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SENATE BILL 5223

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Benton, Fraser, and Hobbs

Read first time 01/18/11. Referred to Committee on Financial Institutions, Housing & Insurance.

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

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

21 (2) The board of directors shall not act on behalf of the  
22 association to amend the declaration in any manner that requires the  
23 vote or approval of the unit owners pursuant to RCW 64.34.264, to  
24 terminate the condominium pursuant to RCW 64.34.268, or to elect  
25 members of the board of directors or determine the qualifications,  
26 powers, and duties, or terms of office of members of the board of  
27 directors pursuant to subsection (~~((6+))~~) (7) of this section; but the  
28 board of directors may fill vacancies in its membership for the  
29 unexpired portion of any term.

30 (3) Within thirty days after adoption of any proposed budget for  
31 the condominium, the board of directors shall provide a summary of the  
32 budget to all the unit owners and shall set a date for a meeting of the  
33 unit owners to consider ratification of the budget not less than  
34 fourteen nor more than sixty days after mailing of the summary. Unless  
35 at that meeting the owners of units to which a majority of the votes in  
36 the association are allocated or any larger percentage specified in the  
37 declaration reject the budget, the budget is ratified, whether or not

1 a quorum is present. In the event the proposed budget is rejected or  
2 the required notice is not given, the periodic budget last ratified by  
3 the unit owners shall be continued until such time as the unit owners  
4 ratify a subsequent budget proposed by the board of directors.

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

7 (a) The current amount of regular assessments budgeted for  
8 contribution to the reserve account, the recommended contribution rate  
9 from the reserve study, and the funding plan upon which the recommended  
10 contribution rate is based;

11 (b) If additional regular or special assessments are scheduled to  
12 be imposed, the date the assessments are due, the amount of the  
13 assessments per each unit per month or year, and the purpose of the  
14 assessments;

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

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

25 (e) The estimated amount recommended in the reserve account at the  
26 end of the current fiscal year based on the most recent reserve study,  
27 the projected reserve account cash balance at the end of the current  
28 fiscal year, and the percent funded at the date of the latest reserve  
29 study;

30 (f) The estimated amount recommended in the reserve account based  
31 upon the most recent reserve study at the end of each of the next five  
32 budget years, the projected reserve account cash balance in each of  
33 those years, and the projected percent funded for each of those years;  
34 and

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



1        ~~(5)~~(a) Subject to subsection ~~((+5+))~~ (6) of this section, the  
2 declaration may provide for a period of declarant control of the  
3 association, during which period a declarant, or persons designated by  
4 the declarant, may: (i) Appoint and remove the officers and members of  
5 the board of directors; or (ii) veto or approve a proposed action of  
6 the board or association. A declarant's failure to veto or approve  
7 such proposed action in writing within thirty days after receipt of  
8 written notice of the proposed action shall be deemed approval by the  
9 declarant.

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

27        ~~((+5+))~~ (6) Not later than sixty days after conveyance of twenty-  
28 five percent of the units which may be created to unit owners other  
29 than a declarant, at least one member and not less than twenty-five  
30 percent of the members of the board of directors must be elected by  
31 unit owners other than the declarant. Not later than sixty days after  
32 conveyance of fifty percent of the units which may be created to unit  
33 owners other than a declarant, not less than thirty-three and one-third  
34 percent of the members of the board of directors must be elected by  
35 unit owners other than the declarant.

36        ~~((+6+))~~ (7) Within thirty days after the termination of any period  
37 of declarant control, the unit owners shall elect a board of directors  
38 of at least three members, at least a majority of whom must be unit

1 owners. The number of directors need not exceed the number of units  
2 then in the condominium. The board of directors shall elect the  
3 officers. Such members of the board of directors and officers shall  
4 take office upon election.

5 ~~((7))~~ (8) Notwithstanding any provision of the declaration or  
6 bylaws to the contrary, the unit owners, by a two-thirds vote of the  
7 voting power in the association present and entitled to vote at any  
8 meeting of the unit owners at which a quorum is present, may remove any  
9 member of the board of directors with or without cause, other than a  
10 member appointed by the declarant. The declarant may not remove any  
11 member of the board of directors elected by the unit owners. Prior to  
12 the termination of the period of declarant control, the unit owners,  
13 other than the declarant, may remove by a two-thirds vote, any director  
14 elected by the unit owners.

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

17 (1) An association is encouraged to establish a reserve account  
18 with a financial institution to fund major maintenance, repair, and  
19 replacement of common elements, including limited common elements that  
20 will require major maintenance, repair, or replacement within thirty  
21 years. ~~((A reserve account shall be established in the name of the  
22 association.))~~ If the association establishes a reserve account, the  
23 account must be in the name of the association. The board of directors  
24 is responsible for administering the reserve account.

