

2 **ESHB 1471** - S COMM AMD
3 By Committee on Law & Justice

4 ADOPTED AS AMENDED 4/22/95

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The intent of this chapter is to provide
8 consistent laws regarding the formation and legal administration of
9 homeowners' associations.

10 NEW SECTION. **Sec. 2.** For purposes of this chapter:

11 (1) "Homeowners' association" or "association" means a corporation,
12 unincorporated association, or other legal entity, each member of which
13 is an owner of residential real property located within the
14 association's jurisdiction, as described in the governing documents,
15 and by virtue of membership or ownership of property is obligated to
16 pay real property taxes, insurance premiums, maintenance costs, or for
17 improvement of real property other than that which is owned by the
18 member. "Homeowners' association" does not mean an association created
19 under chapter 64.32 or 64.34 RCW.

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

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

28 (4) "Common areas" means property owned, or otherwise maintained,
29 repaired or administered by the association.

30 (5) "Common expense" means the costs incurred by the association to
31 exercise any of the powers provided for in this chapter.

32 (6) "Residential real property" means any real property, the use of
33 which is limited by law, covenant or otherwise to primarily residential
34 or recreational purposes.

1 NEW SECTION. **Sec. 3.** The membership of an association at all
2 times shall consist exclusively of the owners of all real property over
3 which the association has jurisdiction, both developed and undeveloped.

4 NEW SECTION. **Sec. 4.** Unless otherwise provided in the governing
5 documents, an association may:

6 (1) Adopt and amend bylaws, rules, and regulations;

7 (2) Adopt and amend budgets for revenues, expenditures, and
8 reserves, and impose and collect assessments for common expenses from
9 owners;

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

12 (4) Institute, defend, or intervene in litigation or administrative
13 proceedings in its own name on behalf of itself or two or more owners
14 on matters affecting the homeowners' association, but not on behalf of
15 owners involved in disputes that are not the responsibility of the
16 association;

17 (5) Make contracts and incur liabilities;

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

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

22 (8) Acquire, hold, encumber, and convey in its own name any right,
23 title, or interest to real or personal property;

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

27 (10) Impose and collect any payments, fees, or charges for the use,
28 rental, or operation of the common areas;

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

37 (12) Exercise any other powers conferred by the bylaws;

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

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

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

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

18 (3) Within thirty days after adoption by the board of directors of
19 any proposed regular or special budget of the association, the board
20 shall set a date for a meeting of the owners to consider ratification
21 of the budget not less than fourteen nor more than sixty days after
22 mailing of the summary. Unless at that meeting the owners of a
23 majority of the votes in the association are allocated or any larger
24 percentage specified in the governing documents reject the budget, in
25 person or by proxy, the budget is ratified, whether or not a quorum is
26 present. In the event the proposed budget is rejected or the required
27 notice is not given, the periodic budget last ratified by the owners
28 shall be continued until such time as the owners ratify a subsequent
29 budget proposed by the board of directors.

30 (4) The owners by a majority vote of the voting power in the
31 association present, in person or by proxy, and entitled to vote at any
32 meeting of the owners at which a quorum is present, may remove any
33 member of the board of directors with or without cause.

34 NEW SECTION. **Sec. 6.** Unless provided for in the governing
35 documents, the bylaws of the association shall provide for:

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

4 (2) Election by the board of directors of the officers of the
5 association as the bylaws specify;

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

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

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

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

13 NEW SECTION. **Sec. 7.** (1) A meeting of the association must be
14 held at least once each year. Special meetings of the association may
15 be called by the president, a majority of the board of directors, or by
16 owners having ten percent of the votes in the association. Not less
17 than fourteen nor more than sixty days in advance of any meeting, the
18 secretary or other officers specified in the bylaws shall cause notice
19 to be hand-delivered or sent prepaid by first class United States mail
20 to the mailing address of each owner or to any other mailing address
21 designated in writing by the owner. The notice of any meeting shall
22 state the time and place of the meeting and the business to be placed
23 on the agenda by the board of directors for a vote by the owners,
24 including the general nature of any proposed amendment to the articles
25 of incorporation, bylaws, any budget or changes in the previously
26 approved budget that result in a change in assessment obligation, and
27 any proposal to remove a director.

28 (2) Except as provided in this subsection, all meetings of the
29 board of directors shall be open for observation by all owners of
30 record and their authorized agents. The board of directors shall keep
31 minutes of all actions taken by the board, which shall be available to
32 all owners. Upon the affirmative vote in open meeting to assemble in
33 closed session, the board of directors may convene in closed executive
34 session to consider personnel matters; consult with legal counsel or
35 consider communications with legal counsel; and discuss likely or
36 pending litigation, matters involving possible violations of the
37 governing documents of the association, and matters involving the
38 possible liability of an owner to the association. The motion shall

1 state specifically the purpose for the closed session. Reference to
2 the motion and the stated purpose for the closed session shall be
3 included in the minutes. The board of directors shall restrict the
4 consideration of matters during the closed portions of meetings only to
5 those purposes specifically exempted and stated in the motion. No
6 motion, or other action adopted, passed, or agreed to in closed session
7 may become effective unless the board of directors, following the
8 closed session, reconvenes in open meeting and votes in the open
9 meeting on such motion, or other action which is reasonably identified.
10 The requirements of this subsection shall not require the disclosure of
11 information in violation of law or which is otherwise exempt from
12 disclosure.

13 NEW SECTION. **Sec. 8.** Unless the governing documents specify a
14 different percentage, a quorum is present throughout any meeting of the
15 association if the owners to which thirty-four percent of the votes of
16 the association are allocated are present in person or by proxy at the
17 beginning of the meeting.

18 NEW SECTION. **Sec. 9.** (1) The association or its managing agent
19 shall keep financial and other records sufficiently detailed to enable
20 the association to fully declare to each owner the true statement of
21 its financial status. All financial and other records of the
22 association, including but not limited to checks, bank records, and
23 invoices, in whatever form they are kept, are the property of the
24 association. Each association managing agent shall turn over all
25 original books and records to the association immediately upon
26 termination of the management relationship with the association, or
27 upon such other demand as is made by the board of directors. An
28 association managing agent is entitled to keep copies of association
29 records. All records which the managing agent has turned over to the
30 association shall be made reasonably available for the examination and
31 copying by the managing agent.

32 (2) All records of the association, including the names and
33 addresses of owners and other occupants of the lots, shall be available
34 for examination by all owners, holders of mortgages on the lots, and
35 their respective authorized agents on reasonable advance notice during
36 normal working hours at the offices of the association or its managing
37 agent. The association shall not release the unlisted telephone number

1 of any owner. The association may impose and collect a reasonable
2 charge for copies and any reasonable costs incurred by the association
3 in providing access to records.

4 (3) 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 the audit.

12 (4) The funds of the association shall be kept in accounts in the
13 name of the association and shall not be commingled with the funds of
14 any other association, nor with the funds of any manager of the
15 association or any other person responsible for the custody of such
16 funds.

17 NEW SECTION. **Sec. 10.** Any violation of the provisions of this
18 chapter entitles an aggrieved party to any remedy provided by law or in
19 equity. The court, in an appropriate case, may award reasonable
20 attorneys' fees to the prevailing party.

21 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
22 constitute a new chapter in Title 64 RCW."

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