
SENATE BILL 6625

State of Washington

54th Legislature

1996 Regular Session

By Senators Smith and Winsley

Read first time 01/19/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to the condominium act; amending RCW 64.34.020,
2 64.34.304, 64.34.308, 64.34.316, 64.34.332, 64.34.340, 64.34.344,
3 64.34.348, 64.34.352, 64.34.360, 64.34.364, 64.34.372, and 64.34.455;
4 and repealing RCW 64.34.376.

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

6 **Sec. 1.** RCW 64.34.020 and 1992 c 220 s 2 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 of a declarant" means any person who controls, is
11 controlled by, or is under common control with a declarant. A person
12 "controls" a declarant if the person: (a) Is a general partner,
13 officer, director, or employer of the declarant; (b) directly or
14 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 declarant; (c) controls in any manner the
18 election of a majority of the directors of the declarant; or (d) has
19 contributed more than twenty percent of the capital of the declarant.

1 A person "is controlled by" a declarant if the declarant: (i) Is a
2 general partner, officer, director, or employer of the person; (ii)
3 directly or indirectly or acting in concert with one or more other
4 persons, or through one or more subsidiaries, owns, controls, holds
5 with power to vote, or holds proxies representing, more than twenty
6 percent of the voting interest in the person; (iii) controls in any
7 manner the election of a majority of the directors of the person; or
8 (iv) has contributed more than twenty percent of the capital of the
9 person. Control does not exist if the powers described in this
10 subsection are held solely as security for an obligation and are not
11 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, and to the extent
24 that this chapter is made applicable by RCW 64.34.010, the association
25 of apartment owners of a condominium created under the provisions of
26 chapter 64.32 RCW.

27 (5) "Board of directors" or "board" means the body, regardless of
28 name, with primary authority to manage the affairs of the association.

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

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

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

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

1 the common elements are vested in the unit owners, and unless a
2 declaration and a survey map and plans have been recorded pursuant to
3 this chapter.

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

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

26 (12) "Dealer" means a person who owns or has a right to acquire
27 either six or more units in a condominium or fifty percent or more of
28 the units in a condominium containing more than two units.

29 (13) "Declarant" means any person or group of persons acting in
30 concert who (a) executes as declarant a declaration as defined in
31 subsection (15) of this section, or (b) reserves or succeeds to any
32 special declarant right under the declaration.

33 (14) "Declarant control" means the right of the declarant or
34 persons designated by the declarant to appoint and remove officers and
35 members of the board of directors, or to veto or approve a proposed
36 action of the board or association, pursuant to RCW 64.34.308 (4) or
37 (5).

1 (15) "Declaration" means the document, however denominated, that
2 creates a condominium by setting forth the information required by RCW
3 64.34.216 and any amendments to that document.

4 (16) "Development rights" means any right or combination of rights
5 reserved by a declarant in the declaration to: (a) Add real property
6 or improvements to a condominium; (b) create units, common elements, or
7 limited common elements within real property included or added to a
8 condominium; (c) subdivide units or convert units into common elements;
9 (d) withdraw real property from a condominium; or (e) reallocate
10 limited common elements with respect to units that have not been
11 conveyed by the declarant.

12 (17) "Dispose" or "disposition" means a voluntary transfer or
13 conveyance to a purchaser or lessee of any legal or equitable interest
14 in a unit, but does not include the transfer or release of a security
15 interest.

16 (18) "Eligible mortgagee" means the holder of a mortgage on a unit
17 that has filed with the secretary of the association a written request
18 that it be given copies of notices of any action by the association
19 that requires the consent of mortgagees.

20 (19) "Foreclosure" means a forfeiture or judicial or nonjudicial
21 foreclosure of a mortgage or a (~~deed~~) conveyance in lieu thereof.

22 (20) "Governing documents" means the articles of incorporation,
23 bylaws, survey map and plans, declaration, rules and regulations of the
24 association, or other written instrument by which the association has
25 the authority to exercise any of the powers provided for in this
26 chapter or to manage, maintain, or otherwise affect the property under
27 its jurisdiction, and all duly adopted, and in the case of the
28 declaration, survey map, and plans recorded, amendments, supplements,
29 and exhibits thereto.

30 (21) "Identifying number" means the designation of each unit in a
31 condominium.

32 (~~(21)~~) (22) "Leasehold condominium" means a condominium in which
33 all or a portion of the real property is subject to a lease, the
34 expiration or termination of which will terminate the condominium or
35 reduce its size.

36 (~~(22)~~) (23) "Limited common element" means a portion of the
37 common elements allocated by the declaration or by operation of RCW
38 64.34.204 (2) or (4) for the exclusive use of one or more but fewer
39 than all of the units.

1 (~~(23)~~) (24) "Master association" means an organization described
2 in RCW 64.34.276, whether or not it is also an association described in
3 RCW 64.34.300.

4 (~~(24)~~) (25) "Mortgage" means a mortgage, deed of trust or real
5 estate contract.

6 (~~(25)~~) (26) "Person" means a natural person, corporation,
7 partnership, limited partnership, trust, governmental subdivision or
8 agency, or other legal entity.

9 (~~(26)~~) (27) "Purchaser" means any person, other than a declarant
10 or a dealer, who by means of a disposition acquires a legal or
11 equitable interest in a unit other than (a) a leasehold interest,
12 including renewal options, of less than twenty years at the time of
13 creation of the unit, or (b) as security for an obligation.

14 (~~(27)~~) (28) "Real property" means any fee, leasehold or other
15 estate or interest in, over, or under land, including structures,
16 fixtures, and other improvements thereon and easements, rights and
17 interests appurtenant thereto which by custom, usage, or law pass with
18 a conveyance of land although not described in the contract of sale or
19 instrument of conveyance. "Real property" includes parcels, with or
20 without upper or lower boundaries, and spaces that may be filled with
21 air or water.

22 (~~(28)~~) (29) "Residential purposes" means use for dwelling or
23 recreational purposes, or both.

24 (~~(29)~~) (30) "Special declarant rights" means rights reserved for
25 the benefit of a declarant to: (a) Complete improvements indicated on
26 survey maps and plans filed with the declaration under RCW 64.34.232;
27 (b) exercise any development right under RCW 64.34.236; (c) maintain
28 sales offices, management offices, signs advertising the condominium,
29 and models under RCW 64.34.256; (d) use easements through the common
30 elements for the purpose of making improvements within the condominium
31 or within real property which may be added to the condominium under RCW
32 64.34.260; (e) make the condominium part of a larger condominium or a
33 development under RCW 64.34.280; (f) make the condominium subject to a
34 master association under RCW 64.34.276; or (g) appoint or remove any
35 officer of the association or any master association or any member of
36 the board of directors, or to veto or approve a proposed action of the
37 board or association, during any period of declarant control under RCW
38 64.34.308(4).

1 (~~(30)~~) (31) "Timeshare" shall have the meaning specified in the
2 timeshare act, RCW 64.36.010(11).

