
SUBSTITUTE HOUSE BILL 1309

State of Washington

62nd Legislature

2011 Regular Session

By House Judiciary (originally sponsored by Representatives Roberts, Appleton, Rodne, Springer, Hasegawa, Ryu, Eddy, Green, Kagi, and Kelley)

READ FIRST TIME 02/15/11.

1 AN ACT Relating to reserve accounts and studies for condominium and
2 homeowners' associations; amending RCW 64.34.020, 64.34.308, 64.34.380,
3 64.34.382, 64.34.384, 64.38.010, and 64.38.025; reenacting and amending
4 RCW 64.34.010; and adding new sections to chapter 64.38 RCW.

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

6 **Sec. 1.** RCW 64.34.020 and 2008 c 115 s 8 are each amended to read
7 as follows:

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

10 (1) "Affiliate" means any person who controls, is controlled by, or
11 is under common control with the referenced person. A person
12 "controls" another person if the person: (a) Is a general partner,
13 officer, director, or employer of the referenced person; (b) directly
14 or indirectly or acting in concert with one or more other persons, or
15 through one or more subsidiaries, owns, controls, holds with power to
16 vote, or holds proxies representing, more than twenty percent of the
17 voting interest in the referenced person; (c) controls in any manner
18 the election of a majority of the directors of the referenced person;
19 or (d) has contributed more than twenty percent of the capital of the

1 referenced person. A person "is controlled by" another person if the
2 other person: (i) Is a general partner, officer, director, or employer
3 of the person; (ii) directly or indirectly or acting in concert with
4 one or more other persons, or through one or more subsidiaries, owns,
5 controls, holds with power to vote, or holds proxies representing, more
6 than twenty percent of the voting interest in the person; (iii)
7 controls in any manner the election of a majority of the directors of
8 the person; or (iv) has contributed more than twenty percent of the
9 capital of the person. Control does not exist if the powers described
10 in this subsection are held solely as security for an obligation and
11 are not exercised.

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

15 (3) "Assessment" means all sums chargeable by the association
16 against a unit including, without limitation: (a) Regular and special
17 assessments for common expenses, charges, and fines imposed by the
18 association; (b) interest and late charges on any delinquent account;
19 and (c) costs of collection, including reasonable attorneys' fees,
20 incurred by the association in connection with the collection of a
21 delinquent owner's account.

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

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

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

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

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

33 (9) "Condominium" means real property, portions of which are
34 designated for separate ownership and the remainder of which is
35 designated for common ownership solely by the owners of those portions.
36 Real property is not a condominium unless the undivided interests in
37 the common elements are vested in the unit owners, and unless a

1 declaration and a survey map and plans have been recorded pursuant to
2 this chapter.

3 (10) "Contribution rate" means, in a reserve study as described in
4 RCW 64.34.380, the amount contributed to the reserve account so that
5 the association will have cash reserves to pay major maintenance,
6 repair, or replacement costs without the need of a special assessment.

7 (11) "Conversion condominium" means a condominium (a) that at any
8 time before creation of the condominium was lawfully occupied wholly or
9 partially by a tenant or subtenant for residential purposes pursuant to
10 a rental agreement, oral or written, express or implied, for which the
11 tenant or subtenant had not received the notice described in (b) of
12 this subsection; or (b) that, at any time within twelve months before
13 the conveyance of, or acceptance of an agreement to convey, any unit
14 therein other than to a declarant or any affiliate of a declarant, was
15 lawfully occupied wholly or partially by a residential tenant of a
16 declarant or an affiliate of a declarant and such tenant was not
17 notified in writing, prior to lawfully occupying a unit or executing a
18 rental agreement, whichever event first occurs, that the unit was part
19 of a condominium and subject to sale. "Conversion condominium" shall
20 not include a condominium in which, before July 1, 1990, any unit
21 therein had been conveyed or been made subject to an agreement to
22 convey to any transferee other than a declarant or an affiliate of a
23 declarant.

24 (12) "Conveyance" means any transfer of the ownership of a unit,
25 including a transfer by deed or by real estate contract and, with
26 respect to a unit in a leasehold condominium, a transfer by lease or
27 assignment thereof, but shall not include a transfer solely for
28 security.

29 (13) "Dealer" means a person who, together with such person's
30 affiliates, owns or has a right to acquire either six or more units in
31 a condominium or fifty percent or more of the units in a condominium
32 containing more than two units.

