
SENATE BILL 6624

State of Washington 54th Legislature 1996 Regular Session

By Senators Smith and Winsley

Read first time 01/19/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to homeowners' associations; amending RCW
2 64.38.005, 64.38.010, 64.38.015, 64.38.020, 64.38.025, 64.38.030,
3 64.38.035, 64.38.040, and 64.38.045; adding new sections to chapter
4 64.38 RCW; and repealing RCW 64.38.050.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 64.38.005 and 1995 c 283 s 1 are each amended to read
7 as follows:

8 The intent of this chapter is to give statutory recognition to
9 associations that operate residential communities in this state, to
10 provide consistent laws ((regarding)) and procedures for the formation
11 and ((legal)) administration of homeowners' associations, and to
12 protect the rights of association members without unduly impairing the
13 ability of such associations to perform their functions.

14 **Sec. 2.** RCW 64.38.010 and 1995 c 283 s 2 are each amended to read
15 as follows:

16 For purposes of this chapter:

17 (1) "Assessment" means all sums chargeable by the association
18 against a lot including, without limitation: (a) Regular and special

1 assessments for common expenses, charges, and fines imposed by the
2 association; (b) interest and late charges on any delinquent account;
3 and (c) costs of collection, including reasonable attorneys' fees,
4 incurred by the association in connection with the collection of a
5 delinquent owner's account.

6 (2) "Homeowners' association" or "association" means a corporation,
7 unincorporated association, or other ((legal entity, each member of
8 which is an owner of residential real property located within the
9 association's jurisdiction, as described in the governing documents,
10 and by virtue of membership or ownership of property is obligated to
11 pay real property taxes, insurance premiums, maintenance costs, or for
12 improvement of real property other than that which is owned by the
13 member)) entity responsible for the operation of a community in which
14 the voting membership is made up of lot owners, in which membership is
15 a mandatory condition of lot ownership, and which is authorized by its
16 governing documents to impose assessments. "Homeowners' association"
17 or "association" does not mean an association created under chapter
18 64.32 or 64.34 RCW.

19 ((2) "Governing documents" means the articles of incorporation,
20 bylaws, plat, declaration of covenants, conditions, and restrictions,
21 rules and regulations of the association, or other written instrument
22 by which the association has the authority to exercise any of the
23 powers provided for in this chapter or to manage, maintain, or
24 otherwise affect the property under its jurisdiction.))

25 (3) "Board of directors" or "board" means the body, regardless of
26 name, with primary authority to manage the affairs of the association.

27 (4) "Common areas" means ((property owned, or otherwise maintained,
28 repaired or administered by)): (a) Real property owned by the
29 association; (b) real property owned as tenants in common by some or
30 all of the members of the association and maintained, repaired, and
31 administered by the association pursuant to the governing documents;
32 (c) real property required by a declaration of covenants to be conveyed
33 or leased to the association; and (d) real property otherwise dedicated
34 exclusively for common use by the members of the association.

35 (5) "Common expense" means ((the costs)) any cost incurred by the
36 association to exercise any of the powers provided for in this chapter
37 or the governing documents.

1 (6) "Community" means the real property that is subject to a
2 declaration of covenants and which is intended primarily for
3 residential use.

4 (7) "Declaration of covenants" or "declaration" means a recorded
5 written instrument in the nature of covenants running with the land
6 which subjects the real property comprising the community to the
7 jurisdiction and control of an association or associations.

8 (8) "Eligible mortgagee" means the holder of a mortgage on a lot
9 that has filed with the secretary of the association a written request
10 that it be given copies of notices of any action by the association
11 that requires the consent of mortgagees.

12 (9) "Foreclosure" means a forfeiture or judicial or nonjudicial
13 foreclosure of a mortgage or a conveyance in lieu thereof.

14 (10) "Governing documents" means the articles of incorporation,
15 bylaws, plat, declaration of covenants, rules and regulations of the
16 association, or other written instrument by which the association has
17 the authority to exercise any of the powers provided for in this
18 chapter or to manage, maintain, or otherwise affect the property under
19 its jurisdiction, and all duly adopted, and in the case of the
20 declaration recorded, amendments, supplements, and exhibits thereto.

21 (11) "Leasehold community" means a community in which all or a
22 portion of the real property is subject to a lease, the expiration or
23 termination of which will terminate the community or reduce its size.

24 (12) "Limited common area" means a portion of the common areas
25 allocated by the declaration for the exclusive use of one or more but
26 fewer than all of the lots.

27 (13) "Lot" means a platted or unplatted lot, tract, condominium
28 unit, or apartment, or other subdivision of real property within a
29 community, as described in the declaration, which is capable of
30 separate conveyance, and of which the lot owner, is obligated: (a) By
31 the governing documents to be a member of an association that serves
32 the community; and (b) to pay assessments to the association.