3 (~~(31)~~) (32) "Unit" means a physical portion of the condominium
4 designated for separate ownership, the boundaries of which are
5 described pursuant to RCW 64.34.216(1)(d). "Separate ownership"
6 includes leasing a unit in a leasehold condominium under a lease that
7 expires contemporaneously with any lease, the expiration or termination
8 of which will remove the unit from the condominium.

9 (~~(32)~~) (33) "Unit owner" means a declarant or other person who
10 owns a unit or leases a unit in a leasehold condominium under a lease
11 that expires simultaneously with any lease, the expiration or
12 termination of which will remove the unit from the condominium, but
13 does not include a person who has an interest in a unit solely as
14 security for an obligation. "Unit owner" means the vendee, not the
15 vendor, of a unit under a real estate contract.

16 **Sec. 2.** RCW 64.34.304 and 1993 c 429 s 11 are each amended to read
17 as follows:

18 (1) Except as provided in subsection (2) of this section, and
19 subject to the provisions of the declaration, the association may:

20 (a) Adopt and amend bylaws, rules, and regulations;

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

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

26 (d) Institute, defend, or intervene in litigation or administrative
27 proceedings in its own name on behalf of itself or two or more unit
28 owners on matters affecting the condominium. However, this subsection
29 does not deprive a particularly aggrieved owner of the right to bring
30 or defend an action on his or her own behalf;

31 (e) Make contracts and incur liabilities;

32 (f) Regulate the use, maintenance, repair, replacement, and
33 modification of common elements;

34 (g) Cause additional improvements to be made as a part of the
35 common elements;

36 (h) Acquire, hold, encumber, and convey in its own name any right,
37 title, or interest to real or personal property, but common elements

1 may be conveyed or subjected to a security interest only pursuant to
2 RCW 64.34.348;

3 (i) Grant easements, leases, licenses, and concessions through or
4 over the common elements and petition for or consent to the vacation of
5 streets and alleys;

6 (j) Impose and collect any payments, fees, or charges for the use,
7 rental, or operation of the common elements, other than limited common
8 elements described in RCW 64.34.204 (2) and (4), and for services
9 provided to individual unit owners;

10 (k) Impose and collect charges for late payment of assessments
11 pursuant to RCW 64.34.364(13) and, after notice and an opportunity to
12 be heard (~~((by the board of directors or by such representative
13 designated by the board of directors and in accordance with such
14 procedures as provided in the declaration or bylaws or rules and
15 regulations adopted by the board of directors))~~ under RCW 64.34.455,
16 levy reasonable fines (~~((in accordance with a previously established
17 schedule thereof adopted by the board of directors and furnished to the
18 owners))~~ for violations of the (~~((declaration, bylaws, and rules and
19 regulations of the association))~~ governing documents;

20 (l) Impose and collect reasonable charges for the preparation and
21 recording of amendments to the declaration, resale certificates
22 required by RCW 64.34.425, and statements of unpaid assessments;

23 (m) Provide for the indemnification of its officers and board of
24 directors and maintain directors' and officers' liability insurance;

25 (n) Assign its right to future income, including the right to
26 receive common expense assessments, but only to the extent the
27 declaration provides;

28 (o) Join in a petition for the establishment of a parking and
29 business improvement area, participate in the rate payers' board or
30 other advisory body set up by the legislative authority for operation
31 of a parking and business improvement area, and pay special assessments
32 levied by the legislative authority on a parking and business
33 improvement area encompassing the condominium property for activities
34 and projects which benefit the condominium directly or indirectly;

35 (p) Exercise any other powers conferred by the (~~((declaration or
36 bylaws))~~ governing documents;

37 (q) Exercise all other powers that may be exercised in this state
38 by the same type of (~~((corporation))~~ entity as the association; (~~((and))~~

1 (r) Exercise any other powers necessary and proper for the
2 governance and operation of the association; and

3 (s) By regulation, require that disputes between the board of
4 directors and unit owners or between two or more unit owners regarding
5 the condominium must be submitted to nonbinding alternative dispute
6 resolution in the manner described in the regulation as a prerequisite
7 to instituting a judicial proceeding.

8 (2) The declaration may not impose limitations on the power of the
9 association to deal with the declarant which are more restrictive than
10 the limitations imposed on the power of the association to deal with
11 other persons.

12 (3) The association may adopt reasonable rules with respect to
13 units that may be used for residential purposes to prevent any use of
14 or behavior in residential units that violate the declaration or
15 adversely affect the use and enjoyment of other units or the common
16 elements by other unit owners or residents. Otherwise, the association
17 may not regulate any use of or behavior in units unless empowered to do
18 so by the declaration or this chapter.

19 (4) If a tenant of a unit owner violates the declaration, bylaws,
20 or rules or regulations of the association, in addition to exercising
21 any of its powers against the unit owner, the association may:

22 (a) Exercise directly against the tenant the powers described in
23 subsection (1)(k) of this section; or

24 (b) After thirty days notice to the unit owner, if the unit owner
25 fails to do so, enforce any rights against the tenant for the violation
26 which the unit owner as landlord might have exercised for a violation
27 under the lease in accordance with Title 59 RCW, or which the
28 association might have exercised directly against the unit owner, or
29 both.

30 (5) Unless a lease otherwise provides, subsection (4) of this
31 section does not:

32 (a) Affect rights that the unit owner may have to enforce a lease
33 or that the association has under other law; or

34 (b) Permit the association to enforce a lease to which it is not a
35 party in the absence of a violation of the declaration, bylaws, or
36 rules or regulations of the association.

37 **Sec. 3.** RCW 64.34.308 and 1992 c 220 s 15 are each amended to read
38 as follows:

1 (1) Except as provided in the (~~declaration, the bylaws~~) governing
2 documents, subsection (2) of this section, or other provisions of this
3 chapter, the board of directors shall act in all instances on behalf of
4 the association. In the performance of their duties, the officers and
5 members of the board of directors (~~are required to exercise: (a) If~~
6 ~~appointed by the declarant, the care required of fiduciaries of the~~
7 ~~unit owners; or (b) if elected by the unit owners, ordinary and~~
8 ~~reasonable care~~) shall exercise the degree of care and loyalty
9 required of an officer or director of a corporation organized under
10 chapter 24.03 RCW.

11 (2) The board of directors shall not act on behalf of the
12 association to amend the declaration in any manner that requires the
13 vote or approval of the unit owners pursuant to RCW 64.34.264, to
14 terminate the condominium pursuant to RCW 64.34.268, or to elect
15 members of the board of directors or determine the qualifications,
16 powers, and duties, or terms of office of members of the board of
17 directors pursuant to subsection (6) of this section; but, unless
18 otherwise provided in the governing documents, the board of directors
19 may fill vacancies in its membership for the unexpired portion of any
20 term.

