

Washington State Chapter **COMMUNITY ASSOCIATIONS INSTITUTE**

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



community
ASSOCIATIONS INSTITUTE

Legal Issues Boot Camp for New Board Members

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Agenda Overview

Welcome

Governing Documents 101

Discussion of Board Liability & Common
Problem Areas

Construction Defect & Warranty Topics

Q&A and Wrap-up

Disclaimer

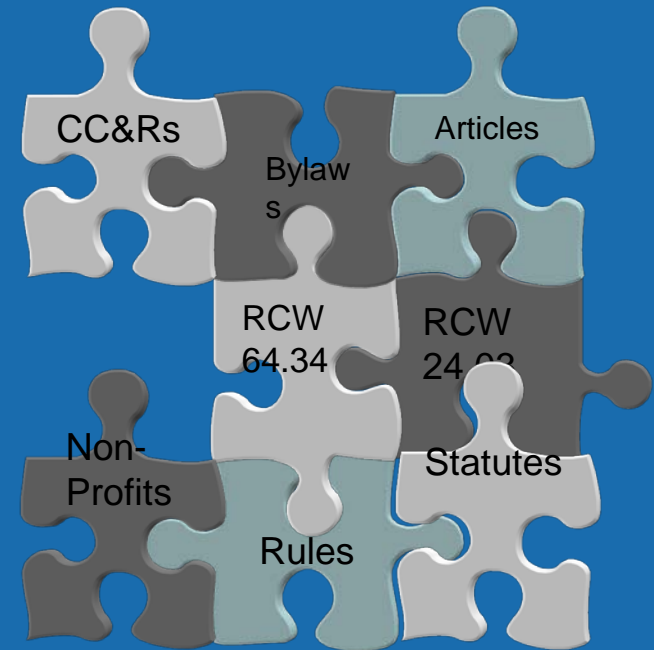
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We urge you to consult your own attorney concerning your particular factual situation and any specific legal questions you may have.

No attorney-client relationship attaches as a result of any exchange of information.

CENTRAL TOPIC: Governing Documents 101

- Governing Documents:
 - What are they?
 - What are the differences between them?
 - What is their order of importance?
 - Why do we have to follow them?



Governing Documents 101

- **Condominiums:**
 - Condominium Declaration (*Recorded*)
 - Association Articles of Incorporation (*Filed w/ Secretary of State*)
 - Association Bylaws
 - Rules and Regulations

Governing Documents 101

- **HOAs:**
 - Covenants, Conditions & Restrictions (*Recorded*)
 - Association Articles of Incorporation (*Filed w/ Secretary of State*)
 - Association Bylaws
 - Rules and Regulations

Condominiums – *Creatures of Statute*

- “Old Act Condos” governed by **Horizontal Property Regimes Act** (RCW 64.32) (1963)
- “New Act Condos” governed by **WA Condo Act** (RCW 64.34) (July 1, 1990)
- Washington Nonprofit Corporation Act (RCW 24.03)
- When in conflict, condo statutes control over corporation acts (RCW 64.34.300)



Homeowner Associations & CC&Rs

- Homeowner Associations Act (RCW 64.38)
Very limited in the topics it addresses
- Washington Nonprofit Corporation Act (RCW 24.03)
- Real Property Covenants (CC&Rs)
A covenant is a written promise restricting an owner's use of his or her property for the benefit of other property

Similarly burden and benefit each property

CC&Rs normally require an Association be created to administer certain functions, such as collection of assessments, budgeting, caring for common areas, etc.



Condominium Declarations

- Condo formed upon *RECORDING* of Declaration and Survey Map and Plans. (RCW 64.34.200)
- Why is *RECORDING* important?
 - Because it places purchasers on notice of Dec's contents
 - Generally, it takes away the “Well, I didn't read that boring document, so I didn't know that I had to _____” excuse...

Condominium Declarations

- Must meet minimum statutory requirements (RCW 64.34.216)
 - Minimum requirements allow a fair amount of drafting freedom, which results in a variety of different condominium declarations in Washington
 - Defines Common and Limited Common Areas, Units, Powers of Association, Collection tools, among other things
 - Allows for Amendments
 - When in conflict, Declaration trumps Bylaws, but is trumped by Condo Act.



Condo & HOA Articles of Incorporation

- They establish the Association as a profit or nonprofit corporate entity (required by Condo Act RCW 64.34.300)
- Very little information for governance – intended to be extremely broad
- RCW 24.03.025 states list of things Articles must contain:
 - Name, duration, purpose, definition and limitations of power, liability, number of directors, address, incorporator
- Association can be for-profit, a non-profit, or even a mutual and miscellaneous corporation (RCW 24.06). Read your Articles!

