

THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT: AN INTRODUCTION FOR CLT ORGANIZATIONS

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I. Introduction

The Washington Uniform Common Interest Ownership Act (“WUCIOA”) was adopted by the Washington State Legislature in March of 2018. It became effective 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.” It also governs ancillary matters such as taxation, condemnation and creditors’ rights relating to common interest communities. WUCIOA changes (in some cases, significantly) the rules governing common interest communities in Washington. WUCIOA affects developers, owners, buyers, sellers, associations, lenders, creditors, title insurers, and governments of common interest communities.

The purpose of this paper is to introduce Washington community land trust organizations to WUCIOA. The goal of this paper is to describe how WUCIOA affects the creation, sale and operation of such communities.

II. WUCIOA Drafting History

In 2006, a group of attorneys representing condominium developers and condominium associations began meeting to discuss how to modernize the Washington Condominium Act, Chapter 64.34 RCW (“WCA”). The group met monthly for about a year, decided to prepare a bill to improve the WCA, and eventually called itself the “Condo Club.” The Condo Club worked for two years to prepare a bill. In 2008, the bill was presented to the Legislative Committee of the Washington State Bar Association (“WSBA”), which recommended that the Condo Club consider the adoption of the Uniform Common Interest Ownership Act (“UCIOA”) in Washington.

As a result, the executive committee of the Real Property Probate and Trust Section (“RPPT”) of WSBA formed a committee to evaluate and report on the adoption of UCIOA in Washington. The committee determined that adoption of UCIOA in Washington would address a long-standing imbalance in the treatment of different forms of community interest communities and would modernize the law relating to common interest communities. The new RPPT WUCIOA committee met at least monthly from January of 2009 through December of 2014 to draft a Washington version of UCIOA. The WUCIOA bill was introduced as SB 5263 in the January 2015 session of the Washington legislature by Senator Jamie Pedersen. The bill was referred to the Senate Committee on Financial Institutions and Insurance, chaired by Senator Don Benson. The bill was not referred out of the committee during the 2015, 2016 or 2017 legislature. The bill was reintroduced in the January 2018 legislative session as SB 6175. It was referred out of committee and passed in both houses in the January 2018 session. The bill was signed by Governor Jay Inslee in March of 2018.

WUCIOA is based on the 2008 version of UCIOA. UCIOA is a model act developed by the National Conference of Commissioners on Uniform State Laws. It was published in 1982 and amended in 1994 and 2008 and 2014. A version of UCIOA has been adopted in eight states other than Washington: Alaska, Colorado, Connecticut, Delaware, Minnesota, Nevada, Vermont and West Virginia. UCIOA combines the Uniform Condominium Act (enacted in 14 states, including Washington), the Uniform Planned Community Act (enacted in Pennsylvania) and the Uniform Real Estate Cooperative Act (enacted in Virginia) into a single act.

III. What Is a Common Interest Community?

A common interest community (“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. The central feature of a CIC is the sharing of costs related to other real estate. The definition of a CIC in WUCIOA is:

“Common interest community” means real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration. “Common Interest Community” does not include an arrangement described in RCW 64.90.110 or 64.90.115. A common interest community may be a part of another common interest community.

RCW 64.90.010(10) (emphases added).

Note the requirements that both the “paying” and the “benefitted” real estate be described in the declaration. Thus, a CIC does not arise accidentally. Nevertheless, the definition is broad. It does not depend on the nature of use, the amount of real estate or the size of the expenses. Those issues are, in fact, addressed in other sections of the WUCIOA.

UCIOA defines three types of CIC: the condominium, the cooperative, and the planned community. WUCIOA distinguishes between two types of planned community: the plat community and the miscellaneous community.

A. Condominium.

In a condominium, each owner holds title to a unit, which is typically defined by the walls, ceilings and floors of a given living or commercial space in a building, although unit boundaries may also be defined in other ways by planes in space. All portions of a condominium that are not units are common elements. The common elements are owned in common by the unit owners. A condominium has an owners association which maintains and insures the common elements,

enforces the condominium documents and acts on behalf of the owners collectively with respect to managers and other third parties.

RCW 64.90.010(11) defines a condominium as:

“Condominium” means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

The distinguishing factor of a condominium is joint ownership of the common elements.

B. Cooperative.

In a cooperative, each owner holds title, typically a certificate, to a membership interest, stock in an owners association (typically a corporation) that owns all the real estate. Each member, by virtue of being a stock holder, has a right to occupy its unit. Cooperatives are not common in most states because the right to occupy a unit is personal property, and thus cannot be mortgaged.

RCW 64.90.010(15) defines a cooperative as:

“Cooperative” means a common interest community in which the real estate is owned by an association, each member of which is entitled by virtue of the member’s ownership interest in the association and by a proprietary lease to exclusive possession of a unit.

The distinguishing factor of a cooperative is that the association owns all the real estate.

C. Planned Communities.

In a planned community, each owner holds title to a unit, which is typically created by subdivision. All portions of the community that are not units are common elements. The common elements are owned by an owners association. A residential subdivision in which an association maintains private streets, parks, natural area buffers or storm water detention ponds is a planned community.

UCIOA defines a planned community as:

“Planned community” means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

Under UCIOA, a planned community cannot have common ownership of the common elements and it cannot have association ownership of the units. A community in which the units are owned by the owners and the common elements are owned by the association is a planned community.

WUCIOA does not use the term “planned community”. It uses the terms “plat community” and “miscellaneous community” instead. The drafters chose to use these terms to acknowledge the role that platting jurisdictions have in the creation of subdivisions, which are usually planned communities. The WUCIOA definitions are:

“Plat community” means a common interest community in which units have been created by subdivision or short subdivision as both are defined in RCW 58.17.020 and in which the boundaries of units are established pursuant to chapter 58.17 RCW.

RCW 64.90.010(37).

“Miscellaneous community” means a common interest community in which units are lawfully created in a manner not inconsistent with chapter 58.17 RCW and that is not a condominium, cooperative, or plat community.

RCW 64.90.010(33).

In recognition of the fact that local platting jurisdictions often have long-standing procedures concerning the content and wording of plats, WUCIOA contains special provisions relating to maps of plat communities. The intent is to avoid a conflict between WUCIOA and platting requirements.