33 (14) "Declarant" means:

34 (a) Any person who executes as declarant a declaration as defined
35 in subsection (16) of this section; or

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

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

3 (d) Any person who is the owner of a fee interest in the real
4 property which is subjected to the declaration at the time of the
5 recording of an instrument pursuant to RCW 64.34.316 and who directly
6 or through one or more affiliates is materially involved in the
7 construction, marketing, or sale of units in the condominium created by
8 the recording of the instrument.

9 (15) "Declarant control" means the right of the declarant or
10 persons designated by the declarant to appoint and remove officers and
11 members of the board of directors, or to veto or approve a proposed
12 action of the board or association, pursuant to RCW 64.34.308 (~~((4)~~
13 ~~or~~)) (5) or (6).

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

17 (17) "Development rights" means any right or combination of rights
18 reserved by a declarant in the declaration to: (a) Add real property
19 or improvements to a condominium; (b) create units, common elements, or
20 limited common elements within real property included or added to a
21 condominium; (c) subdivide units or convert units into common elements;
22 (d) withdraw real property from a condominium; or (e) reallocate
23 limited common elements with respect to units that have not been
24 conveyed by the declarant.

25 (18) "Dispose" or "disposition" means a voluntary transfer or
26 conveyance to a purchaser or lessee of any legal or equitable interest
27 in a unit, but does not include the transfer or release of a security
28 interest.

29 (19) "Effective age" means the difference between the estimated
30 useful life and remaining useful life.

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

35 (21) "Foreclosure" means a forfeiture or judicial or nonjudicial
36 foreclosure of a mortgage or a deed in lieu thereof.

37 (22) "Fully funded balance" means the current value of the
38 deteriorated portion, not the total replacement value, of all the

1 reserve components. The fully funded balance for each reserve
2 component is calculated by multiplying the current replacement cost of
3 that reserve component by its effective age, then dividing the result
4 by that reserve component's useful life. The sum total of all reserve
5 components' fully funded balances is the association's fully funded
6 balance.

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

9 (24) "Leasehold condominium" means a condominium in which all or a
10 portion of the real property is subject to a lease, the expiration or
11 termination of which will terminate the condominium or reduce its size.

12 (25) "Limited common element" means a portion of the common
13 elements allocated by the declaration or by operation of RCW 64.34.204
14 (2) or (4) for the exclusive use of one or more but fewer than all of
15 the units.

16 (26) "Master association" means an organization described in RCW
17 64.34.276, whether or not it is also an association described in RCW
18 64.34.300.

19 (27) "Mortgage" means a mortgage, deed of trust or real estate
20 contract.

21 (28) "Person" means a natural person, corporation, partnership,
22 limited partnership, trust, governmental subdivision or agency, or
23 other legal entity.

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

29 (30) "Real property" means any fee, leasehold or other estate or
30 interest in, over, or under land, including structures, fixtures, and
31 other improvements thereon and easements, rights and interests
32 appurtenant thereto which by custom, usage, or law pass with a
33 conveyance of land although not described in the contract of sale or
34 instrument of conveyance. "Real property" includes parcels, with or
35 without upper or lower boundaries, and spaces that may be filled with
36 air or water.

37 (31) "Remaining useful life" means the estimated time, in years,

1 (~~that a reserve component can be expected to continue to serve~~)
2 before a reserve component will require major maintenance, repair, or
3 replacement to perform its intended function.

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

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

9 (34) "Reserve component(~~(s)~~)" means a common element(~~(s)~~) whose
10 cost of maintenance, repair, or replacement is infrequent, significant,
11 and impractical to include in an annual budget.

12 (35) "Reserve study professional" means an independent person who
13 is suitably qualified by knowledge, skill, experience, training, or
14 education to prepare a reserve study in accordance with RCW 64.34.380
15 and 64.34.382.

16 (36) "Special declarant rights" means rights reserved for the
17 benefit of a declarant to: (a) Complete improvements indicated on
18 survey maps and plans filed with the declaration under RCW 64.34.232;
19 (b) exercise any development right under RCW 64.34.236; (c) maintain
20 sales offices, management offices, signs advertising the condominium,
21 and models under RCW 64.34.256; (d) use easements through the common
22 elements for the purpose of making improvements within the condominium
23 or within real property which may be added to the condominium under RCW
24 64.34.260; (e) make the condominium part of a larger condominium or a
25 development under RCW 64.34.280; (f) make the condominium subject to a
26 master association under RCW 64.34.276; or (g) appoint or remove any
27 officer of the association or any master association or any member of
28 the board of directors, or to veto or approve a proposed action of the
29 board or association, during any period of declarant control under RCW
30 64.34.308(~~(+4)~~) (5).

31 (37) "Timeshare" shall have the meaning specified in the timeshare
32 act, RCW 64.36.010(11).