33 (14) "Lot owner" or "owner" means a person who owns a lot or leases
34 a lot in a leasehold community under a lease that expires
35 simultaneously with any lease, the expiration or termination of which
36 will remove the lot from the community, but does not include a person
37 who only holds a mortgage on a lot. "Lot owner" or "owner" means the
38 vendee, not the vendor, of a lot under a real estate contract.

1 (15) "Master association" means an organization described in
2 section 17 of this act, whether or not it is also a homeowners'
3 association described in RCW 64.38.010(2).

4 (16) "Mortgage" means a mortgage, deed of trust, or real estate
5 contract encumbering one or more lots.

6 (17) "~~(Residential)~~ Real property" means any (~~real property, the~~
7 use of)) fee, leasehold, or other estate or interest in, over, or under
8 land, including structures, fixtures, and other improvements thereon
9 and easements, servitudes, rights, and interests appurtenant thereto
10 which by custom, usage, or law pass with a conveyance of land although
11 not described in the contract of sale or instrument of conveyance.
12 "Real property" includes parcels, with or without upper or lower
13 boundaries, and spaces that may be filled with air or water.

14 (18) "Residential use" means use which is limited by law, covenant
15 or otherwise to primarily residential or recreational purposes.

16 NEW SECTION. Sec. 3. A new section is added to chapter 64.38 RCW
17 to read as follows:

18 This chapter does not apply to a community that is primarily
19 comprised of property restricted for commercial, industrial, or other
20 nonresidential use.

21 **Sec. 4.** RCW 64.38.015 and 1995 c 283 s 3 are each amended to read
22 as follows:

23 The membership of an association at all times shall consist
24 exclusively of the owners of all (~~real property~~) lots over which the
25 association has jurisdiction, both developed and undeveloped.

26 **Sec. 5.** RCW 64.38.020 and 1995 c 283 s 4 are each amended to read
27 as follows:

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

30 (1) Adopt and amend bylaws, reasonable rules, and regulations
31 consistent with the purposes of the association;

32 (2) Adopt and amend budgets for revenues, expenditures, and
33 reserves, and impose and collect assessments for common expenses from
34 owners;

35 (3) Hire and discharge or contract with managing agents and other
36 employees, agents, and independent contractors;

1 (4) Institute, defend, or intervene in litigation or administrative
2 proceedings in its own name on behalf of itself or two or more owners
3 (~~(en)~~) to enforce the governing documents or the provisions of this
4 chapter and in matters affecting the homeowners' association(~~(, but~~
5 ~~not)~~) or the common areas. However, this subsection does not
6 authorized action by the association on behalf of owners involved in
7 disputes that are not (~~(the responsibility)~~) concerned with the
8 purposes and responsibilities of the association. This subsection does
9 not deprive a particularly aggrieved owner of the right to bring or
10 defend an action on his or her own behalf;

11 (5) Make contracts and incur liabilities;

12 (6) Regulate the use, maintenance, repair, replacement, and
13 modification of common areas;

14 (7) Cause additional improvements to be made as a part of the
15 common areas;

16 (8) Subject to section 7 of this act, execute plat amendments,
17 dedicate common area for public use, and acquire, hold, encumber, and
18 convey in its own name any right, title, or interest to real or
19 personal property;

20 (9) Grant easements, leases, licenses, and concessions through or
21 over the common areas and petition for or consent to the vacation of
22 streets and alleys;

23 (10) Impose and collect any payments, fees, or charges for the use,
24 rental, or operation of the common areas or for services provided to
25 individual owners;

26 (11) Impose and collect charges for late payments of assessments
27 and, after notice and an opportunity to be heard by the board of
28 directors or by the representative designated by the board of directors
29 and in accordance with the procedures as provided in the bylaws or
30 rules and regulations adopted by the board of directors, levy
31 reasonable fines in accordance with a previously established schedule
32 adopted by the board of directors and furnished to the owners for
33 violation of the bylaws, rules, and regulations of the association;

34 (12) Exercise any other powers conferred by the (~~(bylaws)~~)
35 governing documents;

36 (13) Exercise all other powers that may be exercised in this state
37 by the same type of (~~(corporation)~~) entity as the association; and

38 (14) Exercise any other powers necessary and proper for the
39 governance and operation of the association.

1 **Sec. 6.** RCW 64.38.025 and 1995 c 283 s 5 are each amended to read
2 as follows:

3 (1) Except as provided in the association's governing documents or
4 this chapter, the board of directors shall act in all instances on
5 behalf of the association. In the performance of their duties, the
6 officers and members of the board of directors shall exercise the
7 degree of care and loyalty required of an officer or director of a
8 corporation organized under chapter 24.03 RCW.

9 (2) The board of directors shall not act on behalf of the
10 association to amend the articles of incorporation, to take any action
11 that requires the vote or approval of the owners, to terminate the
12 association, to elect members of the board of directors, or to
13 determine the qualifications, powers, and duties, or terms of office of
14 members of the board of directors; but, unless otherwise provided in
15 the governing documents, the board of directors may fill vacancies in
16 its membership ~~((of))~~ for the unexpired portion of any term.