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

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

34 (4) This section and RCW 64.34.382 through ~~((64.34.390))~~ 64.34.392  
35 apply to condominiums governed by chapter 64.32 RCW or this chapter and  
36 intended in whole or in part for residential purposes. These sections

1 do not apply to condominiums consisting solely of units that are  
2 restricted in the declaration to nonresidential use. An association's  
3 governing documents may contain stricter requirements.

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

6 (1) A reserve study as described in RCW 64.34.380 is supplemental  
7 to the association's operating and maintenance budget. In preparing a  
8 reserve study, the association shall estimate the anticipated major  
9 maintenance, repair, and replacement costs, whose infrequent and  
10 significant nature make them impractical to be included in an annual  
11 budget.

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

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

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

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

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

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

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

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

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

31 (f) Special assessments already implemented or planned;

32 (g) Interest and inflation assumptions;

33 (h) Current reserve account contribution rate;

34 (i) A recommended reserve account contribution rate, a contribution  
35 rate for a full funding plan to achieve one hundred percent fully  
36 funded reserves by the end of the thirty-year study period, a baseline

1 funding plan to maintain the reserve balance above zero throughout the  
2 thirty-year study period without special assessments, and a  
3 contribution rate recommended by a reserve study professional;

4 (j) A projected reserve account balance for thirty years and a  
5 funding plan to pay for projected costs from those reserves without  
6 reliance on future unplanned special assessments; and

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

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

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

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

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

1 without meeting the notification or repayment requirements under this  
2 section.

3 **Sec. 6.** RCW 64.34.010 and 2008 c 115 s 7 and 2008 c 114 s 1 are  
4 each reenacted and amended to read 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 64.34.268 (1) through (7) and (10) (termination of condominium), RCW  
11 64.34.212 (description of units), RCW 64.34.304(1) (a) through (f) and  
12 (k) through ~~((r))~~ (t) (powers of unit owners' association), RCW  
13 64.34.308(1) (board of directors and officers), RCW 64.34.340  
14 (voting-proxies), RCW 64.34.344 (tort and contract liability), RCW  
15 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common  
16 expenses-assessments), RCW 64.34.364 (lien for assessments), RCW  
17 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW  
18 64.34.455 (effect of violation on rights of action; attorney's fees),  
19 RCW 64.34.380 through ~~((34.34.390))~~ 64.34.392 (reserve studies and  
20 accounts), and RCW 64.34.020 (definitions) to the extent necessary in  
21 construing any of those sections, apply to all condominiums created in  
22 this state before July 1, 1990; but those sections apply only with  
23 respect to events and circumstances occurring after July 1, 1990, and  
24 do not invalidate or supersede existing, inconsistent provisions of the  
25 declaration, bylaws, or survey maps or plans of those condominiums.

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

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

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

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

18 For purposes of this chapter:

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

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

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

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

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

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

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

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

12 (9) "Fully funded balance" means the current value of the  
13 deteriorated portion, not the total replacement value, of all the  
14 reserve components. The fully funded balance for each reserve  
15 component is calculated by multiplying the current replacement cost of  
16 the reserve component by its effective age, then dividing the result by  
17 the reserve component's useful life. The sum total of all reserve  
18 components' fully funded balances is the association's fully funded  
19 balance.

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

23 (11) "Replacement cost" means the current cost of replacing,  
24 repairing, or restoring a reserve component to its original functional  
25 condition.

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

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

33 (14) "Significant assets" means that the current replacement value  
34 of the major reserve components is fifty percent or more of the gross  
35 budget of the association, excluding the association's reserve account  
36 funds.

37 (15) "Useful life" means the estimated time, between years, that  
38 major maintenance, repair, or replacement is estimated to occur.

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

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

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

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

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

30       (a) The current amount of regular assessments budgeted for  
31 contribution to the reserve account, the recommended contribution rate  
32 from the reserve study, and the funding plan upon which the recommended  
33 contribution rate is based;

34       (b) If additional regular or special assessments are scheduled to  
35 be imposed, the date the assessments are due, the amount of the  
36 assessments per each owner per month or year, and the purpose of the  
37 assessments;



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

6 (d) If reserve account balances are not projected to be sufficient,  
7 what additional assessments may be necessary to ensure that sufficient  
8 reserve account funds will be available each year during the next  
9 thirty years, the approximate dates assessments may be due, and the  
10 amount of the assessments per owner per month or year;

