
SUBSTITUTE HOUSE BILL 2541

State of Washington

60th Legislature

2008 Regular Session

By House Judiciary (originally sponsored by Representatives Kelley, McCune, Springer, Williams, Miloscia, and Campbell)

READ FIRST TIME 02/04/08.

1 AN ACT Relating to reserve accounts and studies for condominium
2 associations; amending RCW 64.34.010, 64.34.020, 64.34.304, 64.34.410,
3 and 64.34.425; and adding new sections to chapter 64.34 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.34 RCW
6 under the subchapter heading "Article 3" to read as follows:

7 (1) An association is encouraged to establish a reserve account to
8 fund major maintenance, repair, and replacement of common elements,
9 including limited common elements that will require major maintenance,
10 repair, or replacement within thirty years. A reserve account shall be
11 established in the name of the association. The board of directors is
12 responsible for administering the reserve account.

13 (2) Unless doing so would impose an unreasonable hardship, an
14 association shall prepare and update a reserve study, in accordance
15 with the association's governing documents and RCW 64.34.224(1). The
16 initial reserve study must be based upon a visual site inspection
17 conducted by a reserve study professional.

18 (3) Unless doing so would impose an unreasonable hardship, the

1 association shall update the reserve study annually. At least every
2 three years, an updated reserve study must be prepared and based upon
3 a visual site inspection conducted by a reserve study professional.

4 (4) This section and sections 2 through 6 of this act apply to
5 condominiums governed by chapter 64.32 RCW or this chapter and intended
6 in whole or in part for residential purposes. These sections do not
7 apply to condominiums consisting solely of units that are restricted in
8 the declaration to nonresidential use. An association's governing
9 documents may contain stricter requirements.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.34 RCW
11 under the subchapter heading "Article 3" to read as follows:

12 (1) A reserve study as described in section 1 of this act is
13 supplemental to the association's operating and maintenance budget. In
14 preparing a reserve study, the association shall estimate the
15 anticipated major maintenance, repair, and replacement costs, whose
16 infrequent and significant nature make them impractical to be included
17 in an annual budget.

18 (2) A reserve study shall include:

19 (a) A reserve component list, including quantities and estimates
20 for useful life of each reserve component, remaining useful life of
21 each reserve component, and current repair and replacement cost for
22 each component;

23 (b) The date of the study and a statement that the study meets the
24 requirements of this section;

25 (c) The level of reserve study performed:

26 (i) Level I: Full reserve study funding analysis and plan;

27 (ii) Level II: Update with visual site inspection;

28 (iii) Level III: Update with no visual site inspection;

29 (d) The association's reserve account balance;

30 (e) The percentage of the fully funded balance that the reserve
31 account is funded;

32 (f) Special assessments already implemented or planned;

33 (g) Interest and inflation assumptions;

34 (h) Current reserve account contribution rate;

35 (i) Recommended reserve account contribution rate;

36 (j) Projected reserve account balance for thirty years and a

1 funding plan to pay for projected costs from those reserves without
2 reliance on future unplanned special assessments; and

3 (k) Whether the reserve study was prepared with the assistance of
4 a reserve study professional.

5 (3) A reserve study shall include the following disclosure:

6 "This reserve study should be reviewed carefully. It
7 may not include all common and limited common element
8 components that will require major maintenance, repair, or
9 replacement in future years, and may not include regular
10 contributions to a reserve account for the cost of such
11 maintenance, repair, or replacement. The failure to include a
12 component in a reserve study, or to provide contributions to a
13 reserve account for a component, may, under some circumstances,
14 require you to pay on demand as a special assessment your share
15 of common expenses for the cost of major maintenance, repair,
16 or replacement of a reserve component."

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.34 RCW
18 under the subchapter heading "Article 3" to read as follows:

19 An association may withdraw funds from its reserve account to pay
20 for unforeseen or unbudgeted costs. The board of directors shall
21 record any such withdrawal in the minute books of the association,
22 cause notice of any such withdrawal to be hand delivered or sent
23 prepaid by first-class United States mail to the mailing address of
24 each unit or to any other mailing address designated in writing by the
25 unit owner, and adopt a repayment schedule not to exceed twenty-four
26 months unless it determines that repayment within twenty-four months
27 would impose an unreasonable burden on the unit owners.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.34 RCW
29 under the subchapter heading "Article 3" to read as follows:

30 (1) Where more than three years have passed since the date of the
31 last reserve study prepared by a reserve study professional, the owners
32 of the units to which at least twenty percent of the votes are
33 allocated may demand, in writing, to the association that the cost of
34 a reserve study be included in the next budget and that the study be
35 obtained by the end of that budget year. The written demand must refer
36 to this section. The board of directors shall, upon receipt of the

1 written demand, provide unit owners making the demand reasonable
2 assurance that the board of directors will include a reserve study in
3 the next budget and, if the budget is not rejected by the owners, will
4 arrange for the completion of a reserve study.