17 (3) ~~((Within thirty days after adoption))~~ All regular and special
18 assessments, other than special assessments which according to the
19 governing documents of the association may be imposed on a particular
20 owner or lot, shall be made pursuant to a budget adopted by the board
21 of directors ~~((of any proposed regular or special))~~ and ratified.
22 Within thirty days after adoption by the board of directors of any
23 proposed budget of the association, the board shall ~~((set a date for a~~
24 meeting of the owners)) provide a copy of the budget or a summary
25 thereof setting forth the material elements and totals of income and
26 expenditures included therein to the members, and shall give notice to
27 the members of a membership meeting to consider ratification of the
28 budget. The meeting shall be held not less than fourteen nor more than
29 sixty days after ~~((mailing))~~ the date of the ~~((summary))~~ notice.
30 Unless at that meeting the ~~((owners of))~~ eligible voting members to
31 whom a majority of the votes in the association are allocated, or any
32 larger percentage which is specified in the governing documents, vote
33 to reject the budget, ~~((in person or by proxy,))~~ the budget is
34 ratified, whether or not a quorum is present. ~~((In the event the~~
35 proposed budget)) However, if the governing documents require the
36 affirmative approval of the membership to adopt a budget or to approve
37 assessments, the voting requirements of the governing documents shall
38 control. If a proposed budget or assessment is rejected or the
39 required notice is not given, the periodic budget or assessment last

1 ratified by the (~~owners shall be continued until such time as the~~
2 ~~owners~~) members as provided in this section or otherwise properly
3 adopted pursuant to the governing documents prior to the effective date
4 of this act shall continue in effect until the members ratify a
5 subsequent budget (~~(proposed)~~) or assessment adopted by the board of
6 directors.

7 (4) (~~The owners by a majority vote of the voting power in the~~
8 ~~association present, in person or by proxy, and entitled to vote at any~~
9 ~~meeting of the owners~~) The governing documents may contain a procedure
10 for removal of directors. If the governing documents do not provide
11 for the removal of the directors by the members, then any director
12 elected by the members may be removed, with or without cause, by two-
13 thirds of the votes cast by eligible voting members having voting
14 rights with regard to the election of that director, at a membership
15 meeting which has been called for that purpose at which a quorum is
16 present(~~(, may remove any member of the board of directors with or~~
17 without cause)). Notice of the meeting shall identify any directors
18 whose removal is proposed. Any such director shall be given the
19 opportunity to address the meeting with regard to the motion for
20 removal.

21 NEW SECTION. Sec. 7. A new section is added to chapter 64.38 RCW
22 to read as follows:

23 (1) Portions of the common areas that are not necessary for the
24 habitability of a lot may be conveyed or subjected to a security
25 interest by the association or dedicated to public use if the owners of
26 lots to which at least sixty-seven percent of the votes in the
27 association are allocated, or any larger percentage the declaration
28 specifies, agree to that action; but all the owners of lots to which
29 any limited common area is allocated must agree in order to convey that
30 limited common area or subject it to a security interest. Proceeds of
31 the sale or financing of any portion of the common area are an asset of
32 the association, but the proceeds of the sale of a limited common area
33 must be distributed equitably among the owners of the lots to which the
34 limited common areas were allocated.

35 (2) An agreement to convey common areas in a community, or to
36 subject them to a security interest, must be evidenced by the execution
37 of an agreement, or ratifications thereof, in the same manner as a
38 deed, by the requisite number of lot owners. The agreement must

1 specify a date after which the agreement will be void unless the
2 requisite number of lot owners have approved the agreement.

3 (3) The association, on behalf of the lot owners, may contract to
4 convey or dedicate common areas or subject them to a security interest,
5 but the contract is not enforceable against the association until
6 approved pursuant to this section. After approval, the association has
7 all powers necessary and appropriate to effect the conveyance or
8 encumbrance, including the power to execute deeds or other instruments.

9 (4) Any purported conveyance, encumbrance, or other voluntary
10 transfer of common areas unless made pursuant to this section, is
11 voidable.

12 (5) A conveyance or encumbrance of common areas pursuant to this
13 section does not deprive any lot of its rights of access and support.

14 **Sec. 8.** RCW 64.38.030 and 1995 c 283 s 6 are each amended to read
15 as follows:

16 Unless provided (~~for~~) in the other governing documents, the
17 bylaws of the association shall provide for:

18 (1) The number, qualifications, powers and duties, terms of office,
19 and manner of electing and removing the board of directors and officers
20 and filling vacancies;

21 (2) Election by the board of directors of the officers of the
22 association as the bylaws specify;

23 (3) Which, if any, of its powers the board of directors or officers
24 may delegate to other persons or to a managing agent;

25 (4) Which of its officers may prepare, execute, certify, and record
26 amendments to the governing documents on behalf of the association;

27 (5) The method of amending the bylaws; and

28 (6) Subject to the provisions of the governing documents, any other
29 matters the association deems necessary and appropriate.