IV. The Rationale for a Comprehensive Statute

The Horizontal Property Regimes Act (“HPRA”) was enacted in 1963. The HPRA was outdated when it was largely replaced by the WCA in 1990. Although enacted in 1989, WCA was derived from the 1977 Uniform Condominium Act (“UCA”). The WCA has required frequent updates and revisions, having been amended in 1990, 1992, 1993, 1997, 2002, 2004, 2005, 2008, 2009 and 2011, and supplemented by Chapter 64.35 RCW (alternative warranty provisions), Chapter 64.50 RCW (construction warranties dispute resolution) and Chapter 64.55 RCW (building enclosure inspections and arbitration). Without WUCIOA, several very different laws govern the ownership and sale of housing and the operation of owners associations. These laws frequently provide differing rights and obligations relating to otherwise identical housing. There is no rationale or policy behind the lack of uniformity in the rights and obligations relating to different types of CIC.

Condominiums created before July 1, 2018 are governed in Washington by one of two statutes: the HPRA, Chapter 64.32 RCW, which applies to condominiums

created prior to June 1, 1990, or the WCA, Chapter 64.34 RCW, which governs condominiums created on or after June 1, 1990. Several provisions of the WCA also apply to HPRA condominiums, and sales of units in condominiums created under either statute are now subject to the disclosure and construction warranty requirements of the WCA. The WCA identifies what must be contained in the declaration and survey that create a condominium; how portions of the common elements, such as parking spaces, may be assigned to individual units, how the project may be expanded or contracted, how the declaration may be amended and how the condominium may be terminated. It also contains extensive provisions regarding the creation of the owners association and the administration of the condominium, requires disclosures about the condominium to be given to prospective purchasers and imposes construction warranties upon sellers involved in building the condominium.

Cooperatives created prior to July 1, 2018 are governed only by the statute under which the corporation or limited liability company is created. Those statutes are the Cooperative Associations Act, Chapter 23.86 RCW; the Nonprofit Corporation Act, Chapter 24.03 RCW; the Nonprofit Miscellaneous and Mutual Corporations Act, Chapter 24.06 RCW; or the Limited Liability Company Act, Chapter 25.15 RCW. These statutes are corporation statutes that are confined largely to how the cooperative association is to be created, administered and terminated.

As with cooperatives, there is no statute analogous to the WCA that applies specifically to planned communities. Homeowners associations created prior to July 1, 2018 are governed by the Homeowners Associations Act, Chapter 64.38 RCW (“HAA”), which is quite brief and largely focuses on the internal affairs of the association. The creation of lots is governed by the Subdivision Act, Chapter 58.17 RCW. The sale of real estate in planned communities is also governed by Chapter 64.06 RCW, which requires delivery of certain disclosures to buyers, and by the Land Development Act, Chapter 58.19 RCW. In the author’s experiences, most real estate practitioners in Washington are completely unaware of the Land Development Act, and its requirement to deliver a public offering statement.

Appendix A contains a chart showing some of the ways in which current law treats different types of planned communities differently.

V. How the Adoption of WUCIOA Changes Washington Law

WUCIOA controls the creation, administration, termination, marketing and sale of all residential CICs created after July 1, 2018, treating them differently only as necessitated by their unique legal attributes. It makes the process of creating CICs more uniform by providing developers with the same set of rights to enlarge, modify, use and control the CICs that they create. Among other things, by imposing time limits on the ability of a developer to control the association, it prevents developers from exerting perpetual control over residential associations,

a problem that citizens have brought to the legislature for many years. In this regard, WUCIOA does not fundamentally change practices regarding condominium communities. It dramatically changes practices regarding cooperatives, single family communities and townhouse communities.

WUCIOA creates uniform standards for the governance of associations, the administration of the community and the enforcement of the governing documents. In addition, it imposes a uniform set of requirements regarding association meetings, notices, quorum requirements, voting procedures, director elections, and enforcement rights.

Under WUCIOA the consumer protections previously provided to purchasers of condominiums are provided to buyers of units in all CICs. For example, sellers of units in all CICs are required to deliver to the buyer either a public offering statement or a resale certificate. Also, earnest money deposits must be held in escrow. WUCIOA, however, only provides statutory warranties to purchasers of units in a condominium. Neither an expansion nor a modification of the statutory warranties beyond condominiums was possible given political pressure from construction defect lawyers and the home building industry.

VI. Structure of WUCIOA

WUCIOA is divided into four articles. Article 1 of the act covers definitions, applicability, relationship with other law, interpretation, severability, and implied obligations. One of the salient features of WUCIOA is a provision in Article 1 that prohibits variation of its provisions or waiver of the rights it confers, unless expressly permitted in the statute. Article 2 covers the creation, alteration and termination of CICs. It sets forth the requirements for declarations, changes of units and interests in a CIC, the exercise of development rights, and rules upon termination. Article 3 covers management of the CIC. It addresses the creation and powers of the association, the rights and responsibilities of the executive board, voting, quorums, proxies, insurance, association finances, assessments, assessment liens, the liability of owners, and transfer of special declarant rights. Article 4 covers consumer protection. It discusses the applicability of the consumer protection features of the act, such as public offering statements, conversions, resale certificates, express and implied warranties, damages, attorneys' fees, statutes of limitations and other issues.

VII. Variability of Provisions

One of the key features of WUCIOA is that the effect of its provisions cannot be changed except where expressly allowed by the act. RCW 64.90.015 is captioned "No Variation by Agreement." It states:

Except as expressly provided in this chapter, the effect of the provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. Except as

provided otherwise in RCW 64.90.110, a declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

A drafter may not deviate from WUCIOA except to the extent the act expressly permits deviation. Drafters of governing documents should exercise great care when using pre-WUCIOA forms because they will likely fail to satisfy the requirements of the act.

It is critical to note, however, that WUCIOA does allow a great deal of flexibility in tailoring the governing documents to the particular requirements of a given project. A developer needs to be familiar with the ways in which the documents can be tailored to meet the particular needs of a community.

VIII. Applicability of WUCIOA

A. General Applicability Rule to New Common Interest Communities.

RCW 64.90.075(1) states that, except as otherwise provided in the act, WUCIOA applies to any CIC created after July 1, 2018. The Land Development Act, Chapter 58.19 RCW, the HPRA, Chapter 64.32 RCW, the WCA, Chapter 64.34. RCW, and the HAA, Chapter 64.38 RCW, do not apply to CICs created after July 1, 2018.

