

**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.

# A Month in the Life of a Board

- Key Responsibilities
  - Resources
  - Reserves
  - Records
  - Rules
- Washington state laws are complex and often require legal guidance to understand.

# 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)

# Governing Documents

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





# Resources - Budget Ratification

Budget summaries must be mailed to owners at least 2 weeks and up to 2 months before budget ratification meetings. The budget approved by the Board is ratified unless it is rejected by majority of the owners at that meeting.



# Reserve Studies

All common interest communities (“CICs”) are required to obtain and maintain reserve studies if they do not fall within an exception.

If a CIC has only nominal reserve costs or if the cost of the reserve study or update exceeds 10% of the CIC’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 50 percent of the annual budgeted expenses, excluding contributions to the reserve fund, for a condominium or cooperative containing horizontal unit boundaries, and less than 75 percent of the annual budgeted expenses, excluding contributions to the reserve fund, for all other CICs.

# Reserve Studies (cont.)

Reserve study updates must be based on a site inspection by a licensed reserve study professional every 3 years. Initial reserve studies must be based on site inspections by such professionals, and they must be updated annually.

CICs must disclose lack of reserve study on resale certificate.

# Reserve Accounts

State law encourages but does not require CICs to maintain reserve accounts to fund major repairs, maintenance and replacement of the 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 CIC must adopt a repayment schedule.

# Records



New standards for recordkeeping were recently established by state laws RCW 24.03 and 64.90, which contain lengthy lists of categories of documents and information that must be kept for varying lengths of time. Documents such as meeting minutes, financial records, budgets, and notices to owners must be kept. Legal guidance should be considered.

# Rules - 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



# Rules Violations

CICs 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 a lawsuit.

Board may impose fines based on previously approved schedule that has been distributed to the owners after providing the owner with notice and an opportunity to be heard.



# Rules Enforcement

Board is required to enforce rules consistently, but exceptions can be made.

Courts often refuse to enforce rules that have been regularly and substantially violated in a manner that indicates abandonment or waiver.

Minor or occasional violations are insufficient to show abandonment or 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.)

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.

# Recent Law - Nonprofit Corporations Law

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 CICs to obtain federal employer identification number

# Recent Law - 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 CICs. 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.)

WUCIOA's provisions cannot be changed except where expressly allowed by that law.

WUCIOA applies in full to any CIC created after July 1, 2018.

5 sections of WUCIOA apply to CICs created on or before July 1, 2018.

First, RCW 64.90.095 permits CICs 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 WUCIOA is adopted is that rental caps may be approved with a 67% vote.

Another WUCIOA benefit is that CICs liens are given priority over mortgages in amount of 6 months of assessments plus the CIC'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 rulemaking are established.

Standards regarding delinquent assessment collection are established.

Limits on CLCs' ability to limit flags, solar panels, and several other uses are established.

Public offering statements or resale certificates are required when a unit is sold.

# Recent Electronic Notice and Meeting Laws

Applies to all CICs (including pre-WUCIOA communities)

Amends existing state statutes governing CICs

Provides extensive framework for different types of notice, meeting, and voting procedures, including electronic methods

Applies despite any contrary provisions in governing documents except for electronic meeting sections

# Electronic Notice/Meetings

(cont.)

CICs may notify specific owners of meetings and other matters by electronic transmission with their prior consent to be notified in that manner. CICs may meet remotely. Owners may vote by proxy, mail, and electronic transmission in connection with a meeting.

Minimum meeting notice is increased to 14 days and maximum meeting notice is decreased to 50 days for RCW 64.34 CICs.

Maximum meeting notice is decreased to 50 days for RCW 64.38 CICs.

# Recent Records Law

Current budget

Receipts, invoices, and other accounting records within the last 7 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 CIC

Names of current owners, their mailing addresses, and the number of votes allocated to each property

# Recent 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 CIC 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 7 years after the decision is made

# Recent 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 7 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

# Recent Records Law (con't)

CIC 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 at the offices of the CIC or its managing agent

Records retained by CICs must have certain information redacted from disclosure as required by state law

# Recent Foreclosure Laws

Apply to all common interest associations (including pre-WUCIOA communities)

Amend existing state statutes governing CICs

CICs are not permitted to commence foreclosure actions until owners owe sum equal to greater of three months of assessments or \$2,000

CICs must provide new types of notice before commencing foreclosure action



# Recent Electric Vehicle Law

CICs may not effectively prohibit or unreasonably restrict owners' installation of electric vehicle charging stations within unit boundaries or parking spaces

CICs may impose reasonable restrictions on electric vehicle charging stations

Owners must pay electricity costs

# Recent Child Care Law

CICs may not prohibit, unreasonably restrict, or limit the use of properties for licensed family home child care or licensed child daycare centers

CICs 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

CICs may impose reasonable rules pertaining to this use

# Recent Leasing Law

CICs 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

CICs may not require that tenant screening reports or any background information pertaining to tenants be furnished to them

# In Conclusion ...

Boards are responsible to manage **resources, reserves, records, and rules**. They must be impartial and informed and should consider consulting with professionals in cases of dispute or doubt.

# One More Thing!

Did you find this presentation helpful, have suggestions to improve it, or have additional questions? If so, then please complete the survey using the QR code on the final slide!

# Post-Engagement Survey

