
ENGROSSED SUBSTITUTE SENATE BILL 5798

State of Washington

62nd Legislature

2011 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Fraser and Benton)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to homeowners' associations; amending RCW
2 64.38.005, 64.38.010, 64.38.020, 64.38.025, 64.38.030, 64.38.035, and
3 64.38.040; and adding new sections to chapter 64.38 RCW.

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

5 **Sec. 1.** RCW 64.38.005 and 1995 c 283 s 1 are each amended to read
6 as follows:

7 The intent of this chapter is to provide consistent laws regarding
8 the formation and legal administration of homeowners' associations.
9 Unless otherwise provided in this chapter, this chapter applies to all
10 homeowners' associations in the state, regardless of when the
11 declaration was recorded or the association was established.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.38 RCW
13 to read as follows:

14 An obligation of good faith is imposed in the performance and
15 enforcement of all contracts and duties governed by this chapter and in
16 all other transactions involving declarants, associations, and their
17 members.

1 For purposes of this section, "good faith" means honesty in fact
2 and the observance of reasonable standards of fair dealing.

3 **Sec. 3.** RCW 64.38.010 and 1995 c 283 s 2 are each amended to read
4 as follows:

5 For purposes of this chapter:

6 (1) "Homeowners' association" or "association" means a corporation,
7 unincorporated association, or other legal entity, each member of which
8 is an owner of residential real property located within the
9 association's jurisdiction, as described in the governing documents,
10 and by virtue of membership (~~(or ownership of property)~~), the owner is
11 obligated to pay (~~(real property taxes, insurance premiums, maintenance~~
12 ~~costs, or for improvement of real property other than that which is~~
13 ~~owned by the member)~~) assessments pursuant to the governing documents.
14 "Homeowners' association" does not mean an association created under
15 chapter 64.32 or 64.34 RCW.

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

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

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

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

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

31 (7) "Assessment" means all sums chargeable by the association
32 against a lot including, without limitation:

33 (a) Regular and special assessments for common expenses, charges,
34 and fines imposed by the association;

35 (b) Interest and late charges on any delinquent account; and

36 (c) Costs of collection, including reasonable attorneys' fees,

1 incurred by the association in connection with the collection of an
2 owner's delinquent account.

3 This subsection (7) supersedes any inconsistent provision in the
4 governing documents.

5 (8) "Bylaws" means the code adopted for the regulation or
6 management of the internal affairs of the association, irrespective of
7 the designated name of that code. If an association is incorporated
8 under Title 23 or 24 RCW, "bylaws" means the definition assigned to
9 "bylaws" in the act pursuant to which the association is incorporated.

10 (9) "Community" means residential real property that is subject to
11 a declaration under which an association is established for governance
12 of the community.

13 (10) "Cooperative" means a community in which the residential real
14 property is owned by an association where each of those members is
15 entitled, by virtue of his or her ownership interest in the
16 association, to exclusive possession of a portion of the property.

17 (11) "Declarant" means any person who executes as a declarant a
18 declaration or succeeds to the rights of a declarant pursuant to an
19 instrument recorded in the real property records of every county in
20 which any portion of the community is located.

21 (12) "Declaration" means the declaration of covenants, conditions,
22 and restrictions or any other document, however denominated, that is
23 recorded in every county in which any portion of the community is
24 located and that provides for the establishment of an association to
25 govern the community. In the case of a cooperative, "declaration"
26 means the document or documents, however denominated, that create the
27 cooperative housing association that owns the residential real property
28 comprising the cooperative, whether or not the document or documents
29 are recorded.

30 (13) "Lot" means a physical portion of a community designated for
31 separate ownership or occupancy and designated for residential use, the
32 boundaries of which are described in the real property records of every
33 county in which any portion of the community is located. Within a
34 cooperative, "lot" means that portion of the community designated for
35 exclusive possession by a member of the cooperative's association.
36 "Lot" does not mean an apartment created under chapter 64.32 RCW or a
37 unit created under chapter 64.34 RCW.

1 (14) "Owner" means a declarant or other person who owns a lot, but
2 does not include a person who has an interest in a lot solely as
3 security for an obligation. Under a real estate contract, "owner"
4 means the vendee, not the vendor.

5 (15) "Person" means a natural person, corporation, partnership,
6 limited partnership, trust, government subdivision or agency, or other
7 legal entity.

8 (16) "Rules" means the rules, regulations, and policies,
9 irrespective of their designated name, that are adopted by the members
10 of the board of an association in accordance with the governing
11 documents and that supplement, but do not contradict or contravene, the
12 governing documents.