B. Limited Applicability for New Small Planned Communities.

WUCIOA provides for a “lite” applicability to small planned communities with minimal assessments. The purpose of this provision is to avoid imposing costs on small communities that are often run informally. Under RCW 64.90.075(2), a planned community that (i) is not subject to any development rights, (ii) has no more than 12 units, and (iii) provides in the declaration that the average annual assessment of any residential unit (exclusive of optional user fees and insurance premiums paid by the association) is no more than 300 dollars (indexed for inflation), is only subject to RCW 64.90.020 (Separate Titles and Taxation), RCW 64.90.025 (Applicability of Local Ordinances) and RCW 64.90.030 (Eminent Domain) of the act. The declaration may provide that the WUCIOA applies in its entirety, but if it does not do so, only apply. RCW 64.90.075(2) does not apply to condominiums or cooperatives.

C. Applicability to Pre-existing Common Interest Communities.

Under WUCIOA, certain sections of the Act (RCW 64.90.095, RCW 64.90.405(1)(b) and (c) and 64.90.525) each apply to events and circumstances in pre-existing residential CICs occurring after the effective date of WUCIOA. RCW 64.90.095 allows pre-existing CICs to opt-in to WUCIOA. RCW 64.90.405(1)(b) and (c) and RCW 64.90.525 requires associations to prepare annual budgets, establishes standards for ratification of the budget and

assessments and require that assessments can only be imposed based on a budget.

By making RCW 64.90.405(1)(b) and (c) and RCW 64.90.525 applicable to pre-existing communities, WUCIOA overrules Casey v. Sudden Valley Community Ass'n, 182 Wn. App. 315, 329, P.3d 919 (2014). The Sudden Valley case involved a dispute over raising assessments in a community of 3,204 lots created in 1969 in Whatcom County. If it was a municipality, Sudden Valley would be the fourth largest city in Whatcom County. The association must maintain a large array of common amenities. The infrastructure in the community has significant deferred maintenance because the association has not had sufficient funds to meet its obligations.

RCW 64.38.025(3) requires a homeowners' association board to present an annual budget to the members for ratification. Unless the owners to whom a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, it is deemed approved. The association at Sudden Valley adopted budgets each year as required by the statute. The association bylaws, however, require that assessments be approved annually by 60% of the members appearing at a meeting. The association board therefore put the annual budget-based assessments to the members for vote. The different voting standard allowed a small group of members to block assessment increases each year.

Homeowners concerned about the dangerous conditions in the community sued, arguing that the bylaws violated Section 025 of the HAA. The Court of Appeals ruled, however, that Section 025 governed budgets only and not assessments. The plaintiffs pointed to RCW 64.34.308 of the WCA, which is nearly identical to Section 025. The court noted, however, that RCW 64.34.360(1) also states that assessments must be based on a budget adopted by the association. Since the HAA does not contain that provision, the court held the HAA does not require assessments to be based on a budget. The result of Sudden Valley is that the budget process has been rendered meaningless and the association has been hamstrung in its ability to maintain the community infrastructure because of a language difference between the WCA and the HAA. By imposing WUCIOA's budget and assessment requirements on existing communities, WUCIOA overrules Sudden Valley.

Like WUCIOA, the WCA superseded the existing HPRA. The WCA provides that a rather long list of WCA provisions apply to pre-existing communities, including provisions regarding real property rights, local ordinances, construction of governing documents, termination of condominiums, association powers, liability of the association and declarant, public offering statements and resale certificates. See RCW 64.34.010(1). This long list did not make it into WUCIOA for political reasons. Certain homeowners objected that WUCIOA would authorize association officers to run roughshod over the members. The applicability provisions were thus watered down. The unfortunate result of that

change is that one set of requirements for public offering statements and resale certificates applies to units created under the HPRA or WCA, while a different set applies to units created under WUCIOA. Hopefully, this will be changed in the future.

D. Opt-In Feature for Pre-existing Common Interest Communities.

RCW 64.90.095 allows the members of a pre-existing CIC to amend the governing documents to submit the community to WUCIOA. The decision whether to do so will depend on the provisions of the existing governing documents and the situation of the community. A community may find it desirable to use the amendment and voting provisions of WUCIOA to make it easier to respond to changing circumstances. A community may find it desirable to have an association lien super-priority if the governing documents provide that the association lien is subordinate to unit mortgages. On the other hand, if the governing documents give the association lien absolute priority over mortgages, the association may not want the limited super-priority under WUCIOA.

The governing documents of some pre-existing communities require unanimous or unrealistic voting thresholds for amendments. WUCIOA provides a statutory procedure for existing communities to opt-in. RCW 64.90.095(3) provides that, regardless of the amendment procedures in the existing governing documents, the owners can opt-in with a 67% vote, if at least 30% of the members participate in the vote. Specifically, if owners holding 20% of the votes in the community request an opt-in amendment, the board must prepare an amendment, hold a meeting to discuss it, and arrange for a ballot vote, which will be approved if 30% of the votes participate and 67% of the participating votes approve the amendment.

IX. Creation of Common Interest Communities

WUCIOA states that a CIC may only be created by recording a declaration and a map. RCW 64.90.200(1) states:

A common interest community may be created only by (i) recording a declaration executed in the same manner as a deed, and (ii) recording a map pursuant to RCW 64.90.245(3), and (iii) with respect to a cooperative, conveying the real estate subject to that declaration to the association.

The declaration and map must be recorded in every county in which any portion of the common interest community is located. The name of a condominium must not be identical to the name of any other existing condominium or plat community, whether created under this chapter or chapter 64.32 or 64.34 RCW, in any county in which the condominium is located.

RCW 64.90.010(19) and (31) define a declaration and map as follows:

“Declaration” means the instrument, however denominated, that creates a common interest community, including any amendments to the instrument.

“Map” means: (a) With respect to a plat community, the plat as defined in RCW 58.17.020 and complying with the requirements of Title 58 RCW, and (b) with respect to a condominium, cooperative, or miscellaneous community, a map prepared in accordance with the requirements of RCW 64.90.245 of this act.

By requiring both a declaration and a map, WUCIOA changes the practice relating to planned communities that are currently created without a separate declaration, such as certain short subdivisions and unit lot subdivisions in the City of Seattle. It is the practice in some jurisdictions to put cost sharing and association matters on the plat and to dispense with a separate declaration. WUCIOA should change that practice.