11 (e) The estimated amount recommended in the reserve account at the  
12 end of the current fiscal year based on the most recent reserve study,  
13 the projected reserve account cash balance at the end of the current  
14 fiscal year, and the percent funded at the date of the latest reserve  
15 study;

16 (f) The estimated amount recommended in the reserve account based  
17 upon the most recent reserve study at the end of each of the next five  
18 budget years, the projected reserve account cash balance in each of  
19 those years, and the projected percent funded for each of those years;  
20 and

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

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

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

30 (1) An association is encouraged to establish a reserve account  
31 with a financial institution to fund major maintenance, repair, and  
32 replacement of common elements, including limited common elements that  
33 will require major maintenance, repair, or replacement within thirty  
34 years. If the association establishes a reserve account, the account  
35 must be in the name of the association. The board of directors is  
36 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  
4 this chapter. 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) The decisions relating to the preparation and updating of a  
11 reserve study must be made by the board of directors in the exercise of  
12 the reasonable discretion of the board. The decisions must include  
13 whether a reserve study will be prepared or updated, and whether the  
14 assistance of a reserve study professional will be utilized.

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

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

23 (2) A reserve study must include:

24 (a) A reserve component list, including roofing, painting, paving,  
25 decks, siding, plumbing, windows, and any other building component that  
26 would cost more than one percent of the annual budget for major  
27 maintenance, repair, or replacement. If one of these reserve  
28 components is not included in the reserve study, the study should  
29 provide commentary explaining the basis for its exclusion. The study  
30 must also include quantities and estimates for the useful life of each  
31 reserve component, remaining useful life of each reserve component, and  
32 current major maintenance, repair, or replacement cost for each reserve  
33 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 rates for a full funding  
9 plan, threshold funding plan, and baseline funding plan;  
10 (i) A recommended reserve account contribution rate, a contribution  
11 rate for a full funding plan to achieve one hundred percent fully  
12 funded reserves by the end of the thirty-year study period, a baseline  
13 funding plan to maintain the reserve balance above zero throughout the  
14 thirty-year study period without special assessments, and a  
15 contribution rate recommended by the reserve study professional;  
16 (j) A projected reserve account balance for thirty years and a  
17 funding plan to pay for projected costs from that reserve account  
18 balance without reliance on future unplanned special assessments; and  
19 (k) A statement on whether the reserve study was prepared with the  
20 assistance of a reserve study professional.

21 (3) A reserve study must also include the following disclosure:  
22 "This reserve study should be reviewed carefully. It may not include  
23 all common and limited common element components that will require  
24 major maintenance, repair, or replacement in future years, and may not  
25 include regular 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 reserve  
28 account for a component, may, under some circumstances, require you to  
29 pay on demand as a special assessment your share of common expenses for  
30 the cost of major maintenance, repair, or replacement of a reserve  
31 component."

32 NEW SECTION. **Sec. 11.** A new section is added to chapter 64.38 RCW  
33 to read 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 building components. The board of  
37 directors shall record any such withdrawal in the minute books of the

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

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

14 (1) When more than three years have passed since the date of the  
15 last reserve study prepared by a reserve study professional, the owners  
16 of the units to which at least twenty percent of the votes are  
17 allocated may demand, in writing, to the association that the cost of  
18 a reserve study be included in the next budget and that the study be  
19 prepared by the end of that budget year. The written demand must refer  
20 to this section. The board of directors shall, upon receipt of the  
21 written demand, provide the owners who make the demand reasonable  
22 assurance that the board will include a reserve study in the next  
23 budget and, if the budget is not rejected by the owners, will arrange  
24 for the completion of a reserve study.

25 (2) If a written demand under this section is made and a reserve  
26 study is not timely prepared, a court may order specific performance  
27 and award reasonable attorneys' fees to the prevailing party in any  
28 legal action brought to enforce this section. An association may  
29 assert unreasonable hardship as an affirmative defense in any action  
30 brought against it under this section. Without limiting this  
31 affirmative defense, an unreasonable hardship exists where the cost of  
32 preparing a reserve study would exceed ten percent of the association's  
33 annual budget.

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

1 because of the association's failure to comply with this section or  
2 this chapter.

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

5 Monetary damages or any other liability may not be awarded against  
6 or imposed upon the association, the officers or board of directors of  
7 the association, or those persons who may have provided advice or  
8 assistance to the association or its officers or directors, for failure  
9 to: Establish a reserve account; have a current reserve study prepared  
10 or updated in accordance with the requirements of this chapter; or make  
11 the reserve disclosures in accordance with this chapter.

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

14 An association is not required to follow the requirements under RCW  
15 64.38.025 and sections 9 through 13 of this act if the cost of the  
16 reserve study exceeds ten percent of the association's annual budget.

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