

*Welcome to the*

**WASHINGTON STATE CHAPTER**  
*of*  
**Community Associations Institute**

*The leading professional organization providing education,  
resources, and advocacy for community association living.*



**CHIWAWA, FILMORE AND  
SUDDEN VALLEY:  
ARE THE COURTS HAMMERING  
ASSOCIATIONS?**

**Presented by:  
Jeremy L. Stilwell  
Barker Martin, PS  
[jstilwell@barkermartin.com](mailto:jstilwell@barkermartin.com)**

# *Wilkinson v. Chiwawa Community Association*

## Facts:

- Homeowner sought to invalidate a 2011 amendment to the community covenants that prohibited rentals for less than 30 days.
- HOA Governing Documents:
  - Restrictions including “no industrial or commercial use.”
  - May be “changed in whole or in part” by majority vote.

# *Wilkinson v. Chiwawa Community Association*

## Facts:

- Homeowners had rented homes on a short term for profit basis for decades.
- In 2008, Assoc. banned rentals less than 6 months. Wilkinson sued and won... kinda. Trial Court rewrote the Association's governing documents to include a 1 month minimum rental. Appellate Court: Overturn
- In 2011, Association votes in a new ban on rentals less than 1 month.

# *Wilkinson v. Chiwawa Community Association*

*Vacation Rentals Are Not Commercial  
Uses and Are Consistent with Single-  
Family Residential Use Provisions*

# *Wilkinson v. Chiwawa Community Association*

## *Vacation Rentals Are Not Commercial Uses and Are Consistent with Single-Family Residential Use Provisions*

We emphasize that our holding does not prohibit residential communities from prohibiting short-term rentals. We merely hold that the Chiwawa River Pines community did not do so through covenants allowing rentals while prohibiting commercial uses and limiting homes to single-family structures.

# *Wilkinson v. Chiwawa Community Association*

## *Vacation Rentals Are Not Commercial Uses and Are Consistent with Single-Family Residential Use Provisions*

Based on the drafters' detailed discussion about what Chiwawa homeowners could not do, their clear expression that rentals were permissible uses, and the absence of any durational restriction on such rentals, reasonable minds could reach but one conclusion—that the drafters intended to permit rentals without any durational limitation. It was therefore proper for the trial court to determine the issue of the drafter's intent as a matter of law.

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# *Wilkinson v. Chiwawa Community Association*

*Was the Amendment Enforceable?*

# *Wilkinson v. Chiwawa Community Association*

*A Simple Majority Sought To  
Deprive Chiwawa Landowners of  
Their Property Rights,  
Inconsistent with the General  
Plan of Development.*

## *Wilkinson v. Chiwawa Community Association*

When the governing covenants authorize a majority of homeowners to create new restrictions unrelated to existing ones, majority rule prevails “provided that such power is exercised in a reasonable manner consistent with the general plan of the development.”

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## *Wilkinson v. Chiwawa Community Association*

Because the Chiwawa general plan did not authorize a majority of owners to adopt new covenants. The Chiwawa general plan of development merely authorized a majority of owners “to change these protective restrictions and covenants in whole or in part.”

## *Wilkinson v. Chiwawa Community Association*

[N]o Washington case has described the precise contours of when an amendment would be “consistent with the general plan of development,” we need not provide that guidance here.....

# *Wilkinson v. Chiwawa Community Association*

- The Chiwawa general plan of development allows homeowners to rent their homes without any durational limitation.
- Homeowners who took title under these covenants were not on notice that short-term rentals might be prohibited without their consent.
- We reject the Association's position in favor of protecting the reasonable and settled expectation of landowners in their property.



# *Wilkinson v. Chiwawa Community Association*

- Supreme Court Decision
- Look closely at Amendment Authority:  
Change vs. Add
- “Intent of the developer” and “consistent with the general plan of development” are important concepts
- Property Rights must be considered

# The Chiwawa Effect

- The Chiwawa decision increases the risk of a successful owner challenge of CC&R amendments in Washington homeowner associations in certain circumstances.
- It's applicability to condos in Washington, which are governed by separate statutes, should be limited although it certainly should be considered in the analysis of any proposed amendment.

## *Filmore LLLP v. Unit Owners Association of Centre Pointe Condominium*

- Court of Appeals' decision that New Act Condo rental cap amendments need 90% homeowner approval (and not 67%).
- Status of previously adopted amendments <90% are in doubt.

## *Filmore LLP, cnt'd*

- RCW 64.34.264(4) requires 90% voter approval if the amendment restricts "the uses to which any unit is restricted."
- The association in Filmore argued that "use" as it is used in RCW 64.34.264(4) should be interpreted narrowly to mean whether the unit is for commercial or residential use and therefore, should not apply to rental restrictions because restriction does not modify the residential nature of the unit

# Associations and the Filmore Effect

- The effect of the language requiring approval of "each unit particularly affected," which could require 100% approval in effect.
- The Filmore court also failed to address whether leasing-related requirements other than pure rental caps constitute use restrictions.

# *Casey v. Sudden Valley Community Ass'n*

- Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present.

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# *Casey v. Sudden Valley Community Ass'n*

- Court of Appeals' decision on authority of HOAs to assess for annual budget—puts into question process for approving annual budgets, and more importantly, assessing homeowners based on annual budget.
- The court held that a provision in the Association's bylaws requiring 60% approval of owners attending a meeting to raise assessments was not trumped by the HOA Act's budget ratification procedures.
- The court's ruling contradicts the generally accepted approach to adopting budgets and imposing assessments.

# Associations and the Sudden Valley Effect

- Homeowners associations in Washington operating under RCW Chapter 64.38 may need to reverse long held positions that the HOA Act's budget ratification procedures trump affirmative vote provisions for assessments
- The decision is applicable only to non-condo HOA's, because the Condominium Act explicitly provides that assessments must be made against all units "based on a budget adopted by the association."

# How Associations Should Respond to These Court Decisions?

# CAI and the Washington State Chapter of CAI

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