30 **Sec. 9.** RCW 64.38.035 and 1995 c 283 s 7 are each amended to read
31 as follows:

32 (1) A meeting of the association must be held at least once each
33 year. Failure to hold an annual meeting does not cause a forfeiture or
34 give cause for dissolution of the corporation, nor does such failure
35 affect otherwise valid corporate acts. Special meetings of the
36 association may be called by the president, a majority of the board of
37 directors, or by (~~owners~~) eligible voting members having (~~ten~~)

1 twenty percent of the votes in the association or such lower percentage
2 as may be set in the governing documents. Not less than fourteen nor
3 more than sixty days in advance of any meeting of the association, the
4 secretary or other officer(~~s~~) specified in the bylaws shall cause
5 notice to be hand-delivered or sent prepaid by first class United
6 States mail to the mailing address of each (~~owner~~) member or to any
7 other mailing address designated in writing by the (~~owner~~) member to
8 any person authorized to receive notices on behalf of the association.
9 The notice of any meeting shall state the time and place of the meeting
10 and the business to be placed on the agenda by the board of directors
11 for a vote by the owners, including the general nature of any proposed
12 amendment to the (~~articles of incorporation, bylaws~~) governing
13 documents, any budget or changes in the previously approved budget that
14 result in a change in assessment obligation, and any proposal to remove
15 a director.

16 (2) Unless otherwise provided in the governing documents, any
17 action required or permitted by this chapter or the governing documents
18 to be taken at an annual or special meeting of members may be taken
19 without a meeting, if the action is approved by members entitled to
20 vote on such action having not less than the minimum number of votes
21 that would be necessary to authorize such action at a meeting at which
22 all members entitled to vote on such action were present and voted. In
23 order to be effective, all of the members entitled to vote thereon must
24 have been given written notice at least fourteen days in advance of the
25 proposed action, and the action must be evidenced by one or more
26 written consents or ballots describing the action taken, dated and
27 signed by approving members having the requisite number of votes and
28 entitled to vote on such action, and delivered to the association. The
29 notice shall state a date by which the requisite number of consents or
30 ballots must be received for the action to be effective. Any notice
31 given in lieu of a meeting required to be held pursuant to RCW
32 64.38.025(3) to ratify a budget adopted by the board shall provide a
33 period of not less than thirty days for the return of ballots rejecting
34 the budget. Any written consent or ballot may be revoked prior to the
35 date that the association receives the required number of consents or
36 ballots to authorize the proposed action. A consent, ballot, or
37 revocation is not effective unless in writing and until received by the
38 association at its principal office in this state or its principal place
39 of business, or received by the corporate secretary or other officer or

1 agent of the corporation authorized to receive notices on behalf of the
2 association. Within ten days after obtaining such authorization by
3 written consent or ballot, written notice describing the action taken
4 must be given to all members. A consent signed under this section has
5 the effect of a meeting vote and may be described as such in any
6 document. Whenever action is taken pursuant to this section, the
7 written consent of the members consenting to such action or the written
8 reports of the persons appointed to tabulate such consents shall be
9 filed with the minutes of proceedings of members.

10 (3) A member who is entitled to vote may vote in person or, unless
11 the governing documents otherwise provide, may vote by proxy executed
12 in writing by the member or by a duly authorized attorney in fact. An
13 appointment of a proxy is not valid after eleven months following the
14 date of its execution unless otherwise provided in the proxy. A board
15 member may not vote by proxy at a board meeting.

16 (4) Except as provided in this subsection, all meetings of the
17 board of directors shall be open for observation by all ((owners of
18 record)) members and their authorized agents. ((The board of directors
19 shall keep minutes of all actions taken by the board, which shall be
20 available to all owners.)) Unless prohibited or restricted by the
21 governing documents, upon the affirmative vote in open meeting to
22 assemble in closed session, the board of directors may convene in
23 closed executive session to consider ((personnel matters; consult with
24 legal counsel or consider)) any matter which the board determines in
25 good faith should not be considered in open session in furtherance of
26 the best interests of the association and its members, including but
27 not limited to matters involving personnel issues, consultation or
28 consideration of communications with legal counsel((; and discuss)),
29 likely or pending litigation, ((matters involving)) possible violations
30 of the governing documents ((of the association, and matters
31 involving)), and the possible liability of an owner to the association.
32 The motion shall state specifically the purpose for the closed session.
33 Reference to the motion and the stated purpose for the closed session
34 shall be included in the minutes. The board of directors shall
35 restrict the consideration of matters during the closed portions of
36 meetings only to those purposes specifically exempted and stated in the
37 motion. No motion, or other action adopted, passed, or agreed to in
38 closed session may become effective unless the board of directors,
39 following the closed session, reconvenes in open meeting and votes in

1 the open meeting on such motion, or other action which is reasonably
2 identified. The requirements of this subsection shall not require the
3 disclosure of information in violation of law or which is otherwise
4 exempt from disclosure.