13 **Sec. 4.** RCW 64.38.020 and 1995 c 283 s 4 are each amended to read
14 as follows:

15 Unless otherwise provided in the ~~((governing — documents))~~
16 declaration, an association may:

17 (1) Adopt and amend bylaws, resolutions, policies, rules, and
18 regulations that are not inconsistent with the declaration or with this
19 chapter;

20 (2) Adopt and amend budgets for revenues, expenditures, and
21 reserves, and impose and collect assessments for common expenses from
22 owners;

23 (3) Hire and discharge or contract with managing agents and other
24 employees, agents, and independent contractors;

25 (4) Institute, defend, or intervene in litigation or administrative
26 proceedings in its own name on behalf of itself or two or more owners
27 on matters affecting the homeowners' association, but not on behalf of
28 owners involved in disputes that are not the responsibility of the
29 association;

30 (5) Make contracts and incur liabilities;

31 (6) Regulate the use, maintenance, repair, replacement, and
32 modification of common areas;

33 (7) Cause additional improvements to be made as a part of the
34 common areas;

35 (8) Acquire, hold, encumber, and convey in its own name any right,
36 title, or interest to real or personal property;

1 (9) Grant easements, leases, licenses, and concessions through or
2 over the common areas and petition for or consent to the vacation of
3 streets and alleys;

4 (10) Impose and collect any payments, fees, or charges for the use,
5 rental, or operation of the common areas;

6 (11) Impose and collect charges for late payments of assessments
7 (~~and, after notice and an opportunity to be heard by the board of~~
8 ~~directors or by the representative designated by the board of directors~~
9 ~~and in accordance with the procedures as provided in the bylaws or~~
10 ~~rules and regulations adopted by the board of directors, levy~~
11 ~~reasonable fines in accordance with a previously established schedule~~
12 ~~adopted by the board of directors and furnished to the owners for~~
13 ~~violation of the bylaws, rules, and regulations of the association));~~

14 (12) Take enforcement action with respect to any violation of the
15 governing documents;

16 (13) After notice and an opportunity to be heard by the board of
17 directors or by the representative designated by the board of
18 directors, and in accordance with the procedures provided in the
19 governing documents, levy reasonable fines in accordance with a
20 previously established schedule adopted by the board of directors and
21 furnished to the owners for violations of the governing documents;

22 (14) Exercise any other powers conferred by the declaration,
23 articles, or bylaws;

24 ((+13)) (15) Exercise all other powers that may be exercised in
25 this state by the same type of ((~~corporation~~)) legal entity as the
26 association, provided those powers do not conflict with any duties
27 imposed on an association in this chapter; and

28 ((+14)) (16) Exercise any other powers necessary and proper for
29 the governance and operation of the association.

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

32 (1) Except as provided in the association's governing documents or
33 this chapter, the board of directors shall act in all instances on
34 behalf of the association. In the performance of their duties, the
35 officers of the association and members of the board of directors shall
36 exercise the degree of care and loyalty required of an officer or
37 director of a 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
9 of 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) The owners by a majority vote of the voting power in the
21 association present, in person or by proxy, and entitled to vote at any
22 meeting of the owners at which a quorum is present, may remove any
23 member of the board of directors with or without cause.))~~

24 NEW SECTION. Sec. 6. A new section is added to chapter 64.38 RCW
25 to read as follows:

26 Notwithstanding any inconsistent provision in the governing
27 documents or other applicable statutes, any member of the board of
28 directors may be removed with or without cause by a majority vote of
29 the owners (1) entitled to elect the board member and present, in
30 person or by proxy, and (2) entitled to vote at any regular or special
31 meeting of the owners at which a quorum is present.

32 Sec. 7. RCW 64.38.030 and 1995 c 283 s 6 are each amended to read
33 as follows:

34 Unless provided for in the ~~((governing documents))~~ declaration, the
35 bylaws of the association ~~((shall))~~ must contain provisions that are
36 consistent with this chapter and provide for:

1 (1) The number, qualifications, powers and duties, terms of office,
2 and manner of electing and removing the board of directors and officers
3 of the association and filling vacancies;

4 (2) Election by the board of directors of the officers of the
5 association as the bylaws specify;

6 (3) Which, if any, of its powers the board of directors or officers
7 of the association may delegate to other persons or to a managing
8 agent;

9 (4) Which of its officers may prepare, execute, certify, and record
10 amendments to the governing documents on behalf of the association;

11 (5) The method of amending the bylaws; and

12 (6) (~~Subject to the provisions of the governing documents,~~) Any
13 other matters the association deems necessary and appropriate.