X. Units and Common Elements

The concepts of “units” and “common elements” and “limited common element” are central to WUCIOA. The act defines them as follows:

“Unit” means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to RCW 64.90.225(1)(d).

“Common elements” means:

- (1) In a condominium or cooperative, all portions of the common interest community other than the units;
- (2) In a plat community or miscellaneous community, any real estate other than a unit within a plat community or miscellaneous community that is owned or leased either by the association or in common by the unit owners rather than an association; and
- (3) In all common interest communities, any other interests in real estate for the benefit of any unit owners that are subject to the declaration.

“Limited common element” means a portion of the common elements allocated by the declaration or by operation of RCW 64.90.210 (1) (b) or (2) for the exclusive use of one or more, but fewer than all, of the unit owners.

RCW 64.90.010(57), (7) and (30). A drafter of a declaration for a CIC under WUCIOA needs to determine and state which portions of the CIC are units, common elements and limited common elements.

XI. Contents of Declaration

RCW 64.90.225 through RCW 64.90.245. RCW 64.90.225 set out the general requirements for the declaration. RCW 64.90.230 sets out additional requirements for leasehold CICs. RCW 64.90.235 requires an allocation of interests to each unit. RCW 64.90.240 sets forth requirements as to limited common elements. RCW 64.90.245 deals with the map.

A. Mandatory Provisions of a Declaration.

Under RCW 64.90.225, the declaration must contain:

- a. The names of the common interest community and the association and, immediately following the initial recital of the name of the community, a statement that the common interest community is a condominium, cooperative, plat community, or miscellaneous community;
- b. A legal description of the real estate included in the common interest community;
- c. A statement of the number of units that the declarant has created and, if the declarant has reserved the right to create additional units, the maximum number of such additional units;
- d. In all common interest communities, a reference to the recorded map creating the units and common elements, if any, subject to the declaration, and in a common interest community other than a plat community, the identifying number of each unit created by the declaration, a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in RCW 64.90.210(1)(a) of this act, and with respect to each existing unit, and if known at the time the declaration is recorded, the (i) approximate square footage, (ii) number of whole or partial bathrooms, (iii) number of rooms designated primarily as bedrooms, and (iv) level or levels on which each unit is located. The data described in this subsection (1)(d)(ii) and (iii) may be omitted with respect to units restricted to nonresidential use;
- e. A description of any limited common elements, other than those specified in RCW 64.90.210 (1)(b) and (3).
- f. A description of any real estate that may be allocated subsequently by the declarant as limited common elements, other than limited common elements specified in RCW 64.90.210 (1)(b) and (3), together with a statement that they may be so allocated;

- g. A description of any development right and any other special declarant rights reserved by the declarant, and, if the boundaries of the real estate subject to those rights are fixed in the declaration pursuant to (h)(i) of this subsection, a description of the real property affected by those rights, and a time limit within which each of those rights must be exercised;
- h. If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:
 - (1) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards; and
 - (2) A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;
- i. Any other conditions or limitations under which the rights described in (g) of this subsection may be exercised or will lapse;
- j. An allocation to each unit of the allocated interests in the manner described in RCW 64.90.235;
- k. Any restrictions on alienation of the units, including any restrictions on leasing that exceed the restrictions on leasing units that boards may impose pursuant to RCW 64.90.510(9)(c) and on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;
- l. A cross-reference by recording number to the map for the units created by the declaration;
- m. Any authorization pursuant to which the association may establish and enforce construction and design criteria and aesthetic standards as provided in RCW 64.90.505;
- n. All matters required under RCW 64.90.230, 64.90.235, 64.90.240, 64.90.275, 64.90.280, and 64.90.410.

- o. All amendments to the declaration must contain a cross-reference by recording number to the declaration and to any prior amendments to the declaration. All amendments to the declaration adding units must contain a cross-reference by recording number to the map relating to the added units and set forth all information required under subsection (1) of this section with respect to the added units.
- p. The declaration may contain any other matters the declarant considers appropriate, including any restrictions on the uses of a unit or the number or other qualifications of persons who may occupy units.

B. Limited Common Elements.

RCW 64.90.210 (1)(b) and (3) provide that certain items related to a unit – such as porches, windows, doors, balconies, and certain chutes, flues, wires and pipes – are limited common elements of that unit unless the declaration provides otherwise. The items described in RCW 64.90.210 are not the only items that can be allocated as limited common elements. RCW 64.90.240 requires the declaration to specify which limited common elements (other than those described in RCW 64.90.210) are allocated to each unit.

C. Special Declarant Rights.

WUCIOA recognizes that developers need certain rights to develop communities, even if those rights might change the rights and interests of existing owners. However, it also recognizes that developers can overreach. Therefore, WUCIOA contains an enumerated list of “special declarant rights” that the drafter must reserve for the developer. If they are not reserved, they may not be exercised.

RCW 64.90.010(51) defines special declarant rights as follows:

“Special declarant rights” means rights reserved for the benefit of a declarant to:

(A) complete any improvements indicated on the map or described in the declaration or public offering statement pursuant to RCW 64.90.610(1)(h);

(B) exercise any development right;

(C) maintain sales offices, management offices, signs advertising the common interest community, and models;

(D) use easements through the common elements for the purpose of making improvements within the common interest

community or within real estate that may be added to the common interest community;

(E) make the common interest community subject to a master association;

(F) merge or consolidate a common interest community with another common interest community of the same form of ownership;

(G) appoint or remove any officer or board member of the association or any master association or to veto or approve a proposed action of any board or association, pursuant to RCW 64.90.415(1);

(H) control any construction, design review, or aesthetic standards committee or process;

(I) attend meetings of the unit owners and, except during an executive session, the executive board; and

(J) have access to the records of the association to the same extent as a unit owner.

D. Development Rights.

Due to the importance of being able to complete and modify a community, WUCIOA creates a subset of special declarant rights called “development rights” which are defined in RCW 64.90.010(20) as:

“Development rights” means any right or combination of rights reserved by a declarant in the declaration to:

(A) add real estate or improvements to a common interest community;

(B) create units, common elements, or limited common elements within a common interest community;

(C) subdivide or combine units or convert units into common elements;

(D) withdraw real estate from a common interest community;
or

(E) Reallocate limited common elements with respect to units that have not been conveyed by the declarant.