5 (2) In the event a written demand is made and a reserve study is
6 not timely prepared, a court may order specific performance and award
7 reasonable attorneys' fees to the prevailing party in any legal action
8 brought to enforce this section. An association may assert
9 unreasonable hardship as an affirmative defense in any action brought
10 against it under this section. Without limiting this affirmative
11 defense, an unreasonable hardship exists where the cost of preparing a
12 reserve study would exceed ten percent of the association's annual
13 budget.

14 (3) A unit owner's duty to pay for common expenses shall not be
15 excused because of the association's failure to comply with this
16 section or sections 2 through 6 of this act. A budget ratified by the
17 unit owners under RCW 64.34.308(3) may not be invalidated because of
18 the association's failure to comply with this section or sections 2
19 through 6 of this act.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 64.34 RCW
21 under the subchapter heading "Article 3" to read as follows:

22 Subject to section 4 of this act, the decisions relating to the
23 preparation and updating of a reserve study must be made by the board
24 of directors of the association in the exercise of the reasonable
25 discretion of the board. Such decisions must include whether a reserve
26 study will be prepared or updated, and whether the assistance of a
27 reserve study professional will be utilized.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 64.34 RCW
29 under the subchapter heading "Article 3" to read as follows:

30 Monetary damages or any other liability may not be awarded against
31 or imposed upon the association, the officers or board of directors of
32 the association, or those persons who may have provided advice or
33 assistance to the association or its officers or directors, for failure
34 to: Establish a reserve account; have a current reserve study prepared
35 or updated in accordance with sections 1 through 5 of this act; or make

1 the reserve disclosures in accordance with section 2 of this act and
2 RCW 64.34.410(1)(oo) and 64.34.425(1)(s).

3 **Sec. 7.** RCW 64.34.010 and 1993 c 429 s 12 are each amended to read
4 as follows:

5 (1) This chapter applies to all condominiums created within this
6 state after July 1, 1990. RCW 64.34.040 (separate titles and
7 taxation), RCW 64.34.050 (applicability of local ordinances,
8 regulations, and building codes), RCW 64.34.060 (condemnation), RCW
9 64.34.208 (construction and validity of declaration and bylaws), RCW
10 64.34.212 (description of units), RCW 64.34.304(1) (a) through (f) and
11 (k) through (r) (powers of unit owners' association), RCW 64.34.308(1)
12 (board of directors and officers), RCW 64.34.340 (voting-proxies), RCW
13 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on
14 sale of unit), RCW 64.34.360(3) (common expenses-assessments), RCW
15 64.34.364 (lien for assessments), RCW 64.34.372 (association records),
16 RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on
17 rights of action; attorney's fees), sections 1 through 6 of this act
18 (reserve studies and accounts), and RCW 64.34.020 (definitions) to the
19 extent necessary in construing any of those sections, apply to all
20 condominiums created in this state before July 1, 1990; but those
21 sections apply only with respect to events and circumstances occurring
22 after July 1, 1990, and do not invalidate or supersede existing,
23 inconsistent provisions of the declaration, bylaws, or survey maps or
24 plans of those condominiums.

25 (2) The provisions of chapter 64.32 RCW do not apply to
26 condominiums created after July 1, 1990, and do not invalidate any
27 amendment to the declaration, bylaws, and survey maps and plans of any
28 condominium created before July 1, 1990, if the amendment would be
29 permitted by this chapter. The amendment must be adopted in conformity
30 with the procedures and requirements specified by those instruments and
31 by chapter 64.32 RCW. If the amendment grants to any person any
32 rights, powers, or privileges permitted by this chapter which are not
33 otherwise provided for in the declaration or chapter 64.32 RCW, all
34 correlative obligations, liabilities, and restrictions in this chapter
35 also apply to that person.

36 (3) This chapter does not apply to condominiums or units located
37 outside this state.

1 (4) RCW 64.34.400 (applicability-waiver), RCW 64.34.405 (liability
2 for public offering statement requirements), RCW 64.34.410 (public
3 offering statement-general provisions), RCW 64.34.415 (public offering
4 statement-conversion condominiums), RCW 64.34.420 (purchaser's right to
5 cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion
6 condominiums-notice-tenants), and RCW 64.34.455 (effect of violations
7 on rights of action-attorney's fees) apply with respect to all sales of
8 units pursuant to purchase agreements entered into after July 1, 1990,
9 in condominiums created before July 1, 1990, in which as of July 1,
10 1990, the declarant or an affiliate of the declarant owns or had the
11 right to create at least ten units constituting at least twenty percent
12 of the units in the condominium.