14 NEW SECTION. Sec. 8. A new section is added to chapter 64.38 RCW
15 to read as follows:

16 (1) 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 adoption of
19 the budget no less than ten and no more than sixty days after the
20 mailing of the summary of the proposed regular or special budget.
21 Notwithstanding any contrary provision in the governing documents, the
22 board must allow members to vote on the issue of ratifying the budget
23 either by mail-in ballot or at the meeting, in person or by proxy.
24 Unless the proposed budget is rejected at that meeting by a majority of
25 all the votes in the association, or any larger percentage specified in
26 the governing documents, the proposed budget is ratified and approved
27 whether or not there is a quorum at the meeting. If the proposed
28 budget is rejected or the required notice is not provided, the periodic
29 budget last adopted by the owners must be continued until the owners
30 adopt a subsequent budget proposed by the board of directors.

31 (2) An association's lien rights may not include liens to secure
32 payment of fines validly imposed.

33 (3) This section applies retroactively to any governing documents
34 in effect on the effective date of this section.

35 (4) This section supersedes any provisions of the governing
36 documents that are inconsistent with this section. All such

1 inconsistent provisions of the governing documents are void and
2 unenforceable.

3 **Sec. 9.** RCW 64.38.035 and 1995 c 283 s 7 are each amended to read
4 as follows:

5 (1) A meeting of the association must be held at least once each
6 year.

7 (2) Special meetings of the association may be called by the
8 president, a majority of the board of directors, or by owners having
9 ten percent of the votes in the association and must be held at a
10 reasonable time and at a reasonable place. Any business may be placed
11 on the agenda for a special meeting as long as the business does not
12 conflict with this chapter or the association's governing documents.
13 If the special meeting is called by the members, the members may
14 determine the business to be placed on the agenda. The board may also
15 place business on the special meeting agenda. This subsection
16 supersedes any inconsistent provisions of the governing documents or
17 other applicable statute.

18 (3) Not less than ((fourteen)) ten nor more than sixty days in
19 advance of any meeting, the secretary or other officers specified in
20 the bylaws shall cause notice to be hand-delivered or sent prepaid by
21 first-class United States mail to the mailing address of each owner or
22 to any other mailing address designated in writing by the owner. The
23 notice of any meeting shall state the time and place of the meeting and
24 the business to be placed on the agenda by the board of directors for
25 a vote by the owners, including the general nature of any proposed
26 amendment to the articles of incorporation, bylaws, any budget or
27 changes in the previously approved budget that result in a change in
28 assessment obligation, and any proposal to remove a director.

29 ~~((2) Except as provided in this subsection, all meetings of the~~
30 ~~board of directors shall be open for observation by all owners of~~
31 ~~record and their authorized agents. The board of directors shall keep~~
32 ~~minutes of all actions taken by the board, which shall be available to~~
33 ~~all owners. Upon the affirmative vote in open meeting to assemble in~~
34 ~~closed session, the board of directors may convene in closed executive~~
35 ~~session to consider personnel matters; consult with legal counsel or~~
36 ~~consider communications with legal counsel; and discuss likely or~~
37 ~~pending litigation, matters involving possible violations of the~~

1 governing documents of the association, and matters involving the
2 possible liability of an owner to the association. The motion shall
3 state specifically the purpose for the closed session. Reference to
4 the motion and the stated purpose for the closed session shall be
5 included in the minutes. The board of directors shall restrict the
6 consideration of matters during the closed portions of meetings only to
7 those purposes specifically exempted and stated in the motion. No
8 motion, or other action adopted, passed, or agreed to in closed session
9 may become effective unless the board of directors, following the
10 closed session, reconvenes in open meeting and votes in the open
11 meeting on such motion, or other action which is reasonably identified.
12 The requirements of this subsection shall not require the disclosure of
13 information in violation of law or which is otherwise exempt from
14 disclosure.))

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

17 Except as provided in this section, all meetings of the board of
18 directors must be open for observation by all owners of record and
19 their authorized agents. The board of directors shall keep minutes of
20 all actions taken by the board, which must be available to all owners.
21 Upon the affirmative vote in open meeting to assemble in closed
22 session, the board of directors may convene in closed executive session
23 to consider personnel matters; consult with legal counsel or consider
24 communications with legal counsel; and discuss likely or pending
25 litigation, matters involving possible violations of the governing
26 documents of the association, and matters involving the possible
27 liability of an owner to the association. The motion must state
28 specifically the purpose for the closed session. Reference to the
29 motion and the stated purpose for the closed session must be included
30 in the minutes. The board of directors shall restrict the
31 consideration of matters during the closed portions of meetings only to
32 those purposes specifically exempted and stated in the motion. A
33 motion, or other action adopted, passed, or agreed to in closed session
34 may not become effective unless the board of directors, following the
35 closed session, reconvenes in open meeting and votes in the open
36 meeting on such motion, or other action that is reasonably identified.
37 This section does not require the disclosure of information in

1 violation of law or that is otherwise exempt from disclosure. This
2 section supersedes any conflicting provisions in Title 23 or 24 RCW or
3 in the association's governing documents.