21 (3) All regular and special assessments, other than special
22 assessments that according to the governing documents of the
23 association may be imposed on a particular owner or unit, shall be made
24 pursuant to a budget adopted by the board of directors and ratified.
25 Within thirty days after adoption by the board of any proposed budget
26 (~~for the condominium, the board of directors shall provide a summary~~
27 of the budget to all the unit owners and shall set a date for a meeting
28 of the unit owners)) of the association, the board shall provide a copy
29 of the budget or a summary thereof setting forth the material elements
30 and totals of income and expenditures included therein to the members,
31 and shall give notice to the members of a membership meeting to
32 consider ratification of the budget. The meeting shall be held not
33 less than fourteen nor more than sixty days after (~~mailing~~) the date
34 of the (~~summary~~) notice. Unless at that meeting (~~the owners of~~
35 units to which)) eligible voting members to whom a majority of the
36 votes in the association are allocated, or any larger percentage
37 specified in the (~~declaration~~) governing documents, vote to reject
38 the budget, the budget is ratified, whether or not a quorum is present.
39 (~~In the event the~~) If a proposed budget or assessment is rejected or

1 the required notice is not given, the periodic budget or assessment
2 last ratified by the ~~((unit owners shall be continued until such time~~
3 ~~as the unit owners))~~ members as provided in this section shall continue
4 in effect until the members ratify a subsequent budget ((proposed)) or
5 assessment adopted by the board of directors.

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

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

33 (5) Not later than sixty days after conveyance of twenty-five
34 percent of the units which may be created to unit owners other than a
35 declarant, at least one member and not less than twenty-five percent of
36 the members of the board of directors must be elected by unit owners
37 other than the declarant. Not later than sixty days after conveyance
38 of fifty percent of the units which may be created to unit owners other
39 than a declarant, not less than thirty-three and one-third percent of

1 the members of the board of directors must be elected by unit owners
2 other than the declarant.

3 (6) Within thirty days after the termination of any period of
4 declarant control, or, in the absence of such period, within sixty days
5 after the conveyance of seventy-five percent of the units which may be
6 created to unit owners other than a declarant, the unit owners shall
7 elect a new board of directors of at least three members, at least a
8 majority of whom must be unit owners, which shall replace the
9 previously elected or appointed board of directors. No person shall be
10 disqualified from serving solely by reason of having served on a
11 previous board of directors. The number of directors need not exceed
12 the number of units then in the condominium. The board of directors
13 shall elect the officers. Such members of the board of directors and
14 officers shall take office upon election.

15 (7) Notwithstanding any provision of the declaration or bylaws to
16 the contrary, the unit owners, by a two-thirds vote of the voting power
17 in the association present and entitled to vote at any meeting of the
18 unit owners at which a quorum is present, may remove any member of the
19 board of directors with or without cause, other than a member appointed
20 by the declarant. The declarant may not remove any member of the board
21 of directors elected by the unit owners. Prior to the termination of
22 the period of declarant control, the unit owners, other than the
23 declarant, may remove by a two-thirds vote, any director elected by the
24 unit owners. Notice of the meeting shall identify any directors whose
25 removal is proposed. Any such director shall be given the opportunity
26 to address the meeting with regard to the motion for removal.

27 **Sec. 4.** RCW 64.34.316 and 1989 c 43 s 3-105 are each amended to
28 read as follows:

29 (1) No special declarant right, as described in RCW
30 64.34.020(~~(+29)~~)(30), created or reserved under this chapter may be
31 transferred except by an instrument evidencing the transfer executed by
32 the declarant or the declarant's successor and the transferee is
33 recorded in every county in which any portion of the condominium is
34 located. Each unit owner shall receive a copy of the recorded
35 instrument, but the failure to furnish the copy shall not invalidate
36 the transfer.

37 (2) Upon transfer of any special declarant right, the liability of
38 a transferor declarant is as follows:

1 (a) A transferor is not relieved of any obligation or liability
2 arising before the transfer and remains liable for warranty obligations
3 imposed upon the transferor by this chapter. Lack of privity does not
4 deprive any unit owner of standing to maintain an action to enforce any
5 obligation of the transferor.

6 (b) If a successor to any special declarant right is an affiliate
7 of a declarant as described in RCW 64.34.020(1), the transferor is
8 jointly and severally liable with the successor for any obligations or
9 liabilities of the successor relating to the condominium.

10 (c) If a transferor retains any special declarant right, but
11 transfers other special declarant rights to a successor who is not an
12 affiliate of the declarant, the transferor is liable for any
13 obligations or liabilities imposed on a declarant by this chapter or by
14 the declaration relating to the retained special declarant rights
15 arising after the transfer.

16 (d) A transferor has no liability for any act or omission or any
17 breach of a contractual or warranty obligation arising from the
18 exercise of a special declarant right by a successor declarant who is
19 not an affiliate of the transferor.

20 (3) Unless otherwise provided in a mortgage, in case of foreclosure
21 of a mortgage, tax sale, judicial sale, or sale under bankruptcy code
22 or receivership proceedings of any unit owned by a declarant or real
23 property in a condominium subject to development rights, a person
24 acquiring title to all the real property being foreclosed or sold
25 succeeds to all special declarant rights related to that real property
26 held by that declarant and to any rights reserved in the declaration
27 pursuant to RCW 64.34.256 and held by that declarant to maintain
28 models, sales offices, and signs, unless such person requests that all
29 or any of such rights not be transferred. The judgment or instrument
30 conveying title shall describe any special declarant rights not being
31 transferred.

32 (4) Upon foreclosure of a mortgage, tax sale, judicial sale, or
33 sale under bankruptcy code or receivership proceedings of all units and
34 other real property in a condominium owned by a declarant:

35 (a) The declarant ceases to have any special declarant rights; and

36 (b) The period of declarant control as described in RCW
37 64.34.308(4) terminates unless the judgment or instrument conveying
38 title provides for transfer of all special declarant rights held by
39 that declarant to a successor declarant.

1 (5) The liabilities and obligations of a person who succeeds to
2 special declarant rights are as follows:

3 (a) A successor to any special declarant right who is an affiliate
4 of a declarant is subject to all obligations and liabilities imposed on
5 the transferor by this chapter or by the declaration;

6 (b) A successor to any special declarant right, other than a
7 successor described in (c) or (d) of this subsection, who is not an
8 affiliate of a declarant is subject to all obligations and liabilities
9 imposed by this chapter or the declaration:

10 (i) On a declarant which relate to such successor's exercise or
11 nonexercise of special declarant rights; or

12 (ii) On the declarant's transferor, other than:

13 (A) Misrepresentations by any previous declarant;

14 (B) Warranty obligations on improvements made by any previous
15 declarant or made before the condominium was created;

16 (C) Breach of any fiduciary obligation by any previous declarant or
17 the declarant's appointees to the board of directors; or

18 (D) Any liability or obligation imposed on the transferor as a
19 result of the transferor's acts or omissions after the transfer;

20 (c) A successor to only a right reserved in the declaration to
21 maintain models, sales offices, and signs as described in RCW
22 64.34.256, if the successor is not an affiliate of a declarant, may not
23 exercise any other special declarant right and is not subject to any
24 liability or obligation as a declarant, except the obligation to
25 provide a public offering statement and any liability arising as a
26 result thereof;