13 **Sec. 8.** RCW 64.34.020 and 2004 c 201 s 9 are each amended to read
14 as follows:

15 In the declaration and bylaws, unless specifically provided
16 otherwise or the context requires otherwise, and in this chapter:

17 (1) "Affiliate" means any person who controls, is controlled by, or
18 is under common control with the referenced person. A person
19 "controls" another person if the person: (a) Is a general partner,
20 officer, director, or employer of the referenced person; (b) directly
21 or indirectly or acting in concert with one or more other persons, or
22 through one or more subsidiaries, owns, controls, holds with power to
23 vote, or holds proxies representing, more than twenty percent of the
24 voting interest in the referenced person; (c) controls in any manner
25 the election of a majority of the directors of the referenced person;
26 or (d) has contributed more than twenty percent of the capital of the
27 referenced person. A person "is controlled by" another person if the
28 other person: (i) Is a general partner, officer, director, or employer
29 of the person; (ii) directly or indirectly or acting in concert with
30 one or more other persons, or through one or more subsidiaries, owns,
31 controls, holds with power to vote, or holds proxies representing, more
32 than twenty percent of the voting interest in the person; (iii)
33 controls in any manner the election of a majority of the directors of
34 the person; or (iv) has contributed more than twenty percent of the
35 capital of the person. Control does not exist if the powers described
36 in this subsection are held solely as security for an obligation and
37 are not exercised.

1 (2) "Allocated interests" means the undivided interest in the
2 common elements, the common expense liability, and votes in the
3 association allocated to each unit.

4 (3) "Assessment" means all sums chargeable by the association
5 against a unit including, without limitation: (a) Regular and special
6 assessments for common expenses, charges, and fines imposed by the
7 association; (b) interest and late charges on any delinquent account;
8 and (c) costs of collection, including reasonable attorneys' fees,
9 incurred by the association in connection with the collection of a
10 delinquent owner's account.

11 (4) "Association" or "unit owners' association" means the unit
12 owners' association organized under RCW 64.34.300.

13 (5) "Board of directors" means the body, regardless of name, with
14 primary authority to manage the affairs of the association.

15 (6) "Common elements" means all portions of a condominium other
16 than the units.

17 (7) "Common expenses" means expenditures made by or financial
18 liabilities of the association, together with any allocations to
19 reserves.

20 (8) "Common expense liability" means the liability for common
21 expenses allocated to each unit pursuant to RCW 64.34.224.

22 (9) "Condominium" means real property, portions of which are
23 designated for separate ownership and the remainder of which is
24 designated for common ownership solely by the owners of those portions.
25 Real property is not a condominium unless the undivided interests in
26 the common elements are vested in the unit owners, and unless a
27 declaration and a survey map and plans have been recorded pursuant to
28 this chapter.

29 (10) "Contribution rate" means, in a reserve study as described in
30 section 1 of this act, the amount contributed to the reserve account so
31 that the association will have cash reserves to pay major maintenance,
32 repair, or replacement costs without the need of a special assessment.

33 (11) "Conversion condominium" means a condominium (a) that at any
34 time before creation of the condominium was lawfully occupied wholly or
35 partially by a tenant or subtenant for residential purposes pursuant to
36 a rental agreement, oral or written, express or implied, for which the
37 tenant or subtenant had not received the notice described in (b) of
38 this subsection; or (b) that, at any time within twelve months before

1 the conveyance of, or acceptance of an agreement to convey, any unit
2 therein other than to a declarant or any affiliate of a declarant, was
3 lawfully occupied wholly or partially by a residential tenant of a
4 declarant or an affiliate of a declarant and such tenant was not
5 notified in writing, prior to lawfully occupying a unit or executing a
6 rental agreement, whichever event first occurs, that the unit was part
7 of a condominium and subject to sale. "Conversion condominium" shall
8 not include a condominium in which, before July 1, 1990, any unit
9 therein had been conveyed or been made subject to an agreement to
10 convey to any transferee other than a declarant or an affiliate of a
11 declarant.

12 ~~((+11))~~ (12) "Conveyance" means any transfer of the ownership of
13 a unit, including a transfer by deed or by real estate contract and,
14 with respect to a unit in a leasehold condominium, a transfer by lease
15 or assignment thereof, but shall not include a transfer solely for
16 security.

17 ~~((+12))~~ (13) "Dealer" means a person who, together with such
18 person's affiliates, owns or has a right to acquire either six or more
19 units in a condominium or fifty percent or more of the units in a
20 condominium containing more than two units.

