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SENATE BILL 6175

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State of Washington

65th Legislature

2018 Regular Session

By Senators Pedersen, Rivers, and Mullet; by request of Uniform Law Commission

1 AN ACT Relating to the Washington uniform common interest  
2 ownership act; amending RCW 6.13.080; adding a new section to chapter  
3 59.18 RCW; adding a new section to chapter 64.32 RCW; adding a new  
4 section to chapter 64.34 RCW; adding a new section to chapter 64.38  
5 RCW; adding a new chapter to Title 64 RCW; and providing an effective  
6 date.

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

8 **I. DEFINITIONS, APPLICABILITY, AND OTHER GENERAL PROVISIONS**

9 NEW SECTION. **Sec. 101.** SHORT TITLE. This chapter may be known  
10 and cited as the Washington uniform common interest ownership act.

11 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this  
12 section apply throughout this chapter unless the context clearly  
13 requires otherwise.

14 (1) "Affiliate of a declarant" means any person who controls, is  
15 controlled by, or is under common control with a declarant. For  
16 purposes of this subsection:

17 (a) A person controls a declarant if the person:

18 (i) Is a general partner, managing member, officer, director, or  
19 employer of the declarant;

1 (ii) Directly or indirectly or acting in concert with one or more  
2 other persons, or through one or more subsidiaries, owns, controls,  
3 holds with power to vote, or holds proxies representing more than  
4 twenty percent of the voting interest in the declarant;

5 (iii) Controls in any manner the election or appointment of a  
6 majority of the directors, managing members, or general partners of  
7 the declarant; or

8 (iv) Has contributed more than twenty percent of the capital of  
9 the declarant.

10 (b) A person is controlled by a declarant if the declarant:

11 (i) Is a general partner, managing member, officer, director, or  
12 employer of the person;

13 (ii) Directly or indirectly or acting in concert with one or more  
14 other persons, or through one or more subsidiaries, owns, controls,  
15 holds with power to vote, or holds proxies representing more than  
16 twenty percent of the voting interest in the person;

17 (iii) Controls in any manner the election or appointment of a  
18 majority of the directors, managing members, or general partners of  
19 the person; or

20 (iv) Has contributed more than twenty percent of the capital of  
21 the person.

22 (c) Control does not exist if the powers described in this  
23 subsection (1) are held solely as security for an obligation and are  
24 not exercised.

25 (2) "Allocated interests" means the following interests allocated  
26 to each unit:

27 (a) In a condominium, the undivided interest in the common  
28 elements, the common expense liability, and votes in the association;

29 (b) In a cooperative, the common expense liability, the ownership  
30 interest, and votes in the association; and

31 (c) In a plat community and miscellaneous community, the common  
32 expense liability and the votes in the association, and also the  
33 undivided interest in the common elements if owned in common by the  
34 unit owners rather than an association.

35 (3) "Assessment" means all sums chargeable by the association  
36 against a unit, including any assessments levied pursuant to section  
37 317 of this act, fines or fees levied or imposed by the association  
38 pursuant to this chapter or the governing documents, interest and  
39 late charges on any delinquent account, and all costs of collection

1 incurred by the association in connection with the collection of a  
2 delinquent owner's account, including reasonable attorneys' fees.

3 (4) "Association" or "unit owners association" means the unit  
4 owners association organized under section 301 of this act and, to  
5 the extent necessary to construe sections of this chapter made  
6 applicable to common interest communities pursuant to section 117,  
7 119, or 120 of this act, the association organized or created to  
8 administer such common interest communities.

9 (5) "Ballot" means a record designed to cast or register a vote  
10 or consent in a form provided or accepted by the association.

11 (6) "Board" means the body, regardless of name, designated in the  
12 declaration, map, or organizational documents, with primary authority  
13 to manage the affairs of the association.

14 (7) "Common elements" means:

15 (a) In a condominium or cooperative, all portions of the common  
16 interest community other than the units;

17 (b) In a plat community or miscellaneous community, any real  
18 estate other than a unit within a plat community or miscellaneous  
19 community that is owned or leased either by the association or in  
20 common by the unit owners rather than an association; and

21 (c) In all common interest communities, any other interests in  
22 real estate for the benefit of any unit owners that are subject to  
23 the declaration.