27 (d) A successor to all special declarant rights held by the
28 successor's transferor who is not an affiliate of that declarant and
29 who succeeded to those rights pursuant to a foreclosure(~~(, a deed in~~
30 ~~lieu of foreclosure,~~) or a judgment or instrument conveying title to
31 units under subsection (3) of this section may declare his or her
32 intention in a recorded instrument to hold those rights solely for
33 transfer to another person. Thereafter, until transferring all special
34 declarant rights to any person acquiring title to any unit or real
35 property subject to development rights owned by the successor or until
36 recording an instrument permitting exercise of all those rights, that
37 successor may not exercise any of those rights other than any right
38 held by the successor's transferor to control the board of directors in
39 accordance with the provisions of RCW 64.34.308(4) for the duration of

1 any period of declarant control, and any attempted exercise of those
2 rights is void. So long as a successor declarant may not exercise
3 special declarant rights under this subsection, the successor is not
4 subject to any liability or obligation as a declarant other than
5 liability for the successor's acts and omissions under RCW
6 64.34.308(4);

7 (e) Nothing in this section subjects any successor to a special
8 declarant right to any claims against or other obligations of a
9 transferor declarant, other than claims and obligations arising under
10 this chapter or the declaration.

11 **Sec. 5.** RCW 64.34.332 and 1989 c 43 s 3-109 are each amended to
12 read as follows:

13 (1) A meeting of the association must be held at least once each
14 year. Failure to hold an annual meeting does not cause a forfeiture or
15 give cause for dissolution of the corporation, nor does such failure
16 affect otherwise valid corporate acts. Special meetings of the
17 association may be called by the president, a majority of the board of
18 directors, or by unit owners having twenty percent or any lower
19 percentage (~~(specified in the declaration or bylaws)~~) of the votes in
20 the association, if specified in the governing documents. Not less
21 than ten nor more than sixty days in advance of any meeting, the
22 secretary or other officer specified in the bylaws shall cause notice
23 to be hand-delivered or sent prepaid by first class United States mail
24 to the mailing address of each unit or to any other mailing address
25 designated in writing by the unit owner. The notice of any meeting
26 shall state the time and place of the meeting and the (~~(items)~~)
27 business to be placed on the agenda (~~(to be voted on)~~) for a vote by
28 the members, including the general nature of any proposed amendment to
29 the (~~(declaration or bylaws,)~~) governing documents, any budget or
30 changes in the previously approved budget that result in a change in
31 assessment obligation(~~(s)~~), and any proposal to remove a director (~~(or~~
32 officer)).

33 (2) Unless otherwise provided in the governing documents, any
34 action required or permitted by this chapter or the governing documents
35 to be taken at an annual or special meeting of members may be taken
36 without a meeting, if the action is approved by members entitled to
37 vote on such action having not less than the minimum number of votes
38 that would be necessary to authorize such action at a meeting at which

1 all members entitled to vote on such action were present and voted. In
2 order to be effective, all of the members entitled to vote thereon must
3 have been given written notice at least fourteen days in advance of the
4 proposed action, and the action must be evidenced by one or more
5 written consents or ballots describing the action taken, dated and
6 signed by approving members having the requisite number of votes and
7 entitled to vote on such action, and delivered to the association. The
8 notice shall state a date by which the requisite number of consents or
9 ballots must be received for the action to be effective. Any notice
10 given in lieu of a meeting required to be held pursuant to RCW
11 64.34.308(3) to ratify a budget adopted by the board shall provide a
12 period of not less than thirty days for the return of ballots rejecting
13 the budget. Any written consent or ballot may be revoked prior to the
14 date that the association receives the required number of consents or
15 ballots to authorize the proposed action. A consent, ballot, or
16 revocation is not effective unless in writing and until received by the
17 association at its principal office in this state or its principal
18 place of business, or received by the corporate secretary or other
19 officer or agent of the corporation authorized to receive notices on
20 behalf of the association. Within ten days after obtaining such
21 authorization by written consent or ballot, written notice describing
22 the action taken must be given to all members. A consent signed under
23 this section has the effect of a meeting vote and may be described as
24 such in any document. Whenever action is taken pursuant to this
25 section, the written consent of the members consenting to such action
26 or the written reports of the persons appointed to tabulate such
27 consents shall be filed with the minutes of proceedings of members.

28 (3) Except as provided in this subsection, all meetings of the
29 board of directors shall be open for observation by all members and
30 their authorized agents. Unless prohibited or restricted by the
31 governing documents, upon the affirmative vote in open meeting to
32 assemble in closed session, the board of directors may convene in
33 closed executive session to consider any matter that the board
34 determines in good faith should not be considered in open session in
35 furtherance of the best interests of the association and its members,
36 including but not limited to matters involving personnel issues,
37 consultation or consideration of communications with legal counsel,
38 likely or pending litigation, possible violations of the governing
39 documents, and the possible liability of an owner to the association.

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

13 (4) Minutes of all meetings of the members of an association and of
14 the board of directors of an association must be maintained in written
15 form. The decision on each matter voted upon at a board meeting or a
16 membership meeting must be recorded in the minutes.

17 (5) A director of an association who is present at a meeting of its
18 board of directors at which action on any association matter is taken
19 shall be presumed to have assented to the action taken unless the
20 director's dissent or abstention shall be entered in the minutes of the
21 meeting or unless the director files his or her written dissent or
22 abstention to such action with the person acting as the secretary of
23 the meeting before the adjournment thereof or forwards such dissent or
24 abstention by registered or certified mail, return receipt requested,
25 to the secretary of the corporation immediately after the adjournment
26 of the meeting. Such right to dissent or abstain does not apply to a
27 director who voted in favor of such action.

28 **Sec. 6.** RCW 64.34.340 and 1992 c 220 s 17 are each amended to read
29 as follows:

30 (1) If only one of the multiple owners of a unit is present at a
31 meeting of the association or has delivered a written ballot or proxy
32 to the association secretary, the owner is entitled to cast all the
33 votes allocated to that unit. If more than one of the multiple owners
34 are present or has delivered a written ballot or proxy to the
35 association secretary, the votes allocated to that unit may be cast
36 only in accordance with the agreement of a majority in interest of the
37 multiple owners, unless the declaration expressly provides otherwise.
38 There is majority agreement if any one of the multiple owners casts the

1 votes allocated to that unit without protest being made promptly to the
2 person presiding over the meeting by any of the other owners of the
3 unit.

4 (2) Votes allocated to a unit may be cast pursuant to a proxy or
5 power of attorney duly executed by a unit owner. If a unit is owned by
6 more than one person, each owner of the unit may vote or register
7 protest to the casting of votes by the other owners of the unit through
8 a duly executed proxy. A unit owner may ~~((not))~~ revoke a proxy given
9 pursuant to this section ~~((except))~~ only by actual notice of revocation
10 to the secretary or the person presiding over a meeting of the
11 association. A proxy is void if it is not dated or purports to be
12 revocable without notice. Unless stated otherwise in the proxy, a
13 proxy terminates eleven months after its date of issuance.