21 ~~((+13))~~ (14) "Declarant" means:

22 (a) Any person who executes as declarant a declaration as defined
23 in subsection ~~((+15))~~ (16) of this section; or

24 (b) Any person who reserves any special declarant right in the
25 declaration; or

26 (c) Any person who exercises special declarant rights or to whom
27 special declarant rights are transferred; or

28 (d) Any person who is the owner of a fee interest in the real
29 property which is subjected to the declaration at the time of the
30 recording of an instrument pursuant to RCW 64.34.316 and who directly
31 or through one or more affiliates is materially involved in the
32 construction, marketing, or sale of units in the condominium created by
33 the recording of the instrument.

34 ~~((+14))~~ (15) "Declarant control" means the right of the declarant
35 or persons designated by the declarant to appoint and remove officers
36 and members of the board of directors, or to veto or approve a proposed
37 action of the board or association, pursuant to RCW 64.34.308 (4) or
38 (5).

1 ~~((15))~~ (16) "Declaration" means the document, however
2 denominated, that creates a condominium by setting forth the
3 information required by RCW 64.34.216 and any amendments to that
4 document.

5 ~~((16))~~ (17) "Development rights" means any right or combination
6 of rights reserved by a declarant in the declaration to: (a) Add real
7 property or improvements to a condominium; (b) create units, common
8 elements, or limited common elements within real property included or
9 added to a condominium; (c) subdivide units or convert units into
10 common elements; (d) withdraw real property from a condominium; or (e)
11 reallocate limited common elements with respect to units that have not
12 been conveyed by the declarant.

13 ~~((17))~~ (18) "Dispose" or "disposition" means a voluntary transfer
14 or conveyance to a purchaser or lessee of any legal or equitable
15 interest in a unit, but does not include the transfer or release of a
16 security interest.

17 ~~((18))~~ (19) "Effective age" means the difference between useful
18 life and remaining useful life.

19 (20) "Eligible mortgagee" means the holder of a mortgage on a unit
20 that has filed with the secretary of the association a written request
21 that it be given copies of notices of any action by the association
22 that requires the consent of mortgagees.

23 ~~((19))~~ (21) "Foreclosure" means a forfeiture or judicial or
24 nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

25 ~~((20))~~ (22) "Fully funded balance" means the value of the
26 deteriorated portion of all the reserve components. The fully funded
27 balance for each reserve component is calculated by multiplying the
28 current replacement cost of that reserve component by its effective
29 age, then dividing the result by that reserve component's useful life.
30 The sum total of all reserve components' fully funded balances is the
31 association's fully funded balance.

32 (23) "Identifying number" means the designation of each unit in a
33 condominium.

34 ~~((21))~~ (24) "Leasehold condominium" means a condominium in which
35 all or a portion of the real property is subject to a lease, the
36 expiration or termination of which will terminate the condominium or
37 reduce its size.

1 ~~((+22+))~~ (25) "Limited common element" means a portion of the
2 common elements allocated by the declaration or by operation of RCW
3 64.34.204 (2) or (4) for the exclusive use of one or more but fewer
4 than all of the units.

5 ~~((+23+))~~ (26) "Master association" means an organization described
6 in RCW 64.34.276, whether or not it is also an association described in
7 RCW 64.34.300.

8 ~~((+24+))~~ (27) "Mortgage" means a mortgage, deed of trust or real
9 estate contract.

10 ~~((+25+))~~ (28) "Person" means a natural person, corporation,
11 partnership, limited partnership, trust, governmental subdivision or
12 agency, or other legal entity.

13 ~~((+26+))~~ (29) "Purchaser" means any person, other than a declarant
14 or a dealer, who by means of a disposition acquires a legal or
15 equitable interest in a unit other than (a) a leasehold interest,
16 including renewal options, of less than twenty years at the time of
17 creation of the unit, or (b) as security for an obligation.

18 ~~((+27+))~~ (30) "Real property" means any fee, leasehold or other
19 estate or interest in, over, or under land, including structures,
20 fixtures, and other improvements thereon and easements, rights and
21 interests appurtenant thereto which by custom, usage, or law pass with
22 a conveyance of land although not described in the contract of sale or
23 instrument of conveyance. "Real property" includes parcels, with or
24 without upper or lower boundaries, and spaces that may be filled with
25 air or water.

26 ~~((+28+))~~ (31) "Remaining useful life" means the estimated time, in
27 years, that a reserve component can be expected to continue to serve
28 its intended function.

29 (32) "Replacement cost" means the current cost of replacing,
30 repairing, or restoring a reserve component to its original functional
31 condition.

