

HOMEOWNERS ASSOCIATIONS WORKSHOP
THINGS YOU SHOULD KNOW
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Presented by
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Introduction

Types of Owner Associations/Properties

- HOA, COA, Co-op
- Single family plats
- Condominium “plats”
- Townhouses
- Mixed use projects
- Master associations
- Common maintenance without association

Scope of CCRs

- Use restrictions
- Architectural controls
- Common areas
- Association
- Budgets and assessments
- Collection of assessments, liens
- Enforcement
- Amendment
- Insurance
- Easements
- Dispute resolution
- Additional property

64.38 Homeowners Associations Act (adopted 1995)

Some Important Definitions

- **Association**
Corporation, unincorporated association or other legal entity, each member of which is an owner of certain residential real estate described in the governing documents under which each member by virtue of membership or ownership of property is required to pay property taxes, insurance premiums, maintenance costs or for improvement of real property other than that owned by the member. Condominium associations are excluded.
- **Governing Documents**
Articles of incorporation, bylaws, plat, CCRs, rules and regulations of the association or other document giving the association the authority to exercise powers provided in the chapter or to manage or maintain property in its jurisdiction. Best to have the substantive provisions in recorded documents, usually the Plat or Declarations of covenants, conditions, restrictions and reservations (CCRs) but can also be in a road maintenance

agreement or similar document. Older subdivisions sometimes relied on articles of incorporation and bylaws, but these are not usually recorded and may not provide constructive notice to new owners.

- **Board**
The body with primary authority to manage the association.
- **Common Areas**
Property owned or maintained, repaired or administered by the association.
- **Residential**
Property the use of which is restricted primarily to residential or recreational purposes.
- **Reserve Studies**
Various definitions relating to reserve studies, which are now required of most associations.

Incorporate?

- Most HOAs are incorporated, although that is not required. Incorporation is strongly recommended for purposes of limiting liability of owners, officers and directors. See Riss v. Angel, 131 Wn.2d 612 (1997), where HOA was administratively dissolved for failing to file annual report with the Secretary of State and court imposed personal liability for damages and attorney's fees against those members who participated in a decision wrongfully rejecting an owners house plans. Being incorporated provides an entity to deal with third parties.

Association Powers (“unless otherwise provided in the governing documents, an association may”)

- Adopt bylaws.
- Adopt rules and regulations.
- Adopt budgets and collect assessments.
The condominium act provide that once assessments being on any unit, they begin on all units, including those owned by the declarant. There is no provision in the HOA act that governs this. Accordingly, there are many differences in how assessments are addressed in the governing documents. For example, some provide initial or annual caps that cannot be exceeded without a vote of the owners and declarant/builder exemptions. Statutory lien for condominium assessments but not for HOA assessments. Lien and enforcement provisions in HOA documents vary.
- Contract with managing agents and others independent contractors.
- Institute and defend litigation, except litigation between owners in disputes that are not the responsibility of the association.
- Enter into contracts and incur liabilities.
- Regulate use, maintenance, repair, replacement and modification of common areas.
- Improve common areas.
- Acquire, mortgage and sell property.
- Grant easements, etc over common areas.
- Charge fees for use of common areas.
- Impose late charges on delinquent assessments.

- Impose late charges for delinquent assessments and reasonable fines for violations of bylaws, rules and regulations (ought to say governing documents) in accordance with a published (to owners) fine schedule and after notice and opportunity to be heard, as provided in bylaws or rules and regulations.
- Other powers conferred by the bylaws.
- All powers of same type of corporation.
- Other powers necessary and proper for governance of the association.

Caveat – the exercise of these powers must be within the authority or purpose of the association as provided in the governing documents.

Board of Directors

- Except as provided in the governing documents, the board acts on behalf of the association.
- Standards for duty of care and loyalty are as provided in nonprofit corporation act, RCW 24.03: Specifically RCW 24.3.127:
- Directors have obligation of good faith, in a manner that the director believes to be in the best interests of the corporation and the care of an ordinarily prudent person in a like position, including reasonable inquiry.
- Directors may rely on information, reports, etc. of counsel accountants or other persons the director believes to be within the person professional or expert competence. Also officers, employees and board committees – no likely in HOA context.
- Board members may be removed at any meeting of the owner at which a quorum is present by majority vote of members present.

Budget Ratification by Members

- A procedure for ratification of annual budget by the owners is set out in RCW 64.38.025(3). Within 30 days after adoption of annual budget by the board, summary of the budget is mailed to owners between 14 and 60 before budget ratification meeting. As part of the summary, the board should disclose information about reserves, such as the current contribution rate, the recommended contribution rate from the reserve study and funding plan for next 30 years,
- The budget adopted by the board is deemed approved by the owners unless it is rejected at the meeting by a majority votes of the members (or such larger percentage as may be provided in the governing documents), whether or not a quorum is present.

Flags and Political Signs

- Displays of US flag on owner's or resident's property may not be prohibited as long as flag is displayed in accordance with US laws and regulations.
- Same for political signs, subject to reasonable regulation regarding placement and manner of display

Solar Panels

- The governing documents may not prohibit installation of solar panels on an owner's or resident's property if they meet certain health, safety and certification requirements, subject to provisions in the governing documents relating to aesthetics (may prohibit

panels that extend above the roof line, conform to the shape of the roof if the roof faces a street, require painting of hardware, and limited shielding. Adopted 2009. Retroactive.

Adult Homes

- The governing documents may not prohibit the operation of a licensed adult home or persons with disabilities from living in a licensed adult homes. Adopted 2009. Retroactive.