14 (3) If the declaration requires that votes on specified matters
15 affecting the condominium be cast by lessees rather than unit owners of
16 leased units: (a) The provisions of subsections (1) and (2) of this
17 section apply to lessees as if they were unit owners; (b) unit owners
18 who have leased their units to other persons may not cast votes on
19 those specified matters; and (c) lessees are entitled to notice of
20 meetings, access to records, and other rights respecting those matters
21 as if they were unit owners. Unit owners must also be given notice, in
22 the manner provided in RCW 64.34.332, of all meetings at which lessees
23 may be entitled to vote.

24 (4) No votes allocated to a unit owned by the association may be
25 cast, and in determining the percentage of votes required to act on any
26 matter, the votes allocated to units owned by the association shall be
27 disregarded.

28 **Sec. 7.** RCW 64.34.344 and 1989 c 43 s 3-112 are each amended to
29 read as follows:

30 ~~((Neither the association nor any unit owner except the declarant
31 is liable for that declarant's torts in connection with any part of the
32 condominium which that declarant has the responsibility to maintain.
33 Otherwise,))~~ (1) No unit owner is liable solely by reason of being a
34 unit owner for an injury or damage arising out of the condition or use
35 of the common elements. Neither the association nor any unit owner
36 except the declarant is liable for that declarant's torts in connection
37 with any part of the condominium which that declarant has the
38 responsibility to maintain.

1 (2) An action alleging a wrong done by or on behalf of the
2 association, including an action arising out of the condition or use of
3 the common elements, must be brought against the association and not
4 against any unit owner or any officer or director of the association.
5 Unless the wrong was done by a unit owner other than the declarant, if
6 the wrong by the association occurred during any period of declarant
7 control and the association gives the declarant reasonable notice of
8 and an opportunity to defend against the action, the declarant who then
9 controlled the association is liable to the association or to any unit
10 owner: (1) For all tort losses not covered by insurance suffered by
11 the association or that unit owner; and (2) for all costs which the
12 association would not have incurred but for a breach of contract or
13 other wrongful act or omission by the association. If the declarant
14 does not defend the action and is determined to be liable to the
15 association under this section, the declarant is also liable for all
16 litigation expenses, including reasonable attorneys' fees, incurred by
17 the association in such defense. Any statute of limitations affecting
18 the association's right of action under this section is tolled until
19 the period of declarant control terminates. A unit owner is not
20 precluded from bringing an action contemplated by this section because
21 he or she is a unit owner or a member or officer of the association.
22 Liens resulting from judgments against the association are governed by
23 RCW 64.34.368.

24 **Sec. 8.** RCW 64.34.348 and 1989 c 43 s 3-113 are each amended to
25 read as follows:

26 (1) Portions of the common elements which are not necessary for the
27 habitability of a unit may be conveyed or subjected to a security
28 interest by the association if the owners of units to which at least
29 eighty percent of the votes in the association are allocated, including
30 eighty percent of the votes allocated to units not owned by a declarant
31 or an affiliate of a declarant, or any larger percentage the
32 declaration specifies, agree to that action; but all the owners of
33 units to which any limited common element is allocated must agree in
34 order to convey that limited common element or subject it to a security
35 interest. The declaration may specify a smaller percentage, but not
36 less than sixty-seven percent of the votes not held by a declarant or
37 an affiliate of a declarant, only if all of the units are restricted
38 exclusively to nonresidential uses. Proceeds of the sale or financing

1 are an asset of the association. The declaration may provide for a
2 special allocation or distribution of the proceeds of the sale or
3 refinancing of a limited common element.

4 (2) An agreement to convey common elements or subject them to a
5 security interest must be evidenced by the execution of an agreement,
6 or ratifications thereof, in the same manner as a deed, by the
7 requisite number of unit owners. The agreement must specify a date
8 after which the agreement will be void unless recorded before that
9 date. The agreement and all ratifications thereof must be recorded in
10 every county in which a portion of the condominium is situated and is
11 effective only upon recording.

12 (3) The association, on behalf of the unit owners, may contract to
13 convey or dedicate common elements or subject them to a security
14 interest, but the contract is not enforceable against the association
15 until approved pursuant to subsections (1) and (2) of this section.
16 Thereafter, the association has all powers necessary and appropriate to
17 effect the conveyance or encumbrance, including the power to execute
18 deeds or other instruments.

19 (4) Any purported conveyance, encumbrance, or other voluntary
20 transfer of common elements, unless made pursuant to this section, is
21 void.

22 (5) A conveyance or encumbrance of common elements pursuant to this
23 section shall not deprive any unit of its rights of access and support.

24 (6) A conveyance or encumbrance of common elements pursuant to this
25 section shall not affect the priority or validity of preexisting
26 encumbrances.

27 **Sec. 9.** RCW 64.34.352 and 1992 c 220 s 18 are each amended to read
28 as follows:

29 (1) Commencing not later than the time of the first conveyance of
30 a unit to a person other than a declarant, the association shall
31 maintain, to the extent reasonably available:

32 (a) (~~Property insurance on the condominium, which may, but need~~
33 ~~not, include equipment, improvements, and betterments in a unit~~
34 ~~installed by the declarant or the unit owners~~) Commercial property
35 insurance written on a special form covered cause of loss basis, or its
36 equivalent, insuring against all risks of direct physical loss commonly
37 insured against(~~. The total amount of insurance after application of~~
38 ~~any deductibles shall be not less than eighty percent, or such greater~~

1 amount specified in the declaration, of the actual cash value of the
2 insured property at the time the insurance is purchased and at each
3 renewal date, exclusive of land, excavations, foundations, and other
4 items normally excluded from property policies)), for the full
5 insurable replacement cost of the common elements, less any applicable
6 deductible. The insurance shall also cover the full insurable
7 replacement cost of the units. Insurance on the units may, but need
8 not, include improvements and betterments installed by unit owners.
9 Insurance purchased by the association shall exclude personal property
10 of the unit owners; ((and))

11 (b) Commercial general liability insurance, or its equivalent,
12 including medical payments insurance, in an amount determined by the
13 board of directors but not less than the amount specified in the
14 declaration, covering all occurrences commonly insured against for
15 ((death,)) bodily injury, ((and)) property damage, personal injury, and
16 advertising injury arising out of or in connection with the use,
17 ownership, or maintenance of the common elements; and

18 (c) If the condominium has twenty or more units, fidelity insurance
19 or blanket employee dishonesty insurance naming the association as the
20 insured including protection for the acts of any person who either
21 handles or is responsible for funds held or administered by the
22 association, including any association managing agent or property
23 manager, whether or not they receive compensation for their services.
24 The policy shall be for an amount equal to at least the sum of three
25 months' assessments plus twenty-five percent of the maximum amount of
26 reserve funds in the possession or control of the association during
27 the policy period.

28 (2) If the insurance described in subsection (1) of this section is
29 not reasonably available, or is modified, canceled, or not renewed, the
30 association promptly shall cause notice of that fact to be hand-
31 delivered or sent prepaid by first class United States mail to all unit
32 owners, to each eligible mortgagee, and to each mortgagee to whom a
33 certificate or memorandum of insurance has been issued at their
34 respective last known addresses. The declaration may require the
35 association to carry any other insurance, and the association in any
36 event may carry any other insurance it ((deems)) considers appropriate
37 to protect the association or the unit owners.