32 (33) "Residential purposes" means use for dwelling or recreational
33 purposes, or both.

34 ~~((+29+))~~ (34) "Reserve components" means common elements whose cost
35 of maintenance, repair, or replacement is infrequent, significant, and
36 impractical to include in an annual budget.

37 (35) "Reserve study professional" means an independent person

1 suitably qualified by knowledge, skill, experience, training, or
2 education to prepare a reserve study in accordance with sections 1 and
3 2 of this act.

4 (36) "Special declarant rights" means rights reserved for the
5 benefit of a declarant to: (a) Complete improvements indicated on
6 survey maps and plans filed with the declaration under RCW 64.34.232;
7 (b) exercise any development right under RCW 64.34.236; (c) maintain
8 sales offices, management offices, signs advertising the condominium,
9 and models under RCW 64.34.256; (d) use easements through the common
10 elements for the purpose of making improvements within the condominium
11 or within real property which may be added to the condominium under RCW
12 64.34.260; (e) make the condominium part of a larger condominium or a
13 development under RCW 64.34.280; (f) make the condominium subject to a
14 master association under RCW 64.34.276; or (g) appoint or remove any
15 officer of the association or any master association or any member of
16 the board of directors, or to veto or approve a proposed action of the
17 board or association, during any period of declarant control under RCW
18 64.34.308(4).

19 ~~((+30+))~~ (37) "Timeshare" shall have the meaning specified in the
20 timeshare act, RCW 64.36.010(11).

21 ~~((+31+))~~ (38) "Unit" means a physical portion of the condominium
22 designated for separate ownership, the boundaries of which are
23 described pursuant to RCW 64.34.216(1)(d). "Separate ownership"
24 includes leasing a unit in a leasehold condominium under a lease that
25 expires contemporaneously with any lease, the expiration or termination
26 of which will remove the unit from the condominium.

27 ~~((+32+))~~ (39) "Unit owner" means a declarant or other person who
28 owns a unit or leases a unit in a leasehold condominium under a lease
29 that expires simultaneously with any lease, the expiration or
30 termination of which will remove the unit from the condominium, but
31 does not include a person who has an interest in a unit solely as
32 security for an obligation. "Unit owner" means the vendee, not the
33 vendor, of a unit under a real estate contract.

34 (40) "Useful life" means the estimated time, in years, that a
35 reserve component can be expected to serve its intended function.

36 **Sec. 9.** RCW 64.34.304 and 1993 c 429 s 11 are each amended to read
37 as follows:

- 1 (1) Except as provided in subsection (2) of this section, and
2 subject to the provisions of the declaration, the association may:
- 3 (a) Adopt and amend bylaws, rules, and regulations;
- 4 (b) Adopt and amend budgets for revenues, expenditures, and
5 reserves, and impose and collect assessments for common expenses from
6 unit owners;
- 7 (c) Hire and discharge or contract with managing agents and other
8 employees, agents, and independent contractors;
- 9 (d) Institute, defend, or intervene in litigation or administrative
10 proceedings in its own name on behalf of itself or two or more unit
11 owners on matters affecting the condominium;
- 12 (e) Make contracts and incur liabilities;
- 13 (f) Regulate the use, maintenance, repair, replacement, and
14 modification of common elements;
- 15 (g) Cause additional improvements to be made as a part of the
16 common elements;
- 17 (h) Acquire, hold, encumber, and convey in its own name any right,
18 title, or interest to real or personal property, but common elements
19 may be conveyed or subjected to a security interest only pursuant to
20 RCW 64.34.348;
- 21 (i) Grant easements, leases, licenses, and concessions through or
22 over the common elements and petition for or consent to the vacation of
23 streets and alleys;
- 24 (j) Impose and collect any payments, fees, or charges for the use,
25 rental, or operation of the common elements, other than limited common
26 elements described in RCW 64.34.204 (2) and (4), and for services
27 provided to unit owners;
- 28 (k) Impose and collect charges for late payment of assessments
29 pursuant to RCW 64.34.364(13) and, after notice and an opportunity to
30 be heard by the board of directors or by such representative designated
31 by the board of directors and in accordance with such procedures as
32 provided in the declaration or bylaws or rules and regulations adopted
33 by the board of directors, levy reasonable fines in accordance with a
34 previously established schedule thereof adopted by the board of
35 directors and furnished to the owners for violations of the
36 declaration, bylaws, and rules and regulations of the association;
- 37 (l) Impose and collect reasonable charges for the preparation and

1 recording of amendments to the declaration, resale certificates
2 required by RCW 64.34.425, and statements of unpaid assessments;