The special declarant rights available under WUCIOA are quite broad. They allow a drafter a great deal of flexibility in protecting a developer's legitimate interests. The declaration need not reserve all or any of these rights, but if a right is not reserved, it cannot be exercised. The drafter must determine which rights are important to the developer in the community and include those that are.

RCW 64.90.225(1)(g) requires the declaration to describe each reserved special declarant right and development right, and the boundaries of the land subject to those rights, if known, and a time limit within which each of the rights must be exercised. WUCIOA does not impose any maximum time limit except upon use of sales and management facilities and declarant control of the association. Under RCW 64.90.275, the declarant's interest in the sales and management facilities expires when the declarant no longer owns a unit or has a right to create a unit unless the declaration reserves a right to remove the unit. Under RCW 64.90.415(2), regardless of the period provided in the declaration, the right to control the association terminates no later than 60 days after conveyance of 75% of the units that may be created. To prevent developers from extending the period of declarant control by overstating the permissible number of units, WUCIOA also invalidates declarant control (i) two years after the declarant has ceased to offer units for sale in the ordinary course of business or (ii) two years after any right to add units was last exercised.

It is important to understand that special declarant rights should not be vague and are not intended to be a comfort blanket for an inexperienced attorney. It is not sufficient to reserve a right to add any real estate whatsoever to a community or to create an unspecified number of units. The drafter must describe the reserved rights with some specificity.

E. Declarant Control.

WUCIOA changes the manner in which a developer can exercise control over an association. It is common to see declarant control provisions in the covenants, conditions and restrictions for subdivisions that create separate classes of membership for the purchasers and the developer, and that give the developer outsized voting rights for as long as it owns a unit in the community. By providing a special declarant right to control the association, WUCIOA supplants that technique.

Declarant control is governed by RCW 64.90.415. The act allows a declarant to either (i) appoint and remove directors and officers or (ii) veto or approve decisions of the board or association. The act also allows a declarant to surrender the right to appoint or remove but to require that specified actions of the board or association be approved by the declarant before they become effective. This is a powerful and flexible tool. It is, however, subject to the time limits discussed above.

WUCIOA imposes a number of additional obligations on developers relating to the operation of the CIC association. These include an obligation to hold meetings, to segregate funds, and to deliver records and information. In addition, the association has the right to audit the association books on turnover and to terminate certain contracts entered into by the developer. These obligations and rights are outlined in Appendix B.

F. Allocated Interests.

WUCIOA creates four “allocated interests” that may attach to a unit in a CIC. They are: a share of undivided interest in the common elements, a share of the common expenses of the association, a share of the votes in the association and a share of the ownership interests in the association. The shares must be stated as a percentage or fraction.

Under RCW 64.90.235, the declaration for a condominium must allocate: a share of undivided interest in the common elements, a share of the common expenses of the association, and a share of the votes in the association to each unit. A declaration for a cooperative must allocate: a share of the common expenses of the association, a share of the votes in the association and a share of the ownership interests in the association. A declaration for a planned community must allocate: a share of the common expenses of the association and a share of the votes in the association.

The declaration must state the formula used to establish the allocations of the interests. If the declaration allows the declarant to add or withdraw units from the CIC, the declaration must also state the formulas that will be used to adjust the allocated interests after the addition or withdrawal of units. The allocations must not discriminate in favor of the declarant. Thus, the common technique of using one class of association stock for sold units and one class for unsold units as a method to control the association is not permitted by WUCIOA. WUCIOA allows a developer to establish a separate right to control the association as part of its special declarant rights.

G. Assessments.

WUCIOA does not allow a developer to exempt unsold homes from association assessments. It has been a common practice for homebuilders to provide that assessments are only imposed on sold homes. RCW 64.90.480(1)(b) states:

Assessments for common expenses and specially allocated expenses must commence on all units that have been created upon the conveyance of the first unit in the common interest community; however, the declarant may delay commencement of assessments for some or all common expenses or specially allocated expenses, in which event the declarant must pay all of the common expenses or specially allocated expenses that have been delayed. In a

common interest community in which units may be added pursuant to reserved development rights, the declarant may delay commencement of assessments for such units in the same manner.

The declarant can delay the commencement of assessments for common expenses as long as it pays the common expenses. This allows a declarant to save money while protecting the buyers from carrying an unfair share of expenses.

H. Maps.

RCW 64.90.245 sets forth the requirements for the map of the CIC. Under RCW 64.90.245, a map is required for all communities and the map is part of the declaration. The requirements are slightly different for each type of community.

Because local subdivision ordinances vary, RCW 64.90.245 contains special rules for a plat community. The only portions of RCW 64.90.245 that apply to a plat map are the requirement for a map (subsection 1); the requirement that the declarant execute the map and record it concurrently with the declaration and that the map contain a cross-reference to the recording number of the declaration (subsection 3); the requirement that the declarant execute amendments to the map and record the amendment concurrently with the corresponding amendment to the declaration and that the amendment contain a cross-reference to the recording number of the declaration and any amendments thereto (subsection 4); and in a plat community, that the information required by RCW 64.90.245 (6)(a) and (c), (8)(d) through (g), (k), (m) and (n), (9) and (10) may be set forth in the declaration if they are not set forth on the plat (subsection 14). In addition, any amendment to the map must be prepared and recorded in compliance with the requirements, processes, and procedures in Chapter 58.17 RCW and of the local subdivision ordinances of the city, town, or county in which the plat community is located.

A map for a cooperative may be prepared by a licensed land surveyor, and may be incorporated into the declaration. If the map for a cooperative is not prepared by a licensed land surveyor, the map need not contain the surveyor's certification required in RCW 64.90.245(6)(a).

If prepared by a surveyor, the map for a CIC must contain certification of the surveyor. If not prepared by a surveyor, the map must contain a declaration by the declarant..

The map must label any land that may be withdrawn from the community, any land subject to the development right to add units, and any land in which the unit owners will only have a leasehold interest.

The map must show the location and dimensions of all existing buildings containing or comprising units; the extent of any encroachments by or upon any

portion of the CIC; to the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the CIC and any unrecorded easements of which a surveyor or declarant knows or reasonably should have known; the location and dimensions of vertical (side) unit boundaries; the location with reference to an established datum of horizontal (top and bottom) unit boundaries; the distance between any noncontiguous parcels of real estate comprising the CIC; the general location of any existing principal common amenities listed in a public offering statement under RCW 64.90.610(1)(k); and the general location of certain limited common elements such as porches and parking spaces. The map may show the anticipated approximate location and dimensions of any contemplated improvement to be constructed anywhere within the CIC, but any contemplated improvement shown must be labeled either “MUST BE BUILT” or “NEED NOT BE BUILT.”