4 **Sec. 11.** RCW 64.38.040 and 1995 c 283 s 8 are each amended to read
5 as follows:

6 Unless the governing documents specify a (~~different~~) smaller
7 percentage, a quorum is present throughout any meeting of the
8 association if the owners to which thirty-four percent of the votes of
9 the association are allocated are present in person or by proxy at the
10 beginning of the meeting.

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

13 For rules, or amendments to rules, adopted after the effective date
14 of this section:

15 (1) A rule adopted by the board is valid and enforceable if all the
16 following requirements are satisfied:

- 17 (a) The rule is in writing;
- 18 (b) The rule is required by law or, within the authority of the
19 board, conferred by law or by the declaration;
- 20 (c) The rule is consistent with the governing documents; and
- 21 (d) The rule is adopted or amended in substantial compliance with
22 the requirements of this chapter.

23 (2) Except for emergency rules, the board of directors must provide
24 the association's members with notice and an opportunity to comment on
25 any proposed new or amended rule before the board is authorized to
26 adopt or enforce that rule. For purposes of this section, an
27 "emergency rule" is a rule that is necessary for the immediate
28 preservation of health and safety or a rule that sets forth specific
29 rights or obligations affecting the association or its members under
30 state statutes or administrative rules. Emergency rules become
31 effective immediately, subject to the members' right to request a
32 ratification vote under subsection (3) of this section.

33 (3) Except for emergency rules, rules adopted by the board of
34 directors following notice and an opportunity for comment become
35 effective thirty days after notice of the rules is provided to the
36 members in the manner authorized by the governing documents, unless a

1 written petition signed by twenty percent of the total votes in the
2 association is submitted to the board within that thirty-day period
3 requesting a ratification vote on the proposed rule. If a ratification
4 vote is requested, the association shall use the following process for
5 the ratification vote:

6 (a) The board of directors must submit the rules on which a
7 ratification vote has been requested to a vote of the members. The
8 vote must be conducted at the next regularly scheduled annual meeting
9 of the association, or at a special meeting held before the next annual
10 meeting.

11 (b) The notice of the meeting, at which the ratification vote will
12 be conducted, must include the text of the proposed rules.

13 (c) Unless the governing documents specify a longer advance notice
14 period for an association meeting, notice of the meeting, at which the
15 ratification vote will be conducted, must be provided at least ten days
16 in advance of the meeting but not more than sixty days in advance of
17 the meeting.

18 (d) The proposed rule change is deemed approved and ratified by the
19 members, unless a majority of all the votes in the association vote at
20 the meeting, in person or by proxy, to reject the rule change approved
21 by the board.

22 (e) All rule changes ratified by the members in accordance with
23 this section take effect on the original effective date or later
24 effective date established by the board.

25 (4) The board of directors is not required to use the following
26 optional rule-making process. However, use of this process establishes
27 compliance with the requirements of subsection (1) of this section.
28 For purposes of this section, "rule change" means the adoption or
29 amendment of a rule by the board.

30 (a) The board shall give notice of a proposed rule change to the
31 owners. The notice must include the following information: (i) The
32 text of the proposed rule change; (ii) a description of the purpose and
33 effect of the proposed rule change; and (iii) the deadline for
34 submission of a comment on the proposed rule change.

35 (b) For a period of at least thirty days following actual or
36 constructive delivery of a notice of a proposed rule change, the board
37 shall accept written comments from owners on the proposed rule change.

1 (c) The board shall consider any comments it receives and make a
2 decision on a proposed rule change at a board meeting. Except for
3 emergency rules, a decision on a rule may not be made until after the
4 comment submission deadline.

5 (d) The board shall give notice of a rule change to the owners.
6 The notice must set out the text of the rule change and state the date
7 the rule change takes effect. Except for emergency rules, the date the
8 rule change takes effect must not be less than thirty days after notice
9 of the rule change is provided in the manner authorized in the
10 governing documents.

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

13 Unless the governing documents permit or require other methods for
14 providing notice, all notices required under this chapter or the
15 governing documents must be delivered or sent by first-class mail
16 postage prepaid to the mailing address of each owner, but not for a
17 shorter time period for providing notice than is required under RCW
18 64.38.035.

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

21 Owners may vote in person or by proxy or by any other method
22 permitted by their governing documents or the law applicable to the
23 association's legal entity.

--- END ---