3 (m) Provide for the indemnification of its officers and board of
4 directors and maintain directors' and officers' liability insurance;

5 (n) Assign its right to future income, including the right to
6 receive common expense assessments, but only to the extent the
7 declaration provides;

8 (o) Join in a petition for the establishment of a parking and
9 business improvement area, participate in the rate payers' board or
10 other advisory body set up by the legislative authority for operation
11 of a parking and business improvement area, and pay special assessments
12 levied by the legislative authority on a parking and business
13 improvement area encompassing the condominium property for activities
14 and projects which benefit the condominium directly or indirectly;

15 (p) Establish and administer a reserve fund as described in section
16 1 of this act;

17 (q) Prepare a reserve study as described in section 1 of this act;

18 (r) Exercise any other powers conferred by the declaration or
19 bylaws;

20 ~~((q))~~ (s) Exercise all other powers that may be exercised in this
21 state by the same type of corporation as the association; and

22 ~~((r))~~ (t) Exercise any other powers necessary and proper for the
23 governance and operation of the association.

24 (2) The declaration may not impose limitations on the power of the
25 association to deal with the declarant which are more restrictive than
26 the limitations imposed on the power of the association to deal with
27 other persons.

28 **Sec. 10.** RCW 64.34.410 and 2005 c 456 s 19 are each amended to
29 read as follows:

30 (1) A public offering statement shall contain the following
31 information:

- 32 (a) The name and address of the condominium;
- 33 (b) The name and address of the declarant;
- 34 (c) The name and address of the management company, if any;
- 35 (d) The relationship of the management company to the declarant, if
36 any;

- 1 (e) A list of up to the five most recent condominium projects
2 completed by the declarant or an affiliate of the declarant within the
3 past five years, including the names of the condominiums, their
4 addresses, and the number of existing units in each. For the purpose
5 of this section, a condominium is "completed" when any one unit therein
6 has been rented or sold;
- 7 (f) The nature of the interest being offered for sale;
- 8 (g) A brief description of the permitted uses and use restrictions
9 pertaining to the units and the common elements;
- 10 (h) A brief description of the restrictions, if any, on the renting
11 or leasing of units by the declarant or other unit owners, together
12 with the rights, if any, of the declarant to rent or lease at least a
13 majority of units;
- 14 (i) The number of existing units in the condominium and the maximum
15 number of units that may be added to the condominium;
- 16 (j) A list of the principal common amenities in the condominium
17 which materially affect the value of the condominium and those that
18 will or may be added to the condominium;
- 19 (k) A list of the limited common elements assigned to the units
20 being offered for sale;
- 21 (l) The identification of any real property not in the condominium,
22 the owner of which has access to any of the common elements, and a
23 description of the terms of such access;
- 24 (m) The identification of any real property not in the condominium
25 to which unit owners have access and a description of the terms of such
26 access;
- 27 (n) The status of construction of the units and common elements,
28 including estimated dates of completion if not completed;
- 29 (o) The estimated current common expense liability for the units
30 being offered;
- 31 (p) An estimate of any payment with respect to the common expense
32 liability for the units being offered which will be due at closing;
- 33 (q) The estimated current amount and purpose of any fees not
34 included in the common expenses and charged by the declarant or the
35 association for the use of any of the common elements;
- 36 (r) Any assessments which have been agreed to or are known to the
37 declarant and which, if not paid, may constitute a lien against any
38 units or common elements in favor of any governmental agency;

1 (s) The identification of any parts of the condominium, other than
2 the units, which any individual owner will have the responsibility for
3 maintaining;

4 (t) If the condominium involves a conversion condominium, the
5 information required by RCW 64.34.415;

6 (u) Whether timesharing is restricted or prohibited, and if
7 restricted, a general description of such restrictions;

8 (v) A list of all development rights reserved to the declarant and
9 all special declarant rights reserved to the declarant, together with
10 the dates such rights must terminate, and a copy of or reference by
11 recording number to any recorded transfer of a special declarant right;

12 (w) A description of any material differences in terms of
13 furnishings, fixtures, finishes, and equipment between any model unit
14 available to the purchaser at the time the agreement for sale is
15 executed and the unit being offered;

16 (x) Any liens on real property to be conveyed to the association
17 required to be disclosed pursuant to RCW 64.34.435(2)(b);

18 (y) A list of any physical hazards known to the declarant which
19 particularly affect the condominium or the immediate vicinity in which
20 the condominium is located and which are not readily ascertainable by
21 the purchaser;

22 (z) A brief description of any construction warranties to be
23 provided to the purchaser;

24 (aa) Any building code violation citations received by the
25 declarant in connection with the condominium which have not been
26 corrected;