33 (38) "Unit" means a physical portion of the condominium designated
34 for separate ownership, the boundaries of which are described pursuant
35 to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit
36 in a leasehold condominium under a lease that expires contemporaneously
37 with any lease, the expiration or termination of which will remove the
38 unit from the condominium.

1 (39) "Unit owner" means a declarant or other person who owns a unit
2 or leases a unit in a leasehold condominium under a lease that expires
3 simultaneously with any lease, the expiration or termination of which
4 will remove the unit from the condominium, but does not include a
5 person who has an interest in a unit solely as security for an
6 obligation. "Unit owner" means the vendee, not the vendor, of a unit
7 under a real estate contract.

8 (40) "Useful life" means the estimated time, ~~((in))~~ between years,
9 that ~~((a reserve component can be expected to serve its intended~~
10 ~~function))~~ major maintenance, repair, or replacement is estimated to
11 occur.

12 (41) "Baseline funding plan" means establishing a reserve funding
13 goal of maintaining a reserve account balance above zero dollars
14 throughout the thirty-year study period described under RCW 64.34.380.

15 (42) "Full funding plan" means setting a reserve funding goal of
16 achieving one hundred percent fully funded reserves by the end of the
17 thirty-year study period described under RCW 64.34.380, in which the
18 reserve account balance equals the sum of the deteriorated portion of
19 all reserve components.

20 (43) "Significant assets" means that the current total cost of
21 major maintenance, repair, and replacement of the reserve components is
22 fifty percent or more of the gross budget of the association, excluding
23 reserve account funds.

24 **Sec. 2.** RCW 64.34.308 and 1992 c 220 s 15 are each amended to read
25 as follows:

26 (1) Except as provided in the declaration, the bylaws, subsection
27 (2) of this section, or other provisions of this chapter, the board of
28 directors shall act in all instances on behalf of the association. In
29 the performance of their duties, the officers and members of the board
30 of directors are required to exercise: (a) If appointed by the
31 declarant, the care required of fiduciaries of the unit owners; or (b)
32 if elected by the unit owners, ordinary and reasonable care.

33 (2) The board of directors shall not act on behalf of the
34 association to amend the declaration in any manner that requires the
35 vote or approval of the unit owners pursuant to RCW 64.34.264, to
36 terminate the condominium pursuant to RCW 64.34.268, or to elect
37 members of the board of directors or determine the qualifications,

1 powers, and duties, or terms of office of members of the board of
2 directors pursuant to subsection (~~((6+))~~) (7) of this section; but the
3 board of directors may fill vacancies in its membership for the
4 unexpired portion of any term.

5 (3) Within thirty days after adoption of any proposed budget for
6 the condominium, the board of directors shall provide a summary of the
7 budget to all the unit owners and shall set a date for a meeting of the
8 unit owners to consider ratification of the budget not less than
9 fourteen nor more than sixty days after mailing of the summary. Unless
10 at that meeting the owners of units to which a majority of the votes in
11 the association are allocated or any larger percentage specified in the
12 declaration reject the budget, the budget is ratified, whether or not
13 a quorum is present. In the event the proposed budget is rejected or
14 the required notice is not given, the periodic budget last ratified by
15 the unit owners shall be continued until such time as the unit owners
16 ratify a subsequent budget proposed by the board of directors.

17 (4) As part of the summary of the budget provided to all unit
18 owners, the board of directors shall disclose to the unit owners:

19 (a) The current amount of regular assessments budgeted for
20 contribution to the reserve account, the recommended contribution rate
21 from the reserve study, and the funding plan upon which the recommended
22 contribution rate is based;

23 (b) If additional regular or special assessments are scheduled to
24 be imposed, the date the assessments are due, the amount of the
25 assessments per each unit per month or year, and the purpose of the
26 assessments;

27 (c) Based upon the most recent reserve study and other information,
28 whether currently projected reserve account balances will be sufficient
29 at the end of each year to meet the association's obligation for major
30 maintenance, repair, or replacement of reserve components during the
31 next thirty years;

32 (d) If reserve account balances are not projected to be sufficient,
33 what additional assessments may be necessary to ensure that sufficient
34 reserve account funds will be available each year during the next
35 thirty years, the approximate dates assessments may be due, and the
36 amount of the assessments per unit per month or year;

37 (e) The estimated amount recommended in the reserve account at the
38 end of the current fiscal year based on the most recent reserve study,

1 the projected reserve account cash balance at the end of the current
2 fiscal year, and the percent funded at the date of the latest reserve
3 study;

4 (f) The estimated amount recommended in the reserve account based
5 upon the most recent reserve study at the end of each of the next five
6 budget years, the projected reserve account cash balance in each of
7 those years, and the projected percent funded for each of those years;
8 and

9 (g) If the funding plan approved by the association is implemented,
10 the projected reserve account cash balance in each of the next five
11 budget years and the percent funded for each of those years.