24 (8) "Common expense" means any expense of the association,  
25 including allocations to reserves, allocated to all of the unit  
26 owners in accordance with common expense liability.

27 (9) "Common expense liability" means the liability for common  
28 expenses allocated to each unit pursuant to section 208 of this act.

29 (10) "Common interest community" means real estate described in a  
30 declaration with respect to which a person, by virtue of the person's  
31 ownership of a unit, is obligated to pay for a share of real estate  
32 taxes, insurance premiums, maintenance, or improvement of, or  
33 services or other expenses related to, common elements, other units,  
34 or other real estate described in the declaration. "Common interest  
35 community" does not include an arrangement described in section 123  
36 or 124 of this act. A common interest community may be a part of  
37 another common interest community.

38 (11) "Condominium" means a common interest community in which  
39 portions of the real estate are designated for separate ownership and  
40 the remainder of the real estate is designated for common ownership

1 solely by the owners of those portions. A common interest community  
2 is not a condominium unless the undivided interests in the common  
3 elements are vested in the unit owners.

4 (12) "Condominium notice" means the notice given to tenants  
5 pursuant to subsection (13)(c) of this section.

6 (13)(a) "Conversion building" means a building:

7 (i) That at any time before creation of the common interest  
8 community was lawfully occupied wholly or partially by a tenant or  
9 subtenant for residential purposes pursuant to a rental agreement,  
10 oral or written, express or implied, who did not receive a  
11 condominium notice prior to entering into the rental agreement or  
12 lawfully taking occupancy, whichever event occurred first; or

13 (ii) That at any time within the twelve months preceding the  
14 first acceptance of an agreement with the declarant to convey, or the  
15 first conveyance of, any unit in the building, whichever event  
16 occurred first, to any person who was not a declarant or dealer, or  
17 affiliate of a declarant or dealer, was lawfully occupied wholly or  
18 partially by a tenant or subtenant for residential purposes pursuant  
19 to a rental agreement, oral or written, express or implied, who did  
20 not receive a condominium notice prior to entering into the rental  
21 agreement or lawfully taking occupancy, whichever event occurred  
22 first.

23 (b) A building in a common interest community is a conversion  
24 building only if:

25 (i) The building contains more than two attached dwelling units  
26 as defined in RCW 64.55.010(1); and

27 (ii) Acceptance of an agreement to convey, or conveyance of, any  
28 unit in the building to any person who was not a declarant or dealer,  
29 or affiliate of a declarant or dealer, did not occur prior to the  
30 effective date of this section.

31 (c) The notice referred to in (a)(i) and (ii) of this subsection  
32 must be in writing and must state: "The unit you will be occupying  
33 is, or may become, part of a common interest community and subject to  
34 sale."

35 (14) "Convey" or "conveyance" means, with respect to a unit, any  
36 transfer of ownership of the unit, including a transfer by deed or by  
37 real estate contract and, with respect to a unit in a leasehold  
38 common interest community or a proprietary lease in a cooperative, a  
39 transfer by lease or assignment of the unit, but does not include the  
40 creation, transfer, or release of a security interest.

1 (15) "Cooperative" means a common interest community in which the  
2 real estate is owned by an association, each member of which is  
3 entitled by virtue of the member's ownership interest in the  
4 association and by a proprietary lease to exclusive possession of a  
5 unit.

6 (16) "Dealer" means a person who, together with such person's  
7 affiliates, owns or has a right to acquire either six or more units  
8 in a common interest community or fifty percent or more of the units  
9 in a common interest community containing more than two units.

10 (17) "Declarant" means:

11 (a) Any person who executes as declarant a declaration;

12 (b) Any person who reserves any special declarant right in a  
13 declaration;

14 (c) Any person who exercises special declarant rights or to whom  
15 special declarant rights are transferred of record. The holding or  
16 exercise of rights to maintain sales offices, signs advertising the  
17 common interest community, and models, and related right of access,  
18 does not confer the status of being a declarant; or

19 (d) Any person who is the owner of a fee interest in the real  
20 estate that is subjected to the declaration at the time of the  
21 recording of an instrument pursuant to section 306 of this act and  
22 who directly or through one or more affiliates is materially involved  
23 in the construction, marketing, or sale of units in the common  
24 interest community created by the recording of the instrument.