5 (5) Minutes of all meetings of the members of an association and of
6 the board of directors of an association must be maintained in written
7 form. The decision on each matter voted upon at a membership meeting
8 or a board meeting must be recorded in the minutes.

9 (6) A director of an association who is present at a meeting of its
10 board of directors at which action on any association matter is taken
11 shall be presumed to have assented to the action taken unless the
12 director's dissent or abstention shall be entered in the minutes of the
13 meeting or unless the director shall file his or her written dissent or
14 abstention to such action with the person acting as the secretary of
15 the meeting before the adjournment thereof or shall forward such
16 dissent or abstention by registered or certified mail, return receipt
17 requested, to the secretary of the corporation immediately after the
18 adjournment of the meeting. Such right to dissent or abstain does not
19 apply to a director who voted in favor of such action.

20 **Sec. 10.** RCW 64.38.040 and 1995 c 283 s 8 are each amended to read
21 as follows:

22 Unless the governing documents specify a different percentage, a
23 quorum is present throughout any meeting of the association if (~~the~~
24 ~~owners~~) eligible voting members to which thirty-four percent of the
25 votes of the association are allocated are present in person or by
26 proxy at the beginning of the meeting.

27 **Sec. 11.** RCW 64.38.045 and 1995 c 283 s 9 are each amended to read
28 as follows:

29 ~~(1) The association ((or its managing agent shall keep financial~~
30 ~~and other records sufficiently detailed to enable the association to~~
31 ~~fully declare to each owner the true statement of its financial~~
32 ~~status)) shall keep or cause to be kept detailed and accurate financial~~
33 records. All financial and other records of the association, including
34 but not limited to checks, bank records, and invoices, in whatever form
35 they are kept, are the property of the association. Each association
36 managing agent shall turn over all original books and records to the
37 association immediately upon termination of the management relationship

1 with the association, or upon such other demand as is made by the board
2 of directors. An association managing agent is entitled to keep copies
3 of association records. All records which the managing agent has
4 turned over to the association shall be made reasonably available for
5 the examination and copying by the managing agent.

6 (2) Except as provided in subsection (3) of this section, all
7 records of the association, including the names and addresses of owners
8 and other occupants of the lots, shall be available for examination by
9 all owners, holders of mortgages on the lots, and their respective
10 authorized agents on reasonable advance notice during normal working
11 hours at the offices of the association or its managing agent. ((The
12 association shall not release the unlisted telephone number of any
13 owner.)) The association may impose and collect a reasonable charge
14 for copies and any reasonable costs incurred by the association in
15 providing access to records.

16 (3) Unless prohibited or restricted by the governing documents,
17 books and records kept by or on behalf of an association may be
18 withheld from examination or copying by a member, a holder of a
19 mortgage on a lot, or their respective agent to the extent that the
20 records concern:

21 (a) Personnel matters that are customarily kept confidential by a
22 business;

23 (b) Medical or health records of any employee of the association,
24 any member, or other occupant of a lot;

25 (c) Communications with legal counsel or attorney work product that
26 are privileged with respect to third parties;

27 (d) Negotiations relating to transactions prior to their completion
28 that the board determines for good cause should be withheld;

29 (e) Agreements that for good cause prohibit disclosure to the
30 members;

31 (f) Pending litigation that the board determines for good cause
32 should be withheld;

33 (g) Pending proceedings for enforcement of the governing documents
34 that the board determines for good cause should be withheld;

35 (h) Unlisted telephone numbers and security access information
36 provided to the association for emergency purposes;

37 (i) Credit information protected by the fair credit reporting act,
38 15 U.S.C. Sec. 1681 et seq.;

1 (j) Meeting minutes or other records of an executive session of the
2 board of directors held pursuant to RCW 64.38.035(4) of this act; and
3 (k) Information otherwise protected from disclosure by law.

4 (4) At least annually, the association shall prepare, or cause to
5 be prepared, a financial statement of the association. The financial
6 statements ((of associations with annual assessments of fifty thousand
7 dollars or more shall be audited at least annually by an independent
8 certified public accountant, but the audit may be waived if sixty-seven
9 percent of the votes cast by owners, in person or by proxy, at a
10 meeting of the association at which a quorum is present, vote each year
11 to waive)) must either be presented in accordance with generally
12 accepted accounting principles, or must contain a report of actual
13 receipts and expenditures on a cash basis showing a detailed breakdown
14 of receipts and expenditures by classification, the beginning and
15 ending cash balances for all accounts of the association, and the
16 beginning and ending balances for all accounts payable and accounts
17 receivable of the association. The financial statements of
18 associations with annual assessments of fifty thousand dollars or more
19 must be presented in accordance with generally accepted accounting
20 principles and must be audited at least annually by an independent
21 certified public accountant, but the audit may be waived for any year
22 if sixty-seven percent of the votes cast by eligible voting members at
23 a meeting of the association at which a quorum is present, approve
24 waiving the audit.

