. Owners may vote by proxy, mail, and electronic transmission in connection with a meeting
- ▶ Minimum meeting notice is increased to fourteen days and maximum meeting notice is decreased to fifty days for RCW 64.34 associations
- ▶ Maximum meeting notice is decreased to fifty days for RCW 64.38 associations

New Foreclosure Law

- ▶ Applies to all common interest associations (including pre-WUCIOA communities)
- ▶ Amends existing state statutes governing common interest associations
- ▶ Associations not permitted to commence foreclosure actions until owners owe sum equal to greater of three months of assessments or \$2,000
- ▶ Associations must provide new types of notice before commencing foreclosure action

New Nonprofit Corporations Law

- ▶ Replaces existing RCW 24.03 governing nonprofits
- ▶ Establishes requirements for record-keeping (meeting minutes, records of actions taken by unanimous consent, all communications with members that are in the form of a record for the past six years, most recent annual report, adequate accounting records, etc.) and access to records
- ▶ Establishes director standard of care (ordinarily prudent person and in a manner that they reasonably believe is in best interest of association)
- ▶ Requires associations to obtain federal employer identification number

New Electric Vehicle Law

- ▶ Associations may not effectively prohibit or unreasonably restrict owners' installation of electric vehicle charging stations within unit boundaries or parking spaces
- ▶ Association may impose reasonable restrictions on electric vehicle charging stations
- ▶ Owners are responsible for electricity costs

New Density Law

- ▶ Increased housing density must be permitted by cities
- ▶ Increases to twoplexes or fourplexes are most common
- ▶ Only applies to associations created on or after July 23

New Child Care Law

- ▶ Associations may not prohibit, unreasonably restrict, or limit the use of properties for licensed family home child care or licensed child daycare centers
- ▶ Associations may require properties to: 1) provide direct customer access from the outside of the buildings or through publicly accessible common areas, 2) be licensed, 3) indemnify the association, 4) obtain insurance or provide self-insurance, and 5) provide the association with signed waivers from the guardians of each child
- ▶ Associations may impose reasonable rules pertaining to this use

New Leasing Law

- ▶ Associations may require properties to use a tenant screening service or obtain background information pertaining to prospective tenants at their expense before executing leases and to require proof of this
- ▶ Associations may not require that tenant screening reports or any background information pertaining to tenants be furnished to them

New Records Law

- ▶ Current budget
- ▶ Receipts, invoices, and other adequate accounting records within the last seven years
- ▶ Minutes of all meetings of its owners and board, a record of all actions taken by its owners or board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association
- ▶ Names of current owners, their mailing addresses, and the number of votes allocated to each property

New Records Law (con't.)

- ▶ Governing documents
- ▶ Financial statements and tax returns for the past seven years
- ▶ List of the names and addresses of current board members and officers
- ▶ Contracts to which association was a party within the last seven years
- ▶ Materials relied upon by the board or any committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made

New Records Law (con't.)

- ▶ Materials relied upon by the board or any committee concerning a decision to enforce the governing documents for a period of seven years after the decision is made
- ▶ Notices provided to the owners
- ▶ Ballots, proxies, absentee ballots, and other records related to voting by owners for one year after the election, action, or vote to which they relate.

- ▶ Association records must be made available for examination and copying by all owners, holders of mortgages on the properties, and their respective authorized agents during reasonable business hours or at a mutually convenient time and location and at the offices of the association or its managing agent
- ▶ Records retained by associations must have certain information redacted from disclosure as specified in state law