12 (5)(a) Subject to subsection ((+5+)) (6) of this section, the
13 declaration may provide for a period of declarant control of the
14 association, during which period a declarant, or persons designated by
15 the declarant, may: (i) Appoint and remove the officers and members of
16 the board of directors; or (ii) veto or approve a proposed action of
17 the board or association. A declarant's failure to veto or approve
18 such proposed action in writing within thirty days after receipt of
19 written notice of the proposed action shall be deemed approval by the
20 declarant.

21 (b) Regardless of the period provided in the declaration, a period
22 of declarant control terminates no later than the earlier of: (i)
23 Sixty days after conveyance of seventy-five percent of the units which
24 may be created to unit owners other than a declarant; (ii) two years
25 after the last conveyance or transfer of record of a unit except as
26 security for a debt; (iii) two years after any development right to add
27 new units was last exercised; or (iv) the date on which the declarant
28 records an amendment to the declaration pursuant to which the declarant
29 voluntarily surrenders the right to further appoint and remove officers
30 and members of the board of directors. A declarant may voluntarily
31 surrender the right to appoint and remove officers and members of the
32 board of directors before termination of that period pursuant to (i),
33 (ii), and (iii) of this subsection ((+4+)) (5)(b), but in that event
34 the declarant may require, for the duration of the period of declarant
35 control, that specified actions of the association or board of
36 directors, as described in a recorded instrument executed by the
37 declarant, be approved by the declarant before they become effective.

1 ~~((+5+))~~ (6) Not later than sixty days after conveyance of twenty-
2 five percent of the units which may be created to unit owners other
3 than a declarant, at least one member and not less than twenty-five
4 percent of the members of the board of directors must be elected by
5 unit owners other than the declarant. Not later than sixty days after
6 conveyance of fifty percent of the units which may be created to unit
7 owners other than a declarant, not less than thirty-three and one-third
8 percent of the members of the board of directors must be elected by
9 unit owners other than the declarant.

10 ~~((+6+))~~ (7) Within thirty days after the termination of any period
11 of declarant control, the unit owners shall elect a board of directors
12 of at least three members, at least a majority of whom must be unit
13 owners. The number of directors need not exceed the number of units
14 then in the condominium. The board of directors shall elect the
15 officers. Such members of the board of directors and officers shall
16 take office upon election.

17 ~~((+7+))~~ (8) Notwithstanding any provision of the declaration or
18 bylaws to the contrary, the unit owners, by a two-thirds vote of the
19 voting power in the association present and entitled to vote at any
20 meeting of the unit owners at which a quorum is present, may remove any
21 member of the board of directors with or without cause, other than a
22 member appointed by the declarant. The declarant may not remove any
23 member of the board of directors elected by the unit owners. Prior to
24 the termination of the period of declarant control, the unit owners,
25 other than the declarant, may remove by a two-thirds vote, any director
26 elected by the unit owners.

27 **Sec. 3.** RCW 64.34.380 and 2008 c 115 s 1 are each amended to read
28 as follows:

29 (1) An association is encouraged to establish a reserve account
30 with a financial institution to fund major maintenance, repair, and
31 replacement of common elements, including limited common elements that
32 will require major maintenance, repair, or replacement within thirty
33 years. ~~((A reserve account shall be established in the name of the
34 association.))~~ If the association establishes a reserve account, the
35 account must be in the name of the association. The board of directors
36 is responsible for administering the reserve account.

1 (2) Unless doing so would impose an unreasonable hardship, an
2 association with significant assets shall prepare and update a reserve
3 study, in accordance with the association's governing documents and RCW
4 64.34.224(1). The initial reserve study must be based upon a visual
5 site inspection conducted by a reserve study professional.

6 (3) Unless doing so would impose an unreasonable hardship, the
7 association shall update the reserve study annually. At least every
8 three years, an updated reserve study must be prepared and based upon
9 a visual site inspection conducted by a reserve study professional.

10 (4) This section and RCW 64.34.382 through (~~64.34.390~~) 64.34.392
11 apply to condominiums governed by chapter 64.32 RCW or this chapter and
12 intended in whole or in part for residential purposes. These sections
13 do not apply to condominiums consisting solely of units that are
14 restricted in the declaration to nonresidential use. An association's
15 governing documents may contain stricter requirements.