38 (3) Insurance policies carried pursuant to subsection (1) of this
39 section shall provide that:

1 (a) Each unit owner is an insured person under the policy with
2 respect to liability arising out of the owner's interest in the common
3 elements or membership in the association;

4 (b) The insurer waives its (~~right to subrogation~~) transfer of
5 recovery rights under the policy against any unit owner, member of the
6 owner's household, (~~and~~) lessee of the owner, and association
7 property manager, if any;

8 (c) No act or omission by any unit owner, unless acting within the
9 scope of the owner's authority on behalf of the association, will void
10 the policy or be a condition to recovery under the policy; and

11 (d) If, at the time of a loss under the association's policy, there
12 is other insurance in the name of a unit owner covering the same risk
13 covered by the association's policy, the association's policy provides
14 primary insurance.

15 (4) Any loss covered by the property insurance under subsection
16 (1)(a) of this section must be adjusted with the association, but the
17 insurance proceeds for that loss are payable to any insurance trustee
18 designated for that purpose, or otherwise to the association, and not
19 to any holder of a mortgage. The insurance trustee or the association
20 shall hold any insurance proceeds in trust for the association, unit
21 owners, and (~~lienholders~~) mortgage holders as their interests may
22 appear. Subject to the provisions of subsection (7) of this section,
23 the proceeds must be disbursed first for the repair or restoration of
24 the damaged property, and unit owners and (~~lienholders~~) mortgage
25 holders are not entitled to receive payment of any portion of the
26 proceeds unless there is a surplus of proceeds after the property has
27 been completely repaired or restored or the condominium is terminated.

28 (5) An insurance policy issued to the association does not prevent
29 a unit owner from obtaining insurance for the owner's own benefit.

30 (6) An insurer that has issued an insurance policy under this
31 section shall issue certificates or memoranda of insurance to the
32 association and, upon written request, to any unit owner or holder of
33 a mortgage. The insurer issuing the policy may not modify the amount
34 or the extent of the coverage of the policy or cancel or refuse to
35 renew the policy unless the insurer has complied with all applicable
36 provisions of chapter 48.18 RCW pertaining to the cancellation or
37 nonrenewal of contracts of insurance. The insurer shall not modify the
38 amount or the extent of the coverage of the policy, or cancel or refuse
39 to renew the policy without complying with this section.

1 (7) Any portion of the condominium for which insurance is required
2 under this section which is damaged or destroyed shall be repaired or
3 replaced promptly by the association unless: (a) The condominium is
4 terminated under RCW 64.34.268; (b) repair or replacement would be
5 illegal under any state or local health or safety statute or ordinance;
6 or (c) eighty percent of the unit owners, including every owner of a
7 unit or assigned limited common element which will not be rebuilt, vote
8 not to rebuild. Except as otherwise provided in the declaration, the
9 cost of repair or replacement in excess of insurance proceeds and
10 reserves is a common expense. If all of the damaged or destroyed
11 portions of the condominium are not repaired or replaced: (i) The
12 insurance proceeds attributable to the damaged common elements shall be
13 used to restore the damaged area to a condition compatible with the
14 remainder of the condominium; (ii) the insurance proceeds attributable
15 to units and limited common elements which are not rebuilt shall be
16 distributed to the owners of those units and the owners of the units to
17 which those limited common elements were allocated, or to
18 ~~((lienholders))~~ mortgage holders, as their interests may appear; and
19 (iii) the remainder of the proceeds shall be distributed to all the
20 unit owners or ~~((lienholders))~~ mortgage holders, as their interests may
21 appear, in proportion to the common element interests of all the units
22 or in such other proportion as the declaration may provide. If the
23 unit owners vote not to rebuild any unit, that unit's allocated
24 interests are automatically reallocated upon the vote as if the unit
25 had been condemned under RCW 64.34.060(1), and the association promptly
26 shall prepare, execute, and record an amendment to the declaration
27 reflecting the reallocations. Notwithstanding the provisions of this
28 subsection, RCW 64.34.268 governs the distribution of insurance
29 proceeds if the condominium is terminated.

30 (8) The provisions of this section may be varied or waived as
31 provided in the declaration if all units of a condominium are
32 restricted to nonresidential use.

33 **Sec. 10.** RCW 64.34.360 and 1990 c 166 s 5 are each amended to read
34 as follows:

35 (1) Until the association makes a common expense assessment, the
36 declarant shall pay all common expenses. After any assessment has been
37 made by the association, assessments must be made against all units,
38 based on a budget adopted by the association. However, upon the

1 closing of the sale of each unit, the association may collect a working
2 capital contribution equal to not more than three months' assessments
3 based on the budget adopted by the association. The collection of this
4 working capital contribution shall not require the commencement of
5 assessments against all units. If a working capital contribution is
6 collected on the sale of each unit, the declarant shall make a working
7 capital contribution to the association calculated on the same basis on
8 all unsold units immediately following the election of the board of
9 directors pursuant to RCW 64.34.308(6), and shall be entitled to
10 recover such contribution from the subsequent purchasers of the unsold
11 units. The working capital contributions collected on the sale of each
12 unit shall be held in a segregated reserve account, shall be turned over
13 to the board of directors immediately following the election pursuant
14 to RCW 64.34.308(6), and shall not be used by the association or the
15 declarant for payment of common expenses prior to that time.

16 (2) Except for assessments under subsections (3), (4), and (5) of
17 this section, all common expenses must be assessed against all the
18 units in accordance with the allocations set forth in the declaration
19 pursuant to RCW 64.34.224(1). Any past due common expense assessment
20 or installment thereof bears interest at the rate established by the
21 association pursuant to RCW 64.34.364.

22 (3) To the extent required by the declaration:

23 (a) Any common expense associated with the operation, maintenance,
24 repair, or replacement of a limited common element shall be paid by the
25 owner of or assessed against the units to which that limited common
26 element is assigned, equally, or in any other proportion that the
27 declaration provides;

28 (b) Any common expense or portion thereof benefiting fewer than all
29 of the units must be assessed exclusively against the units benefited;

30 (c) The costs of insurance must be assessed in proportion to risk;
31 and

32 (d) The costs of utilities must be assessed in proportion to usage
33 or, where the charge by the provider is imposed on a per unit basis, in
34 that amount.

35 (4) Assessments to pay a judgment against the association pursuant
36 to RCW 64.34.368(1) may be made only against the units in the
37 condominium at the time the judgment was entered in proportion to their
38 allocated common expense liabilities at the time the judgment was
39 entered.

1 (5) To the extent that any common expense is caused by the
2 misconduct or negligence of any unit owner, the association may assess
3 that expense against the owner's unit.

4 (6) If common expense liabilities are reallocated, common expense
5 assessments and any installment thereof not yet due shall be
6 recalculated in accordance with the reallocated common expense
7 liabilities.