25 ((+4)) (5) The funds of the association shall be kept in accounts
26 in the name of the association and shall not be commingled with the
27 funds of any other association, nor with the funds of any manager of
28 the association or any other person responsible for the custody of such
29 funds, nor kept in any trust account or custodial account in the name
30 of any trustee or custodian.

31 NEW SECTION. Sec. 12. A new section is added to chapter 64.38 RCW
32 to read as follows:

33 (1) Each member and the member's tenants, guests, and invitees, and
34 each association, are governed by, and must comply with, this chapter,
35 and the governing documents of the association. Actions at law or in
36 equity, or both, to redress alleged failure or refusal to comply with
37 this chapter or the governing documents may be brought by the
38 association or by any member against: (a) The association; (b) a

1 member; (c) any director or officer of an association who willfully and
2 knowingly fails to comply with these provisions; and (d) any tenants,
3 guests, or invitees occupying a lot or using the common areas. The
4 prevailing party in any litigation is entitled to recover reasonable
5 attorneys' fees and costs. This section does not deprive any person of
6 any other available right or remedy.

7 (2) If the governing documents so provide, an association may
8 suspend, for a reasonable period of time, the rights of a member or a
9 member's tenants, guests, or invitees, or both, to use common areas and
10 facilities, and a member's voting rights, and may levy reasonable fines
11 against any member or any tenant, guest, or invitee, in accordance with
12 a previously established schedule adopted by the board of directors and
13 furnished to the owners and tenants.

14 (a) A fine or suspension may not be imposed without notice of at
15 least fourteen days to the person sought to be fined or suspended and
16 an opportunity for a hearing before a committee of at least three
17 impartial persons appointed by the board. If the committee, by
18 majority vote, does not approve a proposed fine or suspension, it may
19 not be imposed.

20 (b) The requirements of (a) of this subsection do not apply to the
21 imposition of suspensions or fines upon any member because of the
22 failure of the member to pay assessments when due.

23 (c) Suspension of common-area-use rights shall not impair the right
24 of an owner or tenant of a lot to have vehicular and pedestrian ingress
25 to and egress from the lot, including, but not limited to, the right to
26 park.

27 NEW SECTION. **Sec. 13.** A new section is added to chapter 64.38 RCW
28 to read as follows:

29 (1) The association has a statutory lien on a lot for any unpaid
30 assessments levied against a lot from the time the assessment is due.

31 (2) A lien under this section shall be prior to all other liens and
32 encumbrances on a lot except: (a) Liens and encumbrances recorded
33 before the recording of the declaration; (b) a mortgage on the lot
34 recorded before the date on which the assessment sought to be enforced
35 became delinquent; and (c) liens for real property taxes and other
36 governmental assessments or charges against the lot. A lien under this
37 section is not subject to the provisions of chapter 6.13 RCW.

1 (3) Except as provided in subsections (4) and (5) of this section,
2 the lien is also prior to the mortgages described in subsection (2)(b)
3 of this section to the extent of assessments for common expenses,
4 excluding any amounts for capital improvements, based on the periodic
5 budget adopted by the association that would have become due in the
6 absence of acceleration during the six months immediately preceding the
7 date of a sheriff's sale in an action for judicial foreclosure by
8 either the association or a mortgagee, the date of a trustee's sale in
9 a nonjudicial foreclosure by a mortgagee, the date of recording of the
10 declaration of forfeiture in a proceeding by the vendor under a real
11 estate contract, or the date of recording of an instrument in lieu of
12 foreclosure. For the purposes of this subsection, capital improvements
13 shall not include common expenses for repairing or replacing the common
14 areas with substantially equivalent items.

15 (4) The priority of the association's lien against lots encumbered
16 by a mortgage held by an eligible mortgagee or by a mortgagee which has
17 given the association a written request for a notice of delinquent
18 assessments shall be reduced by up to three months if and to the extent
19 that the lien priority under subsection (3) of this section includes
20 delinquencies that relate to a period after such holder becomes an
21 eligible mortgagee or has given such notice and before the association
22 gives the holder a written notice of the delinquency. This subsection
23 does not affect the priority of mechanics' or materialmen's liens, or
24 the priority of liens for other assessments made by the association.

25 (5) If the association forecloses its lien under this section
26 nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection
27 (9) of this section, or if the association forecloses its lien against
28 abandoned improved real estate pursuant to RCW 61.12.093 through
29 61.12.095, the association shall not be entitled to the lien priority
30 provided for under subsection (3) of this section.

31 (6) Unless the declaration otherwise provides, if two or more
32 associations have liens for assessments created at any time on the same
33 real estate, those liens have equal priority.

34 (7) Recording the declaration constitutes record notice and
35 perfection of the lien for assessments. While no further recording of
36 any claim of lien for assessment under this section shall be required
37 to perfect the association's lien, the association may record a notice
38 of claim of lien for assessments under this section in the real
39 property records of any county in which the community is located. Such

1 recording shall not constitute the written notice of delinquency to a
2 mortgagee referred to in subsection (2) of this section.