16 **Sec. 4.** RCW 64.34.382 and 2008 c 115 s 2 are each amended to read
17 as follows:

18 (1) A reserve study as described in RCW 64.34.380 is supplemental
19 to the association's operating and maintenance budget. In preparing a
20 reserve study, the association shall estimate the anticipated major
21 maintenance, repair, and replacement costs, whose infrequent and
22 significant nature make them impractical to be included in an annual
23 budget.

24 (2) A reserve study (~~shall~~) must include:

25 (a) A reserve component list, including roofing, painting, paving,
26 decks, siding, plumbing, windows, and any other reserve component that
27 would cost more than one percent of the annual budget for major
28 maintenance, repair, or replacement. If one of these reserve
29 components is not included in the reserve study, the study should
30 provide commentary explaining the basis for its exclusion. The study
31 must also include quantities and estimates for the useful life of each
32 reserve component, remaining useful life of each reserve component, and
33 current repair and replacement cost for each component;

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

36 (c) The following level of reserve study performed:

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

- 1 (ii) Level II: Update with visual site inspection; or
2 (iii) Level III: Update with no visual site inspection;
3 (d) The association's reserve account balance;
4 (e) The percentage of the fully funded balance that the reserve
5 account is funded;
6 (f) Special assessments already implemented or planned;
7 (g) Interest and inflation assumptions;
8 (h) Current reserve account contribution rate;
9 (i) A recommended reserve account contribution rate, a contribution
10 rate for a full funding plan to achieve one hundred percent fully
11 funded reserves by the end of the thirty-year study period, a baseline
12 funding plan to maintain the reserve balance above zero throughout the
13 thirty-year study period without special assessments, and a
14 contribution rate recommended by a reserve study professional;
15 (j) A projected reserve account balance for thirty years and a
16 funding plan to pay for projected costs from those reserves without
17 reliance on future unplanned special assessments; and
18 (k) A statement on whether the reserve study was prepared with the
19 assistance of a reserve study professional.

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

21 "This reserve study should be reviewed carefully. It
22 may not include all common and limited common element
23 components that will require major maintenance, repair, or
24 replacement in future years, and may not include regular
25 contributions to a reserve account for the cost of such
26 maintenance, repair, or replacement. The failure to include a
27 component in a reserve study, or to provide contributions to a
28 reserve account for a component, may, under some circumstances,
29 require you to pay on demand as a special assessment your share
30 of common expenses for the cost of major maintenance, repair,
31 or replacement of a reserve component."

32 **Sec. 5.** RCW 64.34.384 and 2008 c 115 s 3 are each amended to read
33 as follows:

34 An association may withdraw funds from its reserve account to pay
35 for unforeseen or unbudgeted costs that are unrelated to maintenance,
36 repair, or replacement of the reserve components. The board of

1 directors shall record any such withdrawal in the minute books of the
2 association, cause notice of any such withdrawal to be hand delivered
3 or sent prepaid by first-class United States mail to the mailing
4 address of each unit or to any other mailing address designated in
5 writing by the unit owner, and adopt a repayment schedule not to exceed
6 twenty-four months unless it determines that repayment within twenty-
7 four months would impose an unreasonable burden on the unit owners.
8 Payment for major maintenance, repair, or replacement of the reserve
9 components out of cycle with the reserve study projections or not
10 included in the reserve study may be made from the reserve account
11 without meeting the notification or repayment requirements under this
12 section.

13 **Sec. 6.** RCW 64.34.010 and 2008 c 115 s 7 and 2008 c 114 s 1 are
14 each reenacted and amended to read as follows:

15 (1) This chapter applies to all condominiums created within this
16 state after July 1, 1990. RCW 64.34.040 (separate titles and
17 taxation), RCW 64.34.050 (applicability of local ordinances,
18 regulations, and building codes), RCW 64.34.060 (condemnation), RCW
19 64.34.208 (construction and validity of declaration and bylaws), RCW
20 64.34.268 (1) through (7) and (10) (termination of condominium), RCW
21 64.34.212 (description of units), RCW 64.34.304(1) (a) through (f) and
22 (k) through (~~(r)~~) (t) (powers of unit owners' association), RCW
23 64.34.308(1) (board of directors and officers), RCW 64.34.340
24 (voting-proxies), RCW 64.34.344 (tort and contract liability), RCW
25 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common
26 expenses-assessments), RCW 64.34.364 (lien for assessments), RCW
27 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW
28 64.34.455 (effect of violation on rights of action; attorney's fees),
29 RCW 64.34.380 through (~~(34.34.390)~~) 64.34.392 (reserve studies and
30 accounts), and RCW 64.34.020 (definitions) to the extent necessary in
31 construing any of those sections, apply to all condominiums created in
32 this state before July 1, 1990; but those sections apply only with
33 respect to events and circumstances occurring after July 1, 1990, and
34 do not invalidate or supersede existing, inconsistent provisions of the
35 declaration, bylaws, or survey maps or plans of those condominiums.