8 **Sec. 11.** RCW 64.34.364 and 1990 c 166 s 6 are each amended to read
9 as follows:

10 (1) The association has a lien on a unit for any unpaid assessments
11 levied against a unit from the time the assessment is due.

12 (2) A lien under this section shall be prior to all other liens and
13 encumbrances on a unit except: (a) Liens and encumbrances recorded
14 before the recording of the declaration; (b) a mortgage on the unit
15 recorded before the date on which the assessment sought to be enforced
16 became delinquent; and (c) liens for real property taxes and other
17 governmental assessments or charges against the unit. A lien under
18 this section is not subject to the provisions of chapter 6.13 RCW.

19 (3) Except as provided in subsections (4) and (5) of this section,
20 the lien shall also be prior to the mortgages described in subsection
21 (2)(b) of this section to the extent of assessments for common
22 expenses, excluding any amounts for capital improvements, based on the
23 periodic budget adopted by the association pursuant to RCW 64.34.360(1)
24 which would have become due in the absence of acceleration during the
25 six months immediately preceding the date of a sheriff's sale in an
26 action for judicial foreclosure by either the association or a
27 mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by
28 a mortgagee, or the date of recording of the declaration of forfeiture
29 in a proceeding by the vendor under a real estate contract, or the date
30 of recording of an instrument in lieu of foreclosure. For the purposes
31 of this subsection, capital improvements do not include common expenses
32 for repairing or replacing the common areas with substantially
33 equivalent items.

34 (4) The priority of the association's lien against units encumbered
35 by a mortgage held by an eligible mortgagee or by a mortgagee which has
36 given the association a written request for a notice of delinquent
37 assessments shall be reduced by up to three months if and to the extent
38 that the lien priority under subsection (3) of this section includes

1 delinquencies which relate to a period after such holder becomes an
2 eligible mortgagee or has given such notice and before the association
3 gives the holder a written notice of the delinquency. This subsection
4 does not affect the priority of mechanics' or materialmen's liens, or
5 the priority of liens for other assessments made by the association.

6 (5) If the association forecloses its lien under this section
7 nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection
8 (9) of this section, or if the association forecloses its lien against
9 abandoned improved real estate pursuant to RCW 61.12.093 through
10 61.12.095, the association shall not be entitled to the lien priority
11 provided for under subsection (3) of this section.

12 (6) Unless the declaration otherwise provides, if two or more
13 associations have liens for assessments created at any time on the same
14 real estate, those liens have equal priority.

15 (7) Recording of the declaration constitutes record notice and
16 perfection of the lien for assessments. While no further recording of
17 any claim of lien for assessment under this section shall be required
18 to perfect the association's lien, the association may record a notice
19 of claim of lien for assessments under this section in the real
20 property records of any county in which the condominium is located.
21 Such recording shall not constitute the written notice of delinquency
22 to a mortgagee referred to in subsection (2) of this section.

23 (8) A lien for unpaid assessments and the personal liability for
24 payment of assessments is extinguished unless proceedings to enforce
25 the lien or collect the debt are instituted within three years after
26 the amount of the assessments sought to be recovered becomes due.

27 (9) The lien arising under this section may be enforced judicially
28 by the association or its authorized representative in the manner set
29 forth in chapter 61.12 RCW. The lien arising under this section may be
30 enforced nonjudicially in the manner set forth in chapter 61.24 RCW for
31 nonjudicial foreclosure of deeds of trust if the declaration (a)
32 contains a grant of the condominium in trust to a trustee qualified
33 under RCW 61.24.010 to secure the obligations of the unit owners to the
34 association for the payment of assessments, (b) contains a power of
35 sale, (c) provides in its terms that the units are not used principally
36 for agricultural or farming purposes, and (d) provides that the power
37 of sale is operative in the case of a default in the obligation to pay
38 assessments. The association or its authorized representative shall
39 have the power, unless prohibited by the declaration, to purchase the

1 unit at the foreclosure sale and to acquire, hold, lease, mortgage, or
2 convey the same. Upon an express waiver in the complaint of any right
3 to a deficiency judgment in a judicial foreclosure action, the period
4 of redemption shall be eight months. Nothing in this section shall
5 prohibit an association from taking a deed in lieu of foreclosure.

6 (10) From the time of commencement of an action by the association
7 to foreclose a lien for nonpayment of delinquent assessments against a
8 unit that is not occupied by the owner thereof, the association shall
9 be entitled to the appointment of a receiver to collect from the lessee
10 thereof the rent for the unit as and when due. If the rental is not
11 paid, the receiver may obtain possession of the unit, refurbish it for
12 rental up to a reasonable standard for rental units in this type of
13 condominium, rent the unit or permit its rental to others, and apply
14 the rents first to the cost of the receivership and attorneys' fees
15 thereof, then to the cost of refurbishing the unit, then to applicable
16 charges, then to costs, fees, and charges of the foreclosure action,
17 and then to the payment of the delinquent assessments. Only a receiver
18 may take possession and collect rents under this subsection, and a
19 receiver shall not be appointed less than ninety days after the
20 delinquency. The exercise by the association of the foregoing rights
21 shall not affect the priority of preexisting liens on the unit.

22 (11) Except as provided in subsection (3) of this section, the
23 holder of a mortgage or other purchaser of a unit who obtains the right
24 of possession of the unit through foreclosure shall not be liable for
25 assessments or installments thereof that became due prior to such right
26 of possession. Such unpaid assessments shall be deemed to be common
27 expenses collectible from all the unit owners, including such mortgagee
28 or other purchaser of the unit. Foreclosure of a mortgage does not
29 relieve the prior owner of personal liability for assessments accruing
30 against the unit prior to the date of such sale as provided in this
31 subsection.

32 (12) In addition to constituting a lien on the unit, each
33 assessment shall be the joint and several obligation of the owner or
34 owners of the unit to which the same are assessed as of the time the
35 assessment is due. No unit owner may exempt himself or herself from
36 liability for assessments. In a voluntary conveyance or other transfer
37 of a unit other than by foreclosure, the grantee of a unit shall be
38 jointly and severally liable with the grantor for all unpaid
39 assessments against the grantor up to the time of the grantor's

1 conveyance, without prejudice to the grantee's right to recover from
2 the grantor the amounts paid by the grantee therefor. However, if a
3 statement of assessments is furnished to a grantee pursuant to
4 subsection (15) of this section, the liability of the grantee for
5 unpaid assessments accrued through the date of that statement shall not
6 exceed the amount set forth in the statement. Suit to recover a
7 personal judgment for any delinquent assessment shall be maintainable
8 in ~~((any))~~ the superior court of the county in which the unit is
9 located or in any other court of competent jurisdiction without
10 foreclosing or waiving the lien securing such sums.

11 (13) The association may from time to time establish reasonable
12 late charges and a reasonable rate of interest, not to exceed eighteen
13 percent per annum, to be charged on all subsequent delinquent
14 assessments or installments thereof. In the absence of another
15 established ~~((nonusurious))~~ rate, delinquent assessments shall bear
16 interest from the date of delinquency at the maximum rate permitted
17 under RCW 19.52.020 on the date on which the assessments became
18 delinquent.