Reserve Accounts and Reserve Studies

- In 2011, legislation added provisions to the Homeowners Association Act “encouraging” associations to maintain reserve accounts to fund major maintenance, repair and replacement of common areas that will require maintenance, repair and replacement within 30 years (“reserve components”).
- Unless to do so would be a hardship, every association is required to prepare and update a reserve study. Initial inspect must be based on visual inspection and should be updated annually a visual inspection at least every three years.
- Very detailed requirements for contents of reserve studies. List all reserve components whose cost would be more than 1% of the annual operating budget (excludes contributions to reserves), useful life and estimated cost. Then financial projections relating to the funding plan and recommended amount of contributions to the reserve account to achieve fully funded reserves by the end of thirty years, with a baseline plan showing reserves never going below zero without special assessments. The report should also state the current reserve account balance and percentage it is to being fully funded, any special assessments that have been implemented or planned. Reserve studies must be made by a reserve study professional. (17 listed in current WSCAI Directory.)
- Associations may withdraw funds from the reserve account to meet unforeseen or unbudgeted costs unrelated to maintenance, repair or replacement of reserve components but the withdrawal must be noted in the minute book and notice of the withdrawal delivered or mailed to every owner. The board shall adopt a schedule for repayment of the amount withdrawn within a period of not more than 24 months unless it would impose an unreasonable burden on the owners.
- Owners holding at least 35% of the vote may petition the board to have a reserve study done. If board refuses, then the owners may go to court. The board may plead unreasonable hardship, which is determined to exist if the cost of the reserve study would exceed 5% of the association’s annual budget. Attorneys’ fees to the prevailing party.
- Failure to have a reserve study done is not a defense to an owner’s obligation to pay assessments. No liability to association, board, officers for failure to have reserve study done or reserve disclosures made in connection with the adoption of the budget.
- An association is not required to have reserve study done if the cost would exceed 5% of the its annual budget, the association does not have significant assets or there are 10 or fewer homes in the association.

Association Meetings

- Member meetings at least once a year.
- Special member meetings may be called by the president, majority of the board or owners with 10% of the votes.

- Board meetings are to be open to the members and their agents. Minutes shall be kept. Board may vote to go into closed (executive) session for certain items: personnel matters, consultation or communications with counsel, discussions of likely or pending litigation, matters involving possible violations of governing documents or possible liability of an owner to the association. Any action taken in the closed session must be ratified in open session.
- Quorum for Member meetings is 34% unless a different percentage is provided in the governing documents.

Association Records and Funds

- The association or its managing agent shall keep financial and other records in sufficient detail to enable the association to fully declare the financial condition of the association to the members. The records are the property of the association (not the manager)/
- Association records shall be made available on reasonable notice for examination by owners and mortgagees and their agents during normal working hours. Reasonable charges for copying and other costs may be imposed.
- Annual financial statements required. For large associations (annual assessments of \$50,000 or more) the financial statement shall be audited unless waived by 67% of owners present at a meeting at which a quorum is present.
- Association funds shall be kept in accounts in the name of the association and not commingled with the funds of other associations or any manager or other person responsible for custody of the funds.

Violations

- Any aggrieved party may sue for damages or an injunction. The court may, in an appropriate case, award reasonable attorneys' fees to the prevailing party.
- Consider alternative dispute resolution – mediation, arbitration.

Construction Defects – RCW 64 50

- This act established procedures that must be followed before association or homeowners may file a lawsuit for construction defects. They include notices to the builder or developer and opportunities to inspect and timelines for offers to cure or settle. Applies to single family residences, common areas of HOAs and condominiums. Adopted 2002.

Construction of Covenants

- Plats and CCRs are recorded by a property owner to bind all further owners of the property or any portion of it. CCRs are interpreted to determine the intent of the drafter. The provisions are given their ordinary and customary meaning. Parol (outside) evidence admitted only if language is ambiguous. Courts in more recent cases involving HOAs have placed special emphasis on interpretations that protect the homeowners' collective interests, which run counter to older cases that narrowly interpreted any restrictions on land.

Amendments

- Most, but not all, CCRs have provisions for amendments requiring approval of a certain percentage of owners and sometimes mortgagees. Courts limit the power of associations

to adopt amendments by requiring that they be reasonable in light of the purpose of the original CCRs and not constitute a major change in scope. For example, an amendment imposing assessments when none were previously provided for might be considered beyond the permissible scope of an amendment. There are, however, many cases upholding amendments that were properly adopted on the basis that owners buy into a covenant controlled community on the understanding that the CCRs may be changed.

Waiver, Abandonment

- Courts will not enforce a restrictive covenant that has been habitually and substantially violated so as to create an impression that it has been abandoned. In considering whether a covenant has been abandoned, the court looks at the relative number of subdivision lots violating the covenant and the extent of the violations. Lastly, to find that a party has abandoned a restrictive covenant, the court must find the violations material to the covenant's overall purpose; minor violations are insufficient to show abandonment. Whether a party is estopped, because of abandonment or waiver, from enforcing a covenant is a question of fact. Sandy Point Improvement Co. v. Huber, 26 Wn.App. (1980).

Architectural Controls

- Provisions and procedures in governing documents vary widely. Some are quite specific and detailed in terms of style and materials while others are very general.
- Important to understand your procedures and administer them in an even-handed way, treating all owners the same.
- Maintain records to demonstrate that procedures have been followed and reasonable decisions made. Need to act formally.
- Greatest dangers are acting arbitrarily (which can happen when the guidelines are general) and in imposing conditions in excess of those prescribed (which can happen when they are more detailed).
- Take action promptly if owner acts without proper approval since the failure to act will make it difficult to stop or undo what has been done and to enforce the provisions in the future.