36 (2) The provisions of chapter 64.32 RCW do not apply to
37 condominiums created after July 1, 1990, and do not invalidate any

1 amendment to the declaration, bylaws, and survey maps and plans of any
2 condominium created before July 1, 1990, if the amendment would be
3 permitted by this chapter. The amendment must be adopted in conformity
4 with the procedures and requirements specified by those instruments and
5 by chapter 64.32 RCW. If the amendment grants to any person any
6 rights, powers, or privileges permitted by this chapter which are not
7 otherwise provided for in the declaration or chapter 64.32 RCW, all
8 correlative obligations, liabilities, and restrictions in this chapter
9 also apply to that person.

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

12 (4) RCW 64.34.400 (applicability-waiver), RCW 64.34.405 (liability
13 for public offering statement requirements), RCW 64.34.410 (public
14 offering statement-general provisions), RCW 64.34.415 (public offering
15 statement-conversion condominiums), RCW 64.34.420 (purchaser's right to
16 cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion
17 condominiums-notice-tenants(~~(relocation—assistance)~~)-relocation
18 assistance), and RCW 64.34.455 (effect of violations on rights of
19 action-attorney's fees) apply with respect to all sales of units
20 pursuant to purchase agreements entered into after July 1, 1990, in
21 condominiums created before July 1, 1990, in which as of July 1, 1990,
22 the declarant or an affiliate of the declarant owns or had the right to
23 create at least ten units constituting at least twenty percent of the
24 units in the condominium.

25 **Sec. 7.** RCW 64.38.010 and 1995 c 283 s 2 are each amended to read
26 as follows:

27 For purposes of this chapter:

28 (1) "Homeowners' association" or "association" means a corporation,
29 unincorporated association, or other legal entity, each member of which
30 is an owner of residential real property located within the
31 association's jurisdiction, as described in the governing documents,
32 and by virtue of membership or ownership of property is obligated to
33 pay real property taxes, insurance premiums, maintenance costs, or for
34 improvement of real property other than that which is owned by the
35 member. "Homeowners' association" does not mean an association created
36 under chapter 64.32 or 64.34 RCW.

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

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

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

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

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

16 (7) "Assessment" means all sums chargeable to an owner by an
17 association in accordance with RCW 64.38.020.

18 (8) "Baseline funding plan" means establishing a reserve funding
19 goal of maintaining a reserve account balance above zero dollars
20 throughout the thirty-year study period described under section 9 of
21 this act.

22 (9) "Contribution rate" means, in a reserve study as described in
23 RCW 64.34.380, the amount contributed to the reserve account so that
24 the association will have cash reserves to pay major maintenance,
25 repair, or replacement costs without the need of a special assessment.

26 (10) "Effective age" means the difference between the estimated
27 useful life and remaining useful life.

28 (11) "Full funding plan" means setting a reserve funding goal of
29 achieving one hundred percent fully funded reserves by the end of the
30 thirty-year study period described under section 9 of this act, in
31 which the reserve account balance equals the sum of the deteriorated
32 portion of all reserve components.

33 (12) "Fully funded balance" means the current value of the
34 deteriorated portion, not the total replacement value, of all the
35 reserve components. The fully funded balance for each reserve
36 component is calculated by multiplying the current replacement cost of
37 the reserve component by its effective age, then dividing the result by

1 the reserve component's useful life. The sum total of all reserve
2 components' fully funded balances is the association's fully funded
3 balance.

4 (13) "Lot" means a physical portion of the real property located
5 within an association's jurisdiction designated for separate ownership.

6 (14) "Owner" means the owner of a lot, but does not include a
7 person who has an interest in a lot solely as security for an
8 obligation. "Owner" also means the vendee, not the vendor, of a lot
9 under a real estate contract.

10 (15) "Remaining useful life" means the estimated time, in years,
11 before a reserve component will require major maintenance, repair, or
12 replacement to perform its intended function.

13 (16) "Replacement cost" means the current cost of replacing,
14 repairing, or restoring a reserve component to its original functional
15 condition.

16 (17) "Reserve component" means a common element whose cost of
17 maintenance, repair, or replacement is infrequent, significant, and
18 impractical to include in an annual budget.