3 (8) A lien for unpaid assessments and the personal liability for
4 payment of assessments is extinguished unless proceedings to enforce
5 the lien or collect the debt are instituted within three years after
6 the amount of the assessments sought to be recovered becomes due.

7 (9) The lien arising under this section may be enforced judicially
8 by the association or its authorized representative in the manner set
9 forth in chapter 61.12 RCW. The lien arising under this section may be
10 enforced nonjudicially in the manner set forth in chapter 61.24 RCW for
11 nonjudicial foreclosure of deeds of trust if the declaration: (a)
12 Contains a grant of the lots in the community in trust to a trustee
13 qualified under RCW 61.24.010 to secure the obligations of the lot
14 owners to the association for the payment of assessments; (b) contains
15 a power of sale; (c) provides in its terms that the lots are not used
16 principally for agricultural or farming purposes; and (d) provides that
17 the power of sale is operative in the case of a default in the
18 obligation to pay assessments. The association or its authorized
19 representative shall have the power, unless prohibited by the
20 declaration, to purchase the lot at the foreclosure sale and to
21 acquire, hold, lease, mortgage, or convey the same. Upon an express
22 waiver in the complaint of any right to a deficiency judgment in a
23 judicial foreclosure action, the period of redemption shall be eight
24 months. Nothing in this section prohibits an association from taking
25 a deed in lieu of foreclosure.

26 (10) From the time of commencement of an action by the association
27 to foreclose a lien for nonpayment of delinquent assessments against a
28 lot that is not occupied by the owner thereof, the association is
29 entitled to the appointment of a receiver to collect from the lessee
30 thereof the rent for the lot as and when due. If the rental is not
31 paid, the receiver may obtain possession of the lot, refurbish it for
32 rental up to a reasonable standard for rental lots in this type of
33 community, rent the lot or permit its rental to others, and apply the
34 rents first to the cost of the receivership and attorneys' fees
35 thereof, then to the cost of refurbishing the lot, then to applicable
36 charges, then to costs, fees, and charges of the foreclosure action,
37 and then to the payment of the delinquent assessments. Only a receiver
38 may take possession and collect rents under this subsection, and a
39 receiver shall not be appointed less than ninety days after the

1 delinquency. The exercise by the association of these rights does not
2 affect the priority of preexisting liens on the lot.

3 (11) Except as provided in subsection (3) of this section, the
4 holder of a mortgage or other purchaser of a lot who obtains the right
5 of possession of the lot through foreclosure is not liable for
6 assessments or installments thereof that became due prior to such right
7 of possession. These unpaid assessments are common expenses
8 collectible from all the lot owners, including such mortgagee or other
9 purchaser of the lot. Foreclosure of a mortgage does not relieve the
10 prior owner of personal liability for assessments accruing against the
11 lot prior to the date of such sale as provided in this section.

12 (12) In addition to constituting a lien on the lot, each assessment
13 is the joint and several obligation of the owner or owners of the lot
14 to which the same are assessed as of the time the assessment is due.
15 No lot owner may exempt himself or herself from liability for
16 assessments by waiver of the use or enjoyment of any of the common
17 areas, by abandonment of the lot, or otherwise, nor shall an owner be
18 entitled to withhold payment of assessments or otherwise exercise a
19 right of setoff or defense against the association on account of any
20 claim that the owner may have or assert against the association. In a
21 voluntary conveyance or other transfer of a lot other than by
22 foreclosure, the grantee of a lot shall be jointly and severally liable
23 with the grantor for all unpaid assessments against the grantor up to
24 the time of the grantor's conveyance, without prejudice to the
25 grantee's right to recover from the grantor the amounts paid by the
26 grantee therefor. However, if a statement of assessments is furnished
27 to a grantee under subsection (15) of this section, the liability of
28 the grantee for unpaid assessments accrued through the date of that
29 statement shall not exceed the amount set forth in the statement. Suit
30 to recover a personal judgment for any delinquent assessment shall be
31 maintainable in the superior court of the county in which the lot is
32 located or in any other court of competent jurisdiction without
33 foreclosing or waiving the lien securing such sums.

34 (13) The association may from time to time establish reasonable
35 late charges and a reasonable rate of interest, not to exceed eighteen
36 percent per annum, to be charged on all subsequent delinquent
37 assessments or installments thereof. In the absence of another
38 established rate, delinquent assessments shall bear interest from the

1 date of delinquency at the maximum rate permitted under RCW 19.52.020
2 on the date on which the assessments became delinquent.

3 (14) The association shall be entitled to recover any costs and
4 reasonable attorneys' fees incurred in connection with the collection
5 of delinquent assessments, whether or not such collection activities
6 result in suit being commenced or prosecuted to judgment. In addition,
7 if the matter results in a judgment, the prevailing party shall be
8 entitled to recover costs and reasonable attorneys' fees, including
9 costs and reasonable attorneys' fees incurred on appeal and in the
10 enforcement of a judgment.