27 (bb) A statement of any unsatisfied judgments or pending suits
28 against the association, a statement of the status of any pending suits
29 material to the condominium of which the declarant has actual
30 knowledge, and a statement of any litigation brought by an owners'
31 association, unit owner, or governmental entity in which the declarant
32 or any affiliate of the declarant has been a defendant, arising out of
33 the construction, sale, or administration of any condominium within the
34 previous five years, together with the results thereof, if known;

35 (cc) Any rights of first refusal to lease or purchase any unit or
36 any of the common elements;

37 (dd) The extent to which the insurance provided by the association
38 covers furnishings, fixtures, and equipment located in the unit;

1 (ee) A notice which describes a purchaser's right to cancel the
2 purchase agreement or extend the closing under RCW 64.34.420, including
3 applicable time frames and procedures;

4 (ff) Any reports or statements required by RCW 64.34.415 or
5 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
6 statement of a condominium in connection with which a final certificate
7 of occupancy was issued more than sixty calendar months prior to the
8 preparation of the public offering statement whether or not the
9 condominium is a conversion condominium as defined in RCW
10 64.34.020(~~(+10)~~) (11);

11 (gg) A list of the documents which the prospective purchaser is
12 entitled to receive from the declarant before the rescission period
13 commences;

14 (hh) A notice which states: A purchaser may not rely on any
15 representation or express warranty unless it is contained in the public
16 offering statement or made in writing signed by the declarant or by any
17 person identified in the public offering statement as the declarant's
18 agent;

19 (ii) A notice which states: This public offering statement is only
20 a summary of some of the significant aspects of purchasing a unit in
21 this condominium and the condominium documents are complex, contain
22 other important information, and create binding legal obligations. You
23 should consider seeking the assistance of legal counsel;

24 (jj) Any other information and cross-references which the declarant
25 believes will be helpful in describing the condominium to the
26 recipients of the public offering statement, all of which may be
27 included or not included at the option of the declarant;

28 (kk) A notice that addresses compliance or noncompliance with the
29 housing for older persons act of 1995, P.L. 104-76, as enacted on
30 December 28, 1995;

31 (ll) A notice that is substantially in the form required by RCW
32 64.50.050;

33 (mm) A statement, as required by RCW 64.35.210, as to whether the
34 units or common elements of the condominium are covered by a qualified
35 warranty, and a history of claims under any such warranty; (~~and~~)

36 (nn) A statement that the building enclosure has been designed and
37 inspected as required by RCW 64.55.010 through 64.55.090, and, if

1 required, repaired in accordance with the requirements of RCW
2 64.55.090; and

3 (oo) If the association does not have a reserve study that has been
4 prepared in accordance with sections 1 and 2 of this act or its
5 governing documents, the following disclosure:

6 "This association does not have a current reserve study.
7 The lack of a current reserve study poses certain risks to you,
8 the purchaser. Insufficient reserves may, under some
9 circumstances, require you to pay on demand as a special
10 assessment your share of common expenses for the cost of major
11 maintenance, repair, or replacement of a common element."

12 (2) The public offering statement shall include copies of each of
13 the following documents: The declaration, the survey map and plans,
14 the articles of incorporation of the association, bylaws of the
15 association, rules and regulations, if any, current or proposed budget
16 for the association, the balance sheet of the association current
17 within ninety days if assessments have been collected for ninety days
18 or more, the association's current reserve study, if any, and the
19 inspection and repair report or reports prepared in accordance with the
20 requirements of RCW 64.55.090.

21 If any of the foregoing documents listed in this subsection are not
22 available because they have not been executed, adopted, or recorded,
23 drafts of such documents shall be provided with the public offering
24 statement, and, before closing the sale of a unit, the purchaser shall
25 be given copies of any material changes between the draft of the
26 proposed documents and the final documents.

27 (3) The disclosures required by subsection (1)(g), (k), (s), (u),
28 (v), and (cc) of this section shall also contain a reference to
29 specific sections in the condominium documents which further explain
30 the information disclosed.

31 (4) The disclosures required by subsection (1)(ee), (hh), (ii), and
32 (ll) of this section shall be located at the top of the first page of
33 the public offering statement and be typed or printed in ten-point bold
34 face type size.

35 (5) A declarant shall promptly amend the public offering statement
36 to reflect any material change in the information required by this
37 section.