19 (18) "Reserve study professional" means an independent person who
20 is suitably qualified by knowledge, skill, experience, training, or
21 education to prepare a reserve study in accordance with RCW 64.34.380
22 and 64.34.382.

23 (19) "Significant assets" means that the current replacement value
24 of the major reserve components is fifty percent or more of the gross
25 budget of the association, excluding the association's reserve account
26 funds.

27 (20) "Useful life" means the estimated time, between years, that
28 major maintenance, repair, or replacement is estimated to occur.

29 **Sec. 8.** RCW 64.38.025 and 1995 c 283 s 5 are each amended to read
30 as follows:

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

1 (2) The board of directors shall not act on behalf of the
2 association to amend the articles of incorporation, to take any action
3 that requires the vote or approval of the owners, to terminate the
4 association, to elect members of the board of directors, or to
5 determine the qualifications, powers, and duties, or terms of office of
6 members of the board of directors; but the board of directors may fill
7 vacancies in its membership of the unexpired portion of any term.

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

20 (4) As part of the summary of the budget provided to all owners,
21 the board of directors shall disclose to the owners:

22 (a) The current amount of regular assessments budgeted for
23 contribution to the reserve account, the recommended contribution rate
24 from the reserve study, and the funding plan upon which the recommended
25 contribution rate is based;

26 (b) If additional regular or special assessments are scheduled to
27 be imposed, the date the assessments are due, the amount of the
28 assessments per each owner per month or year, and the purpose of the
29 assessments;

30 (c) Based upon the most recent reserve study and other information,
31 whether currently projected reserve account balances will be sufficient
32 at the end of each year to meet the association's obligation for major
33 maintenance, repair, or replacement of reserve components during the
34 next thirty years;

35 (d) If reserve account balances are not projected to be sufficient,
36 what additional assessments may be necessary to ensure that sufficient
37 reserve account funds will be available each year during the next

1 thirty years, the approximate dates assessments may be due, and the
2 amount of the assessments per owner per month or year;

3 (e) The estimated amount recommended in the reserve account at the
4 end of the current fiscal year based on the most recent reserve study,
5 the projected reserve account cash balance at the end of the current
6 fiscal year, and the percent funded at the date of the latest reserve
7 study;

8 (f) The estimated amount recommended in the reserve account based
9 upon the most recent reserve study at the end of each of the next five
10 budget years, the projected reserve account cash balance in each of
11 those years, and the projected percent funded for each of those years;
12 and

13 (g) If the funding plan approved by the association is implemented,
14 the projected reserve account cash balance in each of the next five
15 budget years and the percent funded for each of those years.

16 (5) The owners by a majority vote of the voting power in the
17 association present, in person or by proxy, and entitled to vote at any
18 meeting of the owners at which a quorum is present, may remove any
19 member of the board of directors with or without cause.

20 NEW SECTION. Sec. 9. A new section is added to chapter 64.38 RCW
21 to read as follows:

22 (1) An association is encouraged to establish a reserve account
23 with a financial institution to fund major maintenance, repair, and
24 replacement of common elements, including limited common elements that
25 will require major maintenance, repair, or replacement within thirty
26 years. If the association establishes a reserve account, the account
27 must be in the name of the association. The board of directors is
28 responsible for administering the reserve account.

29 (2) Unless doing so would impose an unreasonable hardship, an
30 association with significant assets shall prepare and update a reserve
31 study, in accordance with the association's governing documents and
32 this chapter. The initial reserve study must be based upon a visual
33 site inspection conducted by a reserve study professional.

34 (3) Unless doing so would impose an unreasonable hardship, the
35 association shall update the reserve study annually. At least every
36 three years, an updated reserve study must be prepared and based upon
37 a visual site inspection conducted by a reserve study professional.

1 (4) The decisions relating to the preparation and updating of a
2 reserve study must be made by the board of directors in the exercise of
3 the reasonable discretion of the board. The decisions must include
4 whether a reserve study will be prepared or updated, and whether the
5 assistance of a reserve study professional will be utilized.

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

8 (1) A reserve study as described in section 9 of this act is
9 supplemental to the association's operating and maintenance budget. In
10 preparing a reserve study, the association shall estimate the
11 anticipated major maintenance, repair, and replacement costs, whose
12 infrequent and significant nature make them impractical to be included
13 in an annual budget.