25 (18) "Declarant control" means the right of the declarant or  
26 persons designated by the declarant to appoint or remove any officer  
27 or board member of the association or to veto or approve a proposed  
28 action of any board or association, pursuant to section 304(1)(a) of  
29 this act.

30 (19) "Declaration" means the instrument, however denominated,  
31 that creates a common interest community, including any amendments to  
32 the instrument.

33 (20) "Development rights" means any right or combination of  
34 rights reserved by a declarant in the declaration to:

35 (a) Add real estate or improvements to a common interest  
36 community;

37 (b) Create units, common elements, or limited common elements  
38 within a common interest community;

39 (c) Subdivide or combine units or convert units into common  
40 elements;

1 (d) Withdraw real estate from a common interest community; or

2 (e) Reallocate limited common elements with respect to units that  
3 have not been conveyed by the declarant.

4 (21) "Effective age" means the difference between the useful life  
5 and remaining useful life.

6 (22) "Electronic transmission" or "electronically transmitted"  
7 means any electronic communication (a) not directly involving the  
8 physical transfer of a record in a tangible medium and (b) that may  
9 be retained, retrieved, and reviewed by the sender and the recipient  
10 of the communication, and that may be directly reproduced in a  
11 tangible medium by a sender and recipient.

12 (23) "Eligible mortgagee" means the holder of a security interest  
13 on a unit that has filed with the secretary of the association a  
14 written request that it be given copies of notices of any action by  
15 the association that requires the consent of mortgagees.

16 (24) "Foreclosure" means a statutory forfeiture or a judicial or  
17 nonjudicial foreclosure of a security interest or a deed or other  
18 conveyance in lieu of a security interest.

19 (25) "Full funding plan" means a reserve funding goal of  
20 achieving one hundred percent fully funded reserves by the end of the  
21 thirty-year study period described under section 331 of this act, in  
22 which the reserve account balance equals the sum of the estimated  
23 costs required to maintain, repair, or replace the deteriorated  
24 portions of all reserve components.

25 (26) "Fully funded balance" means the current value of the  
26 deteriorated portion, not the total replacement value, of all the  
27 reserve components. The fully funded balance for each reserve  
28 component is calculated by multiplying the current replacement cost  
29 of that reserve component by its effective age, then dividing the  
30 result by that reserve component's useful life. The sum total of all  
31 reserve components' fully funded balances is the association's fully  
32 funded balance.

33 (27) "Governing documents" means the organizational documents,  
34 map, declaration, rules, or other written instrument by which the  
35 association has the authority to exercise any of the powers provided  
36 for in this chapter or to manage, maintain, or otherwise affect the  
37 property under its jurisdiction.

38 (28) "Identifying number" means a symbol or address that  
39 identifies only one unit or limited common element in a common  
40 interest community.

1 (29) "Leasehold common interest community" means a common  
2 interest community in which all or a portion of the real estate is  
3 subject to a lease the expiration or termination of which will  
4 terminate the common interest community or reduce its size.

5 (30) "Limited common element" means a portion of the common  
6 elements allocated by the declaration or by operation of section 203  
7 (1)(b) or (2) of this act for the exclusive use of one or more, but  
8 fewer than all, of the unit owners.

9 (31) "Map" means: (a) With respect to a plat community, the plat  
10 as defined in RCW 58.17.020 and complying with the requirements of  
11 Title 58 RCW, and (b) with respect to a condominium, cooperative, or  
12 miscellaneous community, a map prepared in accordance with the  
13 requirements of section 210 of this act.

14 (32) "Master association" means an organization described in  
15 section 221 of this act, whether or not it is also an association  
16 described in section 301 of this act.

17 (33) "Miscellaneous community" means a common interest community  
18 in which units are lawfully created in a manner consistent with RCW  
19 58.17.040 and that is not a condominium, cooperative, or plat  
20 community.