XII. Issues Affecting Associations

Current statutory law concerning cooperative and homeowners associations is sparse. The corporate statutes under which an association may be formed do not contain detailed rules about governance, nor were they written with an eye toward the issues important to CICs. WUCIOA provides a comprehensive set of rules and guidance for associations and owners living in CICs.

A. Incorporation.

RCW 64.90.400 requires that an association be formed not later than the date of the conveyance of a unit to a purchaser. The membership of the association consists exclusively of all owners in the community. Thus, only owners can be members and no member can be excluded by the association or other members. The association must have a board and must be organized as a corporation or limited liability company. Under current law, many planned community associations are unincorporated. For the dangers inherent in having an unincorporated association, see Riss v. Angel, 131 Wn.2d 612, 934 P.2d 669 (1997), in which the members of an unincorporated homeowners association were held personally liable for the acts of the association.

B. Association Powers and Duties.

RCW 64.90.405 requires an association to (i) have organizational documents, (ii) adopt budgets pursuant to RCW 64.90.525, (iii) impose assessments based on the budgets adopted pursuant to RCW 64.90.080(1) and RCW 64.90.525, and (iv) prepare and distribute financial statements and maintain funds pursuant to RCW 64.90.530. These are mandatory.

RCW 64.90.405 also identifies a wide range of powers and rights that an association may exercise subject to limitations set forth in the declaration. RCW 64.90.405 also provides limits on certain of the association’s powers including the power to impose fines, denying owners access to records, suspending the

right to vote, suspending services to owners, conveying or encumbering common elements, and assigning the right to collect assessments. Many of these powers and limitations have been ignored by drafters of declarations for planned communities under current law. WUCIOA should improve the quality of governing documents for both associations and owners in planned communities.

Where the declarant has reserved a special declarant right to control the association, RCW 64.90.430 gives the association the right to terminate (i) management, maintenance, operation or employment contracts, or leases of recreational or parking facilities, (ii) other contract or lease between the association and the declarant, and (iii) any contract that is not bona fide or is unconscionable to the unit owners or association when executed.

RCW 64.90.445, 64.90.450 and 64.90.455 establish rules for the conduct of association meetings, quorums and voting. RCW 64.90.495 governs association records. RCW 64.90.505 imposes standards and limits on rulemaking and provides for an owner comment period prior to adoption by the Board. RCW 64.90.510 imposes limits on the association's ability to control flags and solar panels. RCW 64.90.515 establishes rules for giving of notices, and allows for electronic notices. RCW 64.90.530 regulates financial statements and audits. RCW 64.90.535 and 64.90.540 regulate reserve accounts.

C. Insurance.

RCW 64.90.470 sets forth insurance requirements applicable to CICs. Associations must obtain property insurance, liability insurance and fidelity bonds. In all communities the property insurance must cover the common elements. In any building that contains horizontal boundaries between units or vertical boundaries that constitute common walls between units (think stacked flats or townhomes), the property insurance must also cover the units and, unless otherwise set forth in the declaration, improvements and betterments therein.

WUCIOA provides that any loss covered by the association's property insurance must be adjusted with the association. It also provides that the proceeds are payable to an insurance trustee or the association but not to mortgagees. Insurance proceeds must be used to repair or restore unless the community is terminated, repair is illegal or the unit owners vote not to rebuild.

D. Assessments.

RCW 64.90.480 requires the association to impose assessments for common expenses on the units in accordance with their allocated share of common expenses unless the declaration provides that any of four categories of common expense shall be assessed by an alternative measure. The declaration may provide that the following expenses must be assessed as follows:

Expenses associated with the operation, maintenance, repair, or replacement of any specified limited common element against the units to

which that limited common element is assigned, equally or in any other proportion that the declaration provides;

Expenses specified in the declaration as benefiting fewer than all of the units or their unit owners exclusively against the units benefited in proportion to their common expense liability or in any other proportion that the declaration provides;

The costs of insurance in proportion to risk; and

The costs of one or more specified utilities in proportion to respective usage or upon the same basis as such utility charges are made by the utility provider.

The declaration may provide that such expenses shall be so assessed. The declaration may not give the association the discretion to choose whether to use such alternatives.

RCW 64.90.485 sets forth detailed rules for enforcement of the association's lien. RCW 64.90.490 regulates other liens that might attach to a CIC.

E. Assessments and Liens.

RCW 64.90.485 creates a statutory lien against each unit for unpaid common expense assessments. An association lien is prior to all other liens except: (i) liens recorded prior to the recording of the declaration, (ii) a mortgage on a unit recorded prior to the date the assessment became due, and (iii) liens for taxes.

The association lien also has a priority over a mortgage on a unit recorded prior to the date the assessment became due, for:

Assessments, excluding amounts for capital improvements, based on a periodic budget, which would have become due, but for acceleration, in the six months prior to commencement of an action to enforce the association's or lender's lien. The lien can be foreclosed as a mortgage or deed of trust; and

The association's actual costs and reasonable attorneys' fees (not to exceed the lesser of the unpaid assessments or \$2,000) incurred in foreclosing its lien after giving notice to the lender.

Prior law for cooperatives and planned communities lacks any rules for the priority of an association lien. As a result, the governing documents for those communities vary widely in their treatment of lien priorities and in their treatment of when liens arise and how they may be enforced. WUCIOA provides a comprehensive and consistent set of rules for such communities.

F. Amendment of Governing Documents.

Unrealistic amendment provisions hamper the administration and evolution of communities. Unfortunately, such provisions are common in the governing documents of homeowners associations. RCW 64.90.285 establishes a general requirement for a 67% vote to amend the governing documents and imposes a maximum requirement of 90%. Unanimous voting requirements are prohibited.

RCW 64.90.285(4) requires a 90% vote for amendments that create or increase special declarant rights, increase the number of units, change the boundaries of any unit, or change the allocated interests of a unit. RCW 64.90.285(6) allows a declaration to impose a voting requirement in excess of 67% for an amendment that prohibits or restricts uses of units permitted under applicable zoning ordinances, to protect the interests of certain classes of owners or to protect other legitimate interests.