19 (14) The association shall be entitled to recover any costs and
20 reasonable attorneys' fees incurred in connection with the collection
21 of delinquent assessments, whether or not such collection activities
22 result in suit being commenced or prosecuted to judgment. In addition,
23 the association shall be entitled to recover costs and reasonable
24 attorneys' fees if it prevails on appeal and in the enforcement of a
25 judgment.

26 (15) The association upon written request shall furnish to a unit
27 owner or a mortgagee a statement signed by an officer or authorized
28 agent of the association setting forth the amount of unpaid assessments
29 against that unit. The statement shall be furnished within fifteen
30 days after receipt of the request and is binding on the association,
31 the board of directors, and every unit owner, unless and to the extent
32 known by the recipient to be false.

33 (16) To the extent not inconsistent with this section, the
34 declaration may provide for such additional remedies for collection of
35 assessments as may be permitted by law.

36 **Sec. 12.** RCW 64.34.372 and 1992 c 220 s 19 are each amended to
37 read as follows:

1 (1) The association shall keep financial records sufficiently
2 detailed to enable the association to comply with RCW 64.34.425. All
3 financial and other records of the association, including but not
4 limited to checks, bank records, and invoices, in whatever form they
5 are kept, are the property of the association~~((, but))~~. Each
6 association managing agent shall turn over all original books and
7 records to the association immediately upon termination of the
8 management relationship with the association, or upon such other demand
9 as is made by the board of directors. An association managing agent is
10 entitled to keep copies of association records. All records that the
11 managing agent has turned over to the association shall be made
12 reasonably available for examination and copying by the ~~((manager of~~
13 ~~the association, any unit owner, or the owner's authorized agents))~~
14 managing agent.

15 (2) Except to the extent provided in subsection (3) of this
16 section, all records of the association, including the names and
17 addresses of owners and other occupants of the units, shall be
18 available for examination by all owners, holders of mortgages on the
19 units, and their respective authorized agents on reasonable advance
20 notice during normal working hours at the offices of the association or
21 its managing agent. The association may impose and collect a
22 reasonable charge for copies and any reasonable costs incurred by the
23 association in providing access to records.

24 (3) Unless prohibited or restricted by the governing documents,
25 books and records kept by or on behalf of an association may be
26 withheld from examination or copying by a member, a holder of a
27 mortgage on a unit, or their respective agent to the extent that the
28 records concern:

29 (a) Personnel matters that are customarily kept confidential by a
30 business;

31 (b) Medical or health records of any employee of the association,
32 any member, or other occupant of a unit;

33 (c) Communications with legal counsel or attorney work product that
34 are privileged with respect to third parties;

35 (d) Negotiations relating to transactions prior to their completion
36 that the board determines for good cause should be withheld;

37 (e) Agreements that for good cause prohibit disclosure to the
38 members;

1 (f) Pending litigation that the board determines for good cause
2 should be withheld;

3 (g) Pending proceedings for enforcement of the governing documents
4 that the board determines for good cause should be withheld;

5 (h) Unlisted telephone numbers and security access information
6 provided to the association for emergency purposes;

7 (i) Credit information protected by the fair credit reporting act,
8 15 U.S.C. Sec. 1681 et seq.;

9 (j) Meeting minutes or other records of an executive session of the
10 board of directors held pursuant to RCW 64.34.332(3); and

11 (k) Information otherwise protected from disclosure by law.

12 (4) At least annually, the association shall prepare, or cause to
13 be prepared, a financial statement of the association in accordance
14 with generally accepted accounting principles. The financial
15 statements of condominiums consisting of fifty or more units shall be
16 audited at least annually by a certified public accountant. In the
17 case of a condominium consisting of fewer than fifty units, an annual
18 audit is also required but may be waived annually by unit owners other
19 than the declarant of units to which sixty percent of the votes are
20 allocated, excluding the votes allocated to units owned by the
21 declarant.

22 ~~((+2))~~ (5) The funds of an association shall be kept in accounts
23 in the name of the association and shall not be commingled with the
24 funds of any other association, nor with the funds of any manager of
25 the association or any other person responsible for the custody of such
26 funds, nor kept in any trust account or custodial account in the name
27 of any trustee or custodian. Any reserve funds of an association shall
28 be kept in a segregated account and any transaction affecting such
29 funds, including the issuance of checks, shall require the signature of
30 at least two persons who are officers or directors of the association.

31 **Sec. 13.** RCW 64.34.455 and 1989 c 43 s 4-115 are each amended to
32 read as follows:

33 ~~((If a declarant or any other person subject to this chapter fails~~
34 ~~to comply with any provision hereof or any provision of the declaration~~
35 ~~or bylaws, any person or class of persons adversely affected by the~~
36 ~~failure to comply has a claim for appropriate relief. The court, in an~~
37 ~~appropriate case, may award)) (1) Each owner and the owner's tenants,~~
38 ~~guests, and invitees, and each association, are governed by, and must~~

1 comply with, this chapter, and the governing documents of the
2 association. Actions at law or in equity, or both, to redress alleged
3 failure or refusal to comply with this chapter or the governing
4 documents may be brought by the association or by any owner against:
5 (a) The association; (b) a declarant; (c) an owner; (d) any director or
6 officer of an association who willfully and knowingly fails to comply
7 with these provisions; and (e) any tenants, guests, or invitees
8 occupying a unit or using the common elements. The prevailing party in
9 any such litigation is entitled to recover reasonable attorney's fees
10 ((to the prevailing party)) and costs. This section does not deprive
11 any person of any other available right or remedy.

12 (2) If the governing documents so provide, an association may
13 suspend, for a reasonable period of time, the rights of an owner or an
14 owner's tenants, guests, or invitees, or both, to use common elements
15 and facilities, and an owner's voting rights, and may levy reasonable
16 finances against any owner or any tenant, guest, or invitee, in accordance
17 with a previously established schedule adopted by the board of
18 directors and furnished to the owners and tenants.

19 (a) A fine or suspension may not be imposed without notice of at
20 least fourteen days to the person sought to be fined or suspended and
21 an opportunity for a hearing before a committee of at least three
22 impartial persons appointed by the board. If the committee, by
23 majority vote, does not approve a proposed fine or suspension, it may
24 not be imposed.

25 (b) The requirements under (a) of this subsection do not apply to
26 the imposition of suspensions or fines upon any owner because of the
27 failure of the owner to pay assessments when due.

28 (c) Suspension of common-element-use rights shall not impair the
29 right of an owner or tenant of a unit to have vehicular and pedestrian
30 ingress to and egress from the unit, including, but not limited to, the
31 right to park. However, this subsection does not prohibit the
32 governing documents from providing for the towing or removal of
33 improperly parked vehicles or equipment.

34 NEW SECTION. Sec. 14. RCW 64.34.376 and 1989 c 43 s 3-120 are
35 each repealed.

--- END ---