Bylaws

- Trumped by Declaration, but in certain situations may trump statutes if Declaration so provides
- Directors and Officers: Number, qualifications, powers, duties, terms of office, meetings, quorum, and manner of electing and removing
- Delegation to Committees
- Authority of officers to prepare, execute and record amendments to governing docs (subject to Declaration)
- Amending Bylaws
- Catch-all: Anything else the Association deems necessary and appropriate



Rules and Regulations

- Condos - Authorized by Condo Act as an Association power (RCW 64.34.304(a)) *UNLESS* declaration provides otherwise
- HOAs – Authorized by HOA Act as an Association power (RCW 64.38.020) *UNLESS* CC&Rs provide otherwise
- Rules and Regulations should supplement (but not contradict) Declaration, CC&Rs and Bylaws

Rules and Regulations

- Normally contain the day-to-day, detailed guidelines that promote good behavior, safety, and Association harmony
- Oftentimes, Declaration or CC&R provisions will state something like: “...this section may be supplemented by rules adopted by the Board.”

CENTRAL TOPIC: Association & Board Member Liability

- Legal Duty of Care of Board Members (COA & HOA)
- Common Duties Giving Rise to Liability

Board Duties - Condos

- Govern the Association consistent with duty of care to “...act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise ... ordinary and reasonable care” RCW 64.34.308(1)

Board Duties - Condos

- *Fiduciary duty* for Declarant as member of the board, and for Declarant-appointed board members. *Id.*
- Authority to establish policies and supervise their implementation. Often have a right to enter individual units in emergencies, and to maintain and repair common elements

Board Duties - HOAs

- “Except as provided in the association’s governing documents or this chapter [RCW 64.38], the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW. RCW 64.38.025 (emphasis added)
- Business Judgment Rule

Business Judgment

- Directors should exercise good business judgment and perform their duties (1) in good faith; (2) adhering to the applicable standard of care; (3) in a manner reasonably believed to be in the best interests of the Association.
- Act in good faith. Act in the best interests of the Association. Be informed. Be not wasteful. Watch for personal conflicts of interest!



Common Duties of the Association & Board Giving Rise to Liability

- Meetings
- Budgets
- Records
- Committees
- Warranties & Defects

Association Meetings

- Condo Annual and Special Meeting
 - How may a meeting be called?
 - **Notice** must be *hand delivered or mailed* to the address of each owner and any other owner-designated address
- HOA Meetings
 - **Notice** to owners must be hand delivered or sent via first class U.S. mail 14-60 days in advance of meeting. Notice must contain certain info. See RCW 64.38.035. Check Gov. Docs

Association Meetings

- Quorum
 - Condo: 25% present in person or by proxy *at start of meeting* unless the Bylaws or Declaration provide a different standard. RCW 64.34.336 (WCA)
 - HOA: 34% present in person or by proxy at start of meeting unless the governing documents specify a different percentage RCW 64.38.040 (HOA Act)



Budgets-Condos

- COA: The Board, within 30 days after adopting a proposed budget, must:
 - 1) provide a summary of the budget to all unit owners; and
 - 2) set a date for a meeting to ratify the budget between 14 and 60 days after mailing notice of summary
- No quorum required to ratify
- If rejected or required notice not given, then the budget last ratified shall be continued

Budgets-HOAs

- HOA: Read your CC&Rs Do they comply with RCW 64.38.025? If not, consult legal counsel

Records

- COA: Duty to keep financial and other records sufficiently detailed to enable the association to comply with RCW 64.34.425, the resale certificate statute. RCW 64.34.372
- HOA: Association or manager must keep financial and other records sufficiently detailed to enable the Association to fully declare the true statement of its financial status. RCW 64.38.045(1)



Records

- All owners or their mortgagees (or authorized agents) entitled to inspection of records upon advance notice.
- No unlisted phone number of any owner can be released (HOA) Use caution releasing other personal information of members, or other privileged information
- **No commingling of Association's funds – funds must be kept in Association-named account**



Committee Roles & Limitations

For nonprofit corporations: **RCW 24.03.115:**

- If the articles of incorporation or the bylaws so provide...
the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors...
- Committee does not and may not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon him or her by law
- Use caution if a committee exercises Board authority!

Warranties & Defects

- Condo versus HOA warranties
- Statutory implied warranty for condos under Condo Act, RCW 64.34.445
- Generally runs 4 years from first sale
 - Most common exception is one year from transition
- No implied warranties for HOAs, but may be express or implied warranty of habitability
- Duty to maintain, repair & replace
- Implied duty to investigate



Wrap-Up

- Questions?

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