The foregoing provisions of the act overrule Filmore LLLP v. Unit Owners Ass'n of Centre Pointe Condominium, 183 Wn. App. 328, 333 P.3d 498 (2014). In Filmore, the members of a condominium association approved a restriction on leasing by a 67% vote. Section 264 of the WCA, which is analogous to RCW 64.90.285(4), includes amendments which change "the uses to which a unit is restricted." RCW 64.34.264. Relying on Section 264 of the WCA, the Filmore court, contrary to the expectations of most condominium attorneys, held that the leasing restriction required a 90% vote. Some association lawyers believe that the Filmore decision instantly invalidated most rental caps in the state. Others believe that the decision was based solely on the particular provisions in the Filmore declaration (which happened to be identical to the statute). By removing the WCA language from RCW 64.90.285(4) and providing an optional process under RCW 64.90.285(6), WUCIOA allows rental caps to be passed by a 67% vote.

G. Rights of Association Creditors.

RCW 64.90.490 provides that, in a condominium or planned community, a judgment for money against the association, if recorded, is not a lien against the common elements, but is a lien against all other real estate owned by the association and against all the units. No other property of a unit owner is subject to the creditor's claims. A unit owner has the right to pay the owner's proportionate share of any lien (other than a mortgage) to the creditor and to have that unit released from the lien. In a cooperative, the only property of an owner that is subject to the creditors of the association is the owner's unit.

XIII. Consumer Protection Under WUCIOA

A. Overview of Article 4.

Article 4 of WUCIOA deals with consumer protection. Article 4 requires declarants and dealers to deliver a disclosure document called a public offering statement to prospective unit purchasers. In the case of resales, a unit owner

must give a prospective purchaser a disclosure document called a resale certificate to a prospective purchaser. In each case, the purchaser has a right to cancel after receiving the disclosure document. Article 4 requires that any deposit made to a declarant or dealer must be held in escrow until closing or termination of the purchase agreement. Article 4 requires the declarant or dealer to release or insure over certain encumbrances before closing. Article 4 imposes certain implied warranties on sales of condominium units by declarants or dealers, and establishes the statute of limitations applicable to warranty claims.

All of the foregoing requirements are new with respect to cooperatives and planned communities in Washington (except to the extent a disclosure document is currently required under the Land Development Act).

B. Applicability of Article 4.

RCW 64.90.600 addresses the applicability of Article 4. RCW 64.90.600 provides that Article 4 applies to all units subject to WUCIOA except in the case of (i) a conveyance by gift or inheritance, (ii) a conveyance pursuant to court order, (iii) a conveyance by government agencies, (iv) a conveyance by foreclosure, (v) a bulk sale of all the units, (vi) a conveyance to a declarant or dealer, (vii) an agreement to convey that may be cancelled at will without penalty, or (viii) a conveyance of a unit restricted to nonresidential purposes.

RCW 64.90.600 also states that RCW 64.90.665 through 64.90.680 (dealing with express and implied warranties), RCW 64.90.690 (dealing with labeling of promotional materials) and RCW 64.90.695 (dealing with the completion of improvements labeled “must be built” on the map) only apply to condominiums. They do not apply to cooperatives or planned communities.

C. Public Offering Statement and Resale Certificates.

The requirement for a public offering statement is new to sellers and buyers of units in cooperatives and planned communities. RCW 64.90.610 through 64.90.620 govern the content of the public offering statement. The public offering statement must contain certain notices to the buyer, must contain information concerning the declarant and community, and must contain copies of certain documents relating to the community. The public offering statement must be amended to reflect any material change.

Pursuant to RCW 64.90.635, a prospective purchaser has seven days after receipt of the public offering statement to cancel the contract without penalty. If necessary, the purchaser may extend the closing date to obtain a full seven days to review the public offering statement. A purchaser does not have a right of cancellation upon receipt of an amendment. However, a purchaser may have a right to rescind under generally applicable contract law.

Resale certificates are required for all sales unless the seller is obligated to deliver a public offering statement or unless the sale is exempt from Article 4.

The resale certificate must include copies of the governing documents and certain disclosures about the assessments and fees owed in connection with the unit being sold and the association's finances, liabilities and insurance. RCW 64.90.640 sets forth the requirements for the resale certificate. The seller is obligated to deliver the certificate to the buyer, but the association is obligated to prepare the certificate upon request from the seller.

Under RCW 64.90.640(3), a purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the resale certificate prepared by the association. In this regard the resale certificate operates like an estoppel certificate. The purchaser may terminate the purchase contract during the period ending on the earlier of (i) five days after receipt of the certificate, or (ii) the closing date for the purchase.

Under prior law, public offering statements and resale certificates were required for condominium units only. WUCIOA expanded the requirement for these disclosures to units in cooperatives and planned communities.

D. Escrow of Deposits.

RCW 64.90.645 states:

Any earnest money deposit, as defined in RCW 64.04.005, or any reservation deposit made in connection with the right to purchase a unit from a person required to deliver a public offering statement pursuant to RCW 64.90.605(3) must be placed in escrow and held in this state in an escrow or trust account designated solely for that purpose by a licensed title insurance company or agent, a licensed attorney, a real estate broker or independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing, (2) delivered to the declarant because of the purchaser's default under a contract to purchase the unit, (3) refunded to the purchaser, or (4) delivered to a court in connection with the filing of an interpleader action.

RCW 64.04.005 defines earnest money deposit as:

"Earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser.

Under prior law, the requirement to escrow deposits applied to sales of condominium units but not to sales of units in cooperatives or planned

communities. WUCIOA imposes this requirement on sales of all units in any CIC where a public offering statement is required.

E. Warranties.

RCW 64.90.665 through 64.90.680 deal with express and implied warranties made by a declarant or dealer. The warranties are similar to the warranties under the WCA. Under UCIOA, they only apply to condominium units. Experienced condominium developers will be familiar with these warranties. Developers, associations and buyers of other types of CIC will not need to address these warranties.