14 (2) A reserve study must include:

15 (a) A reserve component list, including any reserve component that
16 would cost more than one percent of the annual budget of the
17 association, not including the reserve account, for major maintenance,
18 repair, or replacement. If one of these reserve components is not
19 included in the reserve study, the study should provide commentary
20 explaining the basis for its exclusion. The study must also include
21 quantities and estimates for the useful life of each reserve component,
22 remaining useful life of each reserve component, and current major
23 maintenance, repair, or replacement cost for each reserve component;

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

26 (c) The following level of reserve study performed:

- 27 (i) Level I: Full reserve study funding analysis and plan;
- 28 (ii) Level II: Update with visual site inspection; or
- 29 (iii) Level III: Update with no visual site inspection;

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

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

33 (f) Special assessments already implemented or planned;

34 (g) Interest and inflation assumptions;

35 (h) Current reserve account contribution rates for a full funding
36 plan and baseline funding plan;

1 (i) A recommended reserve account contribution rate, a contribution
2 rate for a full funding plan to achieve one hundred percent fully
3 funded reserves by the end of the thirty-year study period, a baseline
4 funding plan to maintain the reserve balance above zero throughout the
5 thirty-year study period without special assessments, and a
6 contribution rate recommended by the reserve study professional;

7 (j) A projected reserve account balance for thirty years and a
8 funding plan to pay for projected costs from that reserve account
9 balance without reliance on future unplanned special assessments; and

10 (k) A statement on whether the reserve study was prepared with the
11 assistance of a reserve study professional.

12 (3) A reserve study must also include the following disclosure:
13 "This reserve study should be reviewed carefully. It may not include
14 all common and limited common element components that will require
15 major maintenance, repair, or replacement in future years, and may not
16 include regular contributions to a reserve account for the cost of such
17 maintenance, repair, or replacement. The failure to include a
18 component in a reserve study, or to provide contributions to a reserve
19 account for a component, may, under some circumstances, require you to
20 pay on demand as a special assessment your share of common expenses for
21 the cost of major maintenance, repair, or replacement of a reserve
22 component."

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

25 An association may withdraw funds from its reserve account to pay
26 for unforeseen or unbudgeted costs that are unrelated to maintenance,
27 repair, or replacement of the reserve components. The board of
28 directors shall record any such withdrawal in the minute books of the
29 association, cause notice of any such withdrawal to be hand delivered
30 or sent prepaid by first-class United States mail to the mailing
31 address of each owner or to any other mailing address designated in
32 writing by the owner, and adopt a repayment schedule not to exceed
33 twenty-four months unless it determines that repayment within twenty-
34 four months would impose an unreasonable burden on the owners. Payment
35 for major maintenance, repair, or replacement of the reserve components
36 out of cycle with the reserve study projections or not included in the

1 reserve study may be made from the reserve account without meeting the
2 notification or repayment requirements under this section.

3 NEW SECTION. **Sec. 12.** A new section is added to chapter 64.38 RCW
4 to read as follows:

5 (1) When more than three years have passed since the date of the
6 last reserve study prepared by a reserve study professional, the owners
7 to which at least twenty percent of the votes are allocated may demand,
8 in writing, to the association that the cost of a reserve study be
9 included in the next budget and that the study be prepared by the end
10 of that budget year. The written demand must refer to this section.
11 The board of directors shall, upon receipt of the written demand,
12 provide the owners who make the demand reasonable assurance that the
13 board will include a reserve study in the next budget and, if the
14 budget is not rejected by the owners, will arrange for the completion
15 of a reserve study.

16 (2) If a written demand under this section is made and a reserve
17 study is not timely prepared, a court may order specific performance
18 and award reasonable attorneys' fees to the prevailing party in any
19 legal action brought to enforce this section. An association may
20 assert unreasonable hardship as an affirmative defense in any action
21 brought against it under this section. Without limiting this
22 affirmative defense, an unreasonable hardship exists where the cost of
23 preparing a reserve study would exceed ten percent of the association's
24 annual budget.

25 (3) An owner's duty to pay for common expenses is not excused
26 because of the association's failure to comply with this section or
27 this chapter. A budget ratified by the owners is not invalidated
28 because of the association's failure to comply with this section or
29 this chapter.

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

32 Monetary damages or any other liability may not be awarded against
33 or imposed upon the association, the officers or board of directors of
34 the association, or those persons who may have provided advice or
35 assistance to the association or its officers or directors, for failure

1 to: Establish a reserve account; have a current reserve study prepared
2 or updated in accordance with the requirements of this chapter; or make
3 the reserve disclosures in accordance with this chapter.

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

6 An association is not required to follow the reserve study
7 requirements under RCW 64.38.025 and sections 9 through 13 of this act
8 if the cost of the reserve study exceeds ten percent of the
9 association's annual budget or the association does not have
10 significant assets.

--- END ---