1 **Sec. 11.** RCW 64.34.425 and 2004 c 201 s 4 are each amended to read
2 as follows:

3 (1) Except in the case of a sale where delivery of a public
4 offering statement is required, or unless exempt under RCW
5 64.34.400(2), a unit owner shall furnish to a purchaser before
6 execution of any contract for sale of a unit, or otherwise before
7 conveyance, a resale certificate, signed by an officer or authorized
8 agent of the association and based on the books and records of the
9 association and the actual knowledge of the person signing the
10 certificate, containing:

11 (a) A statement disclosing any right of first refusal or other
12 restraint on the free alienability of the unit contained in the
13 declaration;

14 (b) A statement setting forth the amount of the monthly common
15 expense assessment and any unpaid common expense or special assessment
16 currently due and payable from the selling unit owner and a statement
17 of any special assessments that have been levied against the unit which
18 have not been paid even though not yet due;

19 (c) A statement, which shall be current to within forty-five days,
20 of any common expenses or special assessments against any unit in the
21 condominium that are past due over thirty days;

22 (d) A statement, which shall be current to within forty-five days,
23 of any obligation of the association which is past due over thirty
24 days;

25 (e) A statement of any other fees payable by unit owners;

26 (f) A statement of any anticipated repair or replacement cost in
27 excess of five percent of the annual budget of the association that has
28 been approved by the board of directors;

29 (g) A statement of the amount of any reserves for repair or
30 replacement and of any portions of those reserves currently designated
31 by the association for any specified projects;

32 (h) The annual financial statement of the association, including
33 the audit report if it has been prepared, for the year immediately
34 preceding the current year;

35 (i) A balance sheet and a revenue and expense statement of the
36 association prepared on an accrual basis, which shall be current to
37 within one hundred twenty days;

38 (j) The current operating budget of the association;

1 (k) A statement of any unsatisfied judgments against the
2 association and the status of any pending suits or legal proceedings in
3 which the association is a plaintiff or defendant;

4 (l) A statement describing any insurance coverage provided for the
5 benefit of unit owners;

6 (m) A statement as to whether there are any alterations or
7 improvements to the unit or to the limited common elements assigned
8 thereto that violate any provision of the declaration;

9 (n) A statement of the number of units, if any, still owned by the
10 declarant, whether the declarant has transferred control of the
11 association to the unit owners, and the date of such transfer;

12 (o) A statement as to whether there are any violations of the
13 health or building codes with respect to the unit, the limited common
14 elements assigned thereto, or any other portion of the condominium;

15 (p) A statement of the remaining term of any leasehold estate
16 affecting the condominium and the provisions governing any extension or
17 renewal thereof;

18 (q) A copy of the declaration, the bylaws, the rules or regulations
19 of the association, the association's current reserve study, if any,
20 and any other information reasonably requested by mortgagees of
21 prospective purchasers of units. Information requested generally by
22 the federal national mortgage association, the federal home loan bank
23 board, the government national mortgage association, the veterans
24 administration and the department of housing and urban development
25 shall be deemed reasonable, provided such information is reasonably
26 available to the association; ((and))

27 (r) A statement, as required by RCW 64.35.210, as to whether the
28 units or common elements of the condominium are covered by a qualified
29 warranty, and a history of claims under any such warranty; and

30 (s) If the association does not have a reserve study that has been
31 prepared in accordance with sections 1 and 2 of this act or its
32 governing documents, the following disclosure:

33 "This association does not have a current reserve study.
34 The lack of a current reserve study poses certain risks to you,
35 the purchaser. Insufficient reserves may, under some
36 circumstances, require you to pay on demand as a special
37 assessment your share of common expenses for the cost of major
38 maintenance, repair, or replacement of a common element."

1 (2) The association, within ten days after a request by a unit
2 owner, and subject to payment of any fee imposed pursuant to RCW
3 64.34.304(1)(1), shall furnish a resale certificate signed by an
4 officer or authorized agent of the association and containing the
5 information necessary to enable the unit owner to comply with this
6 section. For the purposes of this chapter, a reasonable charge for the
7 preparation of a resale certificate may not exceed one hundred fifty
8 dollars. The association may charge a unit owner a nominal fee for
9 updating a resale certificate within six months of the unit owner's
10 request. The unit owner shall also sign the certificate but the unit
11 owner is not liable to the purchaser for any erroneous information
12 provided by the association and included in the certificate unless and
13 to the extent the unit owner had actual knowledge thereof.

14 (3) A purchaser is not liable for any unpaid assessment or fee
15 against the unit as of the date of the certificate greater than the
16 amount set forth in the certificate prepared by the association unless
17 and to the extent such purchaser had actual knowledge thereof. A unit
18 owner is not liable to a purchaser for the failure or delay of the
19 association to provide the certificate in a timely manner, but the
20 purchaser's contract is voidable by the purchaser until the certificate
21 has been provided and for five days thereafter or until conveyance,
22 whichever occurs first.

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