Appendix A

Differences in Treatment of CICs prior to WUCIOA

	<i>Planned Community</i>	<i>Condominium</i>	<i>Cooperative</i>
Creation of CIC	Recording of a declaration, recording of a plat, or both.	Recording of a declaration and survey map.	Filing of articles of organization.
Land Use Regulation	Subdivision, zoning, building and related codes apply.	Subdivision Act generally does not apply. Zoning, building and related codes do apply.	Subdivision Act generally does not apply. Zoning, building and related codes do apply.
Home Builder Actions During Development Period	No limit.	Flexible development rights coupled with owner protections under RCW 64.34.	No limit.
Developer Control of Association	No restrictions.	Flexible control coupled with transition and time limits under RCW 64.34.	No restrictions.
Construction Warranty	No statutory warranty. Express warranties vary greatly. Common law warranty of habitability.	Stringent 4-year warranty against most defects under RCW 64.34.	No statutory warranty. Warranties generally not given. Common law warranty of habitability?
Defect Procedures	Preclaim notice only under RCW 64.50, and if the developer elects, arbitration and other provisions of RCW 64.55.	Preclaim notice under RCW 64.50, and RCW 64.55 (arbitration, etc.) applies unless the condominium is composed of duplexes or detached dwelling units.	Preclaim notice only under RCW 64.50, and if the developer elects, arbitration and other provisions of RCW 64.55.

Amendment of Documents	Unregulated except by minimum standards of corporate statutes, if applicable.	Great flexibility coupled with owner protections under RCW 64.34.	Unregulated except by minimum standards of corporate statute.
Disclosure to First Buyers	Limited disclosure required by Form 17 (not designed for new construction) under RCW 64.06; limited public offering statement for some subdivisions under RCW 58.19 (largely ignored). Minimal penalty for non-compliance.	Extensive public offering statement under RCW 64.34.	No disclosure requirements.
Disclosure to Subsequent Buyers	No disclosure requirements.	Resale certificates required under RCW 64.34.	No disclosure requirements.
Governance of Association	RCW 64.38 contains minimal requirements. Incorporated associations could be governed by one of the various corporate and LLC acts (RCW 24.03, 23.06, 23B, or 25.15). Unincorporated associations governed by the declaration and common law.	Governance carefully limited by the WCA (RCW 64.34). Non-profit corporate laws also apply (RCW 24.03 or 24.06). LLCs not permitted.	Governed by applicable corporate or other entity laws only (RCW 24.03, 23.06, 23B, or 25.15).
Financial Affairs of Association	No regulation except recent requirement for reserve studies under RCW 64.38.	Extensive regulation, including requirement for reserve studies under RCW 64.34.	No regulation.
Creditors of Association	General commercial law applies.	Comprehensive scheme for balancing interests of owners and creditors.	General commercial law applies.

Association's Lien	No statutory authorization. No rules regarding attachment, foreclosure or priority.	Statutory authorization and comprehensive governance of attachment, foreclosure and priority.	No lien. Lease can be terminated pursuant to common law.
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Appendix B

Planning for Declarant Turnover

Declarant's responsibilities before turnover

RCW 64.90.445 Call and hold meetings.

RCW 64.90.525 Establish budget.

RCW 64.90.480 Collect assessments. Assessments must commence on all created units unless Declarant delays commencement of some or all assessments and specially allocated expenses, in which case declarant must pay all common expenses and specially allocated expenses which have been delayed.

RCW 64.90.495 Keep association books and records.

RCW 64.90.480(2) Collect working capital.

RCW 64.90.545 Prepare reserve study.

Declarant's responsibility at turnover

RCW 64.90.225(1)(g) Time limit for termination of development rights and special declarant rights must be in Declaration. Time limit not linked to the Period of Declarant Control.

RCW 64.90.415 Until termination of Period of Declarant Control, declarant may appoint and remove officers and directors and veto or approve action of the Board. Declarant-appointed directors can't be removed by owners during Period of Declarant Control (**RCW 64.90.520(1)(i)**).

Period of Declarant Control terminates no later than 60 days after 75% units conveyed, 2 years after last conveyance of unit, or voluntarily by declarant.

Owner-elected directors:

- Must elect at least 25% of directors within 60 days after conveying 25% of units that may be created
- Must elect at least 33.3% of directors within 60 days after conveying 50% of units that may be created
- Within 30 days after termination of Period of Declarant Control or, if no Period of Declarant Control, then within 60 days after conveyance of 75%

of units which may be created, must schedule and give notice of **transition meeting**, which must be held within 14-50 days after notice, to elect all directors.

RCW 64.90.410 Owner-elected Board must have at least three members, majority of whom are owners.

“Unit owner” qualified to serve as board member includes directors, officers, members, trustees, etc. of entities that own units.

RCW 64.90.420(1) Within 30 days after transition meeting, declarant must deliver to Board:

- (a) Original or copy of recorded **declaration and amendments**;
- (b) **Organizational documents** (Articles, Bylaws, Operating Agreement, etc.) of association;
- (c) Minute books, all minutes, and other **books and records** of the association (see list of required records in **RCW 64.90.495(1)**);
- (d) Current **rules and regulations** that have been adopted;
- (e) **Resignations** of declarant-appointed officers and directors;
- (f) **Financial records**, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of formation of the association through the date of transfer of control to the unit owners;
- (g) **Association funds** or the control of the funds of the association;
- (h) Originals or copies of any recorded **instruments of conveyance for any common elements** included within the common interest community but not appurtenant to the units;
- (i) All **tangible personal property** of the association;
- (j) Copy of **plans and specifications** used in the construction or remodeling of the common interest community, except for buildings containing fewer than three units;
- (k) Originals or copies of **insurance policies** for the common interest community and association;
- (l) Originals or copies of any **certificates of occupancy**;

- (m) Originals or copies of any other **permits**;
- (n) Originals or copies of all **written warranties** for the common elements, or any other areas or facilities that the association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all **owners' manuals or instructions** furnished to the declarant with respect to installed equipment or building systems;
- (o) A **roster of unit owners and eligible mortgagees** and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;
- (p) Originals or copies of any **leases of the common elements** and other leases to which the association is a party;
- (q) Originals or photocopies of any **employment contracts or service contracts** in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;
- (r) Originals or copies of any **qualified warranty** issued to the association as provided for in RCW 64.35.505; and
- (s) Originals or copies of all **other contracts** to which the association is a party.

RCW 64.90.420(2) Board must audit books within 60 days of transition meeting unless owners waive. Cost is common expense.

RCW 64.90.430 Within two years after transition meeting, association may terminate pre-transition

- management agreements
- maintenance or operations agreements
- employment contracts
- recreational facilities or parking leases
- other contracts with declarant or affiliates

Except: leases which would terminate the common interest community or proprietary leases.