11 (15) Upon written request, the association shall furnish to a lot
12 owner or a mortgagee a statement signed by an officer or authorized
13 agent of the association setting forth the amount of unpaid assessments
14 against that lot. The statement shall be furnished within fifteen days
15 after receipt of the request and is binding on the association, the
16 board of directors, and every lot owner, unless and to the extent known
17 by the recipient to be false.

18 (16) To the extent not inconsistent with this section, the
19 declaration may provide for such additional remedies for collection of
20 assessments as may be permitted by law.

21 NEW SECTION. **Sec. 14.** A new section is added to chapter 64.38 RCW
22 to read as follows:

23 If any existing homeowners' association desires to amend its
24 declaration to adopt any provision permitted by this chapter and the
25 declaration does not provide a process by which it may be amended, any
26 amendment drafted for this purpose may be approved by eligible voting
27 members to whom a majority of the votes in the association are
28 allocated.

29 NEW SECTION. **Sec. 15.** A new section is added to chapter 64.38 RCW
30 to read as follows:

31 (1) From to time to time the dollar amounts specified in RCW
32 64.38.045(4) must change, as provided in subsection (2) of this
33 section, according to and to the extent of changes in the Consumer
34 Price Index for Urban Wage Earners and Clerical Workers: U.S. City
35 Average, All Items 1982-84 = 100, compiled by the bureau of labor
36 statistics, United States department of labor, known as the index. The
37 index for December 1995, is the reference base index.

1 (2) If the index is revised after December 1995, the percentage of
2 change pursuant to this section must be calculated on the basis of the
3 revised index. If the revision of the index changes the reference base
4 index, a revised reference base index must be determined by multiplying
5 the reference base index then applicable by the rebasing factor
6 furnished by the bureau of labor statistics. If the index is
7 superseded, the index referred to in this section is the one
8 represented by the bureau of labor statistics as reflecting most
9 accurately changes in the purchasing power of the dollar for consumers.

10 NEW SECTION. **Sec. 16.** A new section is added to chapter 64.38 RCW
11 to read as follows:

12 In case of any conflict between Title 23B RCW, the business
13 corporation act, chapter 24.03 RCW, the nonprofit corporation act, or
14 chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations
15 act, and this chapter, this chapter controls.

16 NEW SECTION. **Sec. 17.** A new section is added to chapter 64.38 RCW
17 to read as follows:

18 (1) If the declaration provides that any of the powers described in
19 RCW 64.38.020 are to be exercised by or may be delegated to a profit or
20 nonprofit corporation or association which exercises those or other
21 powers on behalf of a development consisting of one or more
22 condominiums or communities or for the benefit of the owners of one or
23 more condominiums or communities, all provisions of this chapter
24 applicable to homeowners' associations apply to any such corporation or
25 association, except as modified by this section, and except to the
26 extent that such corporation is a master association subject to RCW
27 64.34.276.

28 (2) Unless a master association is acting in the capacity of an
29 association described in RCW 64.38.010(2), it may exercise the powers
30 set forth in RCW 64.38.020 only to the extent expressly permitted in
31 the declarations of the condominiums or communities which are part of
32 the master association or expressly described in the delegations of
33 power from those condominium associations and homeowners' associations
34 to the master association.

35 If the declaration of any condominium or community provides that
36 the board of directors may delegate certain powers to a master
37 association, the members of the board of directors have no liability

1 for the acts or omissions of the master association with respect to
2 those powers following delegation.

3 (4) The rights and responsibilities of unit owners with respect to
4 the unit owners' association set forth in RCW 64.38.025 (3) and (4),
5 64.38.035 (1), (2), and (3), 64.38.040, and section 7 of this act apply
6 in the conduct of the affairs of a master association only to those
7 persons who elect the board of a master association, whether or not
8 those persons are otherwise lot owners within the meaning of this
9 chapter.

10 (5) Even if a master association is also an association described
11 in RCW 64.38.010(2), the articles of incorporation or other instrument
12 creating the master association and the declaration of each condominium
13 and community, the powers of which are assigned by the declaration or
14 delegated to the master association, must provide that the board of
15 directors of the master association shall be elected in any of the
16 following ways:

17 (a) All unit owners of all condominiums and communities subject to
18 the master association may elect all members of that board of
19 directors;

20 (b) All members of the boards of directors of all condominiums and
21 communities subject to the master association may elect all members of
22 that board of directors;

23 (c) All unit owners of each condominium or community subject to the
24 master association may elect specified members of that board of
25 directors; or

26 (d) All members of the board of directors of each condominium or
27 community subject to the master association may elect specified members
28 of that board of directors.

29 NEW SECTION. **Sec. 18.** RCW 64.38.050 and 1995 c 283 s 10 are each
30 repealed.

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