21 (34) "Nominal reserve costs" means that the current estimated  
22 total replacement costs of the reserve components are less than fifty  
23 percent of the annual budgeted expenses of the association, excluding  
24 contributions to the reserve fund, for a condominium or cooperative  
25 containing horizontal unit boundaries, and less than seventy-five  
26 percent of the annual budgeted expenses of the association, excluding  
27 contributions to the reserve fund, for all other common interest  
28 communities.

29 (35) "Organizational documents" means the instruments filed with  
30 the secretary of state to create an entity and the instruments  
31 governing the internal affairs of the entity including, but not  
32 limited to, any articles of incorporation, certificate of formation,  
33 bylaws, and limited liability company or partnership agreement.

34 (36) "Person" means an individual, corporation, business trust,  
35 estate, the trustee or beneficiary of a trust that is not a business  
36 trust, partnership, limited liability company, association, joint  
37 venture, public corporation, government, or governmental subdivision,  
38 agency, or instrumentality, or any other legal entity.

39 (37) "Plat community" means a common interest community in which  
40 units have been created by subdivision or short subdivision as both

1 are defined in RCW 58.17.020 and in which the boundaries of units are  
2 established pursuant to chapter 58.17 RCW.

3 (38) "Proprietary lease" means a written and recordable lease  
4 that is executed and acknowledged by the association as lessor and  
5 that otherwise complies with requirements applicable to a residential  
6 lease of more than one year and pursuant to which a member is  
7 entitled to exclusive possession of a unit in a cooperative. A  
8 proprietary lease governed under this chapter is not subject to  
9 chapter 59.18 RCW except as provided in the declaration.

10 (39) "Purchaser" means a person, other than a declarant or a  
11 dealer, which by means of a voluntary transfer acquires a legal or  
12 equitable interest in a unit other than as security for an  
13 obligation.

14 (40) "Qualified financial institution" means a bank, savings  
15 association, or credit union whose deposits are insured by the  
16 federal government.

17 (41) "Real estate" means any leasehold or other estate or  
18 interest in, over, or under land, including structures, fixtures, and  
19 other improvements and interests that by custom, usage, or law pass  
20 with a conveyance of land though not described in the contract of  
21 sale or instrument of conveyance. "Real estate" includes parcels with  
22 or without upper or lower boundaries and spaces that may be filled  
23 with air or water.

24 (42) "Real estate contract" has the same meaning as defined in  
25 RCW 61.30.010.

26 (43) "Record," when used as a noun, means information inscribed  
27 on a tangible medium or contained in an electronic transmission.

28 (44) "Remaining useful life" means the estimated time, in years,  
29 before a reserve component will require major maintenance, repair, or  
30 replacement to perform its intended function.

31 (45) "Replacement cost" means the estimated total cost to  
32 maintain, repair, or replace a reserve component to its original  
33 functional condition.

34 (46) "Reserve component" means a physical component of the common  
35 interest community which the association is obligated to maintain,  
36 repair, or replace, which has an estimated useful life of less than  
37 thirty years, and for which the cost of such maintenance, repair, or  
38 replacement is infrequent, significant, and impractical to include in  
39 an annual budget.

1 (47) "Reserve study professional" means an independent person who  
2 is suitably qualified by knowledge, skill, experience, training, or  
3 education to prepare a reserve study in accordance with sections 330  
4 and 331 of this act. For the purposes of this subsection,  
5 "independent" means a person who is not an employee, officer, or  
6 director, and has no pecuniary interest in the declarant,  
7 association, or any other party for whom the reserve study is  
8 prepared.

9 (48) "Residential purposes" means use for dwelling or  
10 recreational purposes, or both.

11 (49) "Rule" means a policy, guideline, restriction, procedure, or  
12 regulation of an association, however denominated, that is not set  
13 forth in the declaration or organizational documents and governs the  
14 conduct of persons or the use or appearance of property.

