

New Laws Apply to Washington State Community Associations  
By Kevin L. Britt, Esq.

The Washington State Legislature recently approved several new laws that affect existing community associations. The first new law prohibits community associations from prohibiting, unreasonably restricting, or limiting the use of properties for licensed family home child care or as licensed child daycare centers. An association may require properties being used in that manner to: 1) provide direct customer access from the outside of the buildings or through publicly accessible common areas, 2) be licensed by the state, 3) indemnify the association against all claims related to that use except for claims that arise in common elements that the association is solely responsible for maintaining under the governing documents, 4) obtain daycare insurance or provide self-insurance, and 5) provide the association with signed waivers from the guardians of each child being cared for that release them from legal claims related to that use. An association may impose reasonable rules pertaining to family home child care and licensed child daycare centers, but those rules must apply equally to all other association members. This law took effect on May 1, 2023.

The second new law permits community associations to require owners who lease their properties to use a tenant screening service or obtain background information, including criminal history, pertaining to their prospective tenants at the owners' sole cost and expense before executing leases and to require proof that this has been done. However, associations may not require that tenant screening reports or any background information pertaining to tenants be furnished to them. This law takes effect on July 23, 2023.

The third new law requires community associations to keep and maintain the following records: 1) the current budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years, 2) minutes of all meetings of its owners and board other than executive sessions, 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, 3) the names of current owners, addresses used by the association to communicate with them, and the number of votes allocated to each property, 4) its organizational and governing documents, including all amendments, 5) all financial statements and tax returns of the association for the past seven years, 6) a list of the names and addresses of its current board members and officers, 7) its most recent annual report delivered to the Secretary of State, if any, 8) copies of contracts to which it is or was a party within the last seven years, 9) 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, 10) 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, 11) copies of insurance policies under which the association is a named insured, 12) any current warranties provided to the association, 13) copies of all notices provided to the owners or the association in accordance with state law or the governing documents, and 14) 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.

Community associations' records must generally 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. However, records retained by associations must have the following information redacted or otherwise removed prior to disclosure: 1) personnel and medical records relating to specific individuals, 2) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, 3) existing or potential litigation or mediation, arbitration, or administrative proceedings, 4) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the governing documents, 5) legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with the managing agent or other agent of the association, 6) information the disclosure of which would violate a court order or law, 7) records of an executive session of the board, 8) individual property files other than those of the requesting owner, 9) unlisted telephone number or electronic address of any owner or resident, 10) security access information provided to the association for emergency purposes, and 11) agreements that for good cause prohibit disclosure to the owners. Prior to disclosure of the list of owners, an association must also redact or otherwise remove the address of any owner or resident who is known to the association to be a participant in an address confidentiality program.

Community associations may charge a reasonable fee for producing and providing copies of any records and for supervising an owner's inspection of records, but an owner is entitled to receive a free annual electronic or paper copy of the list of owners from the association. The right to copy records includes the right to receive copies by photocopying or other means, including through an electronic transmission, if available, upon request by an owner. Associations are not obligated to compile or synthesize information for an owner who requests to review or receive records. This law takes effect on July 23, 2023.

The fourth new law imposes additional requirements on community associations related to the collection of past due assessments. Associations must mail a specified pre-foreclosure notice to delinquent owners along with the first notice of delinquency for past due assessments and the same notice again before beginning a foreclosure action against those owners' properties. The second notice may not be mailed sooner than sixty days after the first notice is mailed. Associations may not begin foreclosure actions against delinquent owners' properties unless they owe a sum greater than: 1) three months or more of assessments, not including fines, late charges, interest, attorneys' fees, or costs incurred by the association in connection with the collection of the delinquent owner's account, or 2) \$2,000 of assessments, not including fines, late charges, interest, attorneys' fees, or costs incurred by the association in connection with the collection of a delinquent owner's account. This law takes effect on July 23, 2023.

The laws that apply to community associations grow more numerous and complex every year. It has unfortunately become virtually impossible for associations to comply with all of those laws without legal guidance. Community association boards should strongly consider consulting with an attorney who specializes in this area on a periodic basis.

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