15 (50) "Security interest" means an interest in real estate or  
16 personal property, created by contract or conveyance that secures  
17 payment or performance of an obligation. "Security interest" includes  
18 a lien created by a mortgage, deed of trust, real estate contract,  
19 lease intended as security, assignment of lease or rents intended as  
20 security, pledge of an ownership interest in an association, and any  
21 other consensual lien or title retention contract intended as  
22 security for an obligation.

23 (51) "Special declarant rights" means rights reserved for the  
24 benefit of a declarant to:

25 (a) Complete any improvements indicated on the map or described  
26 in the declaration or the public offering statement pursuant to  
27 section 403(1)(h) of this act;

28 (b) Exercise any development right;

29 (c) Maintain sales offices, management offices, signs advertising  
30 the common interest community, and models;

31 (d) Use easements through the common elements for the purpose of  
32 making improvements within the common interest community or within  
33 real estate that may be added to the common interest community;

34 (e) Make the common interest community subject to a master  
35 association;

36 (f) Merge or consolidate a common interest community with another  
37 common interest community of the same form of ownership;

38 (g) Appoint or remove any officer or board member of the  
39 association or any master association or to veto or approve a

1 proposed action of any board or association, pursuant to section  
2 304(1) of this act;

3 (h) Control any construction, design review, or aesthetic  
4 standards committee or process;

5 (i) Attend meetings of the unit owners and, except during an  
6 executive session, the board;

7 (j) Have access to the records of the association to the same  
8 extent as a unit owner.

9 (52) "Specially allocated expense" means any expense of the  
10 association, including allocations to reserves, allocated to some or  
11 all of the unit owners pursuant to section 317 (4) through (8) of  
12 this act.

13 (53) "Survey" has the same meaning as defined in RCW 58.09.020.

14 (54) "Tangible medium" means a writing, copy of a writing,  
15 facsimile, or a physical reproduction, each on paper or on other  
16 tangible material.

17 (55) "Timeshare" has the same meaning as defined in RCW  
18 64.36.010.

19 (56) "Transition meeting" means the meeting held pursuant to  
20 section 304(4) of this act.

21 (57)(a) "Unit" means a physical portion of the common interest  
22 community designated for separate ownership or occupancy, the  
23 boundaries of which are described pursuant to section 206(1)(d) of  
24 this act.

25 (b) If a unit in a cooperative is owned by a unit owner or is  
26 sold, conveyed, voluntarily or involuntarily encumbered, or otherwise  
27 transferred by a unit owner, the interest in that unit that is owned,  
28 sold, conveyed, encumbered, or otherwise transferred is the right to  
29 possession of that unit under a proprietary lease, coupled with the  
30 allocated interests of that unit, and the association's interest in  
31 that unit is not affected.

32 (c) Except as provided in the declaration, a mobile home or  
33 manufactured home for which title has been eliminated pursuant to  
34 chapter 65.20 RCW is part of the unit described in the title  
35 elimination documents.

36 (58)(a) "Unit owner" means (i) a declarant or other person that  
37 owns a unit or (ii) a lessee of a unit in a leasehold common interest  
38 community whose lease expires simultaneously with any lease the  
39 expiration or termination of which will remove the unit from the

1 common interest community, but does not include a person having an  
2 interest in a unit solely as security for an obligation.

3 (b) "Unit owner" also means the vendee, not the vendor, of a unit  
4 under a recorded real estate contract.

5 (c) In a condominium, plat community, or miscellaneous community,  
6 the declarant is the unit owner of any unit created by the  
7 declaration. In a cooperative, the declarant is treated as the unit  
8 owner of any unit to which allocated interests have been allocated  
9 until that unit has been conveyed to another person.

10 (59) "Useful life" means the estimated time during which a  
11 reserve component is expected to perform its intended function  
12 without major maintenance, repair, or replacement.

13 (60) "Writing" does not include an electronic transmission.

14 (61) "Written" means embodied in a tangible medium.

15 NEW SECTION. **Sec. 103.** NO VARIATION BY AGREEMENT. Except as  
16 expressly provided in this chapter, the effect of the provisions of  
17 this chapter may not be varied by agreement, and rights conferred by  
18 this chapter may not be waived. Except as provided otherwise in  
19 section 123 of this act, a declarant may not act under a power of  
20 attorney, or use any other device, to evade the limitations or  
21 prohibitions of this chapter or the declaration.

22 NEW SECTION. **Sec. 104.** SEPARATE TITLES AND TAXATION. (1) In a  
23 cooperative, unless the declaration provides that a unit owner's  
24 interest in a unit and its allocated interests is real estate for all  
25 purposes, that interest is personal property.

26 (2) In a condominium, plat community, or miscellaneous community,  
27 if there is any unit owner other than a declarant:

28 (a) Each unit that has been created, together with its interest  
29 in the common elements, constitutes for all purposes a separate  
30 parcel of real estate; and

31 (b) Each unit together with its interest in the common elements  
32 must be separately taxed and assessed.

33 (3) If a development right has an ascertainable market value, the  
34 development right constitutes a separate parcel of real estate for  
35 property tax purposes and must be separately taxed and assessed to  
36 the declarant, and the declarant alone is liable for payment of those  
37 taxes.

1 (4) If there is no unit owner other than a declarant, the real  
2 estate comprising the common interest community may be taxed and  
3 assessed in any manner provided by law.

4 NEW SECTION. **Sec. 105.** APPLICABILITY OF LOCAL ORDINANCES,  
5 REGULATIONS, AND BUILDING CODES. (1) A building, fire, health, or  
6 safety statute, ordinance, or regulation may not impose any  
7 requirement upon any structure in a common interest community that it  
8 would not impose upon a physically identical development under a  
9 different form of ownership.

10 (2) A zoning, subdivision, or other land use statute, ordinance,  
11 or regulation may not prohibit the condominium or cooperative form of  
12 ownership or impose any requirement upon a condominium or cooperative  
13 that it would not impose upon a physically identical development  
14 under a different form of ownership.

15 (3) Chapter 58.17 RCW does not apply to the creation of a  
16 condominium or a cooperative. This chapter must not be construed to  
17 permit the creation of a condominium or cooperative on a lot, tract,  
18 or parcel of land that could not be sold or transferred without  
19 violating chapter 58.17 RCW.

20 (4) Except as provided in subsections (1), (2), and (3) of this  
21 section, this chapter does not invalidate or modify any provision of  
22 any building, zoning, subdivision, or other statute, ordinance, rule,  
23 or regulation governing the use of real estate.

24 (5) This section does not prohibit a county legislative authority  
25 from requiring the review and approval of declarations and amendments  
26 to declarations and of termination agreements executed pursuant to  
27 section 219(2) of this act by the county assessor solely for the  
28 purpose of allocating the assessed value and property taxes. The  
29 review by the assessor must be done in a reasonable and timely  
30 manner.

31 NEW SECTION. **Sec. 106.** EMINENT DOMAIN. (1) If a unit is  
32 acquired by condemnation or part of a unit is acquired by  
33 condemnation leaving the unit owner with a remnant that may not  
34 practically or lawfully be used for any purpose permitted by the  
35 declaration, the award must include compensation to the unit owner  
36 for that unit and its allocated interests, whether or not any common  
37 elements are acquired. Upon acquisition, unless the decree otherwise  
38 provides, that unit's allocated interests are automatically

1 reallocated to the remaining units in proportion to the respective  
2 allocated interests of those units before the taking, and the  
3 association must promptly prepare, execute, and record an amendment  
4 to the declaration reflecting the reallocations. Any remnant of a  
5 unit remaining after part of a unit is taken under this subsection is  
6 thereafter a common element.

7 (2) Except as provided in subsection (1) of this section, if part  
8 of a unit is acquired by condemnation, the award must compensate the  
9 unit owner for the reduction in value of the unit and its interest in  
10 the common elements, whether or not any common elements are acquired.  
11 Upon acquisition, unless the decree provides otherwise:

12 (a) That unit's allocated interests are reduced in proportion to  
13 the reduction in the size of the unit, or on any other basis  
14 specified in the declaration; and

15 (b) The portion of the allocated interests divested from the  
16 partially acquired unit are automatically reallocated to that unit  
17 and to the remaining units in proportion to the respective allocated  
18 interests of those units before the taking, with the partially  
19 acquired unit participating in the reallocation on the basis of its  
20 reduced allocated interests.

21 (3)(a) If part of the common elements is acquired by  
22 condemnation, the portion of the award attributable to the common  
23 elements taken must be paid to the association. A court may award  
24 damages to a unit owner or owners for particular damage to the  
25 owner's units arising from condemnation.

26 (b) Unless the declaration or the decree provides otherwise, any  
27 portion of the award attributable to the acquisition of a limited  
28 common element must be equally divided among the owners of the units  
29 to which that limited common element was allocated at the time of  
30 acquisition.

31 (4) The decree must be recorded in every county in which any  
32 portion of the common interest community is located.

33 NEW SECTION. **Sec. 107.** SUPPLEMENTAL GENERAL PRINCIPLES OF LAW  
34 APPLICABLE. The principles of law and equity, including the law of  
35 corporations and any other form of organization authorized by the law  
36 of this state and unincorporated associations, the law of real  
37 estate, and the law relative to the capacity to contract, principal  
38 and agent, eminent domain, estoppel, fraud, misrepresentation,  
39 duress, coercion, mistake, receivership, substantial performance, or

1 other validating or invalidating cause supplement this chapter,  
2 except to the extent inconsistent with this chapter.

3 NEW SECTION. **Sec. 108.** CONSTRUCTION AGAINST IMPLICIT REPEAL.  
4 This chapter is intended as a unified coverage of its subject matter  
5 and no part of it must be construed to be impliedly repealed by  
6 subsequent legislation if that construction can reasonably be  
7 avoided.

8 NEW SECTION. **Sec. 109.** UNIFORMITY OF APPLICATION AND  
9 CONSTRUCTION. This chapter must be applied and construed to  
10 effectuate its general purpose to make uniform the law with respect  
11 to the subject of this chapter among states enacting it.

12 NEW SECTION. **Sec. 110.** SEVERABILITY. If any provision of this  
13 act or its application to any person or circumstance is held invalid,  
14 the remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 111.** UNCONSCIONABLE AGREEMENT OR TERM OF  
17 CONTRACT. (1) The court, upon finding as a matter of law that a  
18 contract or contract clause was unconscionable at the time the  
19 contract was made, may refuse to enforce the contract, enforce the  
20 remainder of the contract without the unconscionable clause, or limit  
21 the application of any unconscionable clause to avoid an  
22 unconscionable result.

23 (2) Whenever it is claimed, or appears to the court, that a  
24 contract or any contract clause is or may be unconscionable, the  
25 parties, to aid the court in making the determination, must be  
26 afforded a reasonable opportunity to present evidence as to:

- 27 (a) The commercial setting of the negotiations;  
28 (b) Whether a party has knowingly taken advantage of the  
29 inability of the other party reasonably to protect his or her  
30 interests by reason of physical or mental infirmity, illiteracy,  
31 inability to understand the language of the agreement, or similar  
32 factors;

33 (c) The effect and purpose of the contract or clause; and

34 (d) If a sale, any gross disparity at the time of contracting  
35 between the amount charged for the property and the value of that  
36 property measured by the price at which similar property was readily

1 obtainable in similar transactions. A disparity between the contract  
2 price and the value of the property measured by the price at which  
3 similar property was readily obtainable in similar transactions does  
4 not, of itself, render the contract unconscionable.

5 NEW SECTION. **Sec. 112.** OBLIGATION OF GOOD FAITH. Every contract  
6 or duty governed under this chapter imposes an obligation of good  
7 faith in its performance or enforcement.

8 NEW SECTION. **Sec. 113.** REMEDIES TO BE LIBERALLY ADMINISTERED.  
9 The remedies provided under this chapter must be liberally  
10 administered to the end that the aggrieved party is put in as good a  
11 position as if the other party had fully performed. However,  
12 consequential, special, or punitive damages may not be awarded except  
13 as specifically provided in this chapter or by other rule of law.

14 NEW SECTION. **Sec. 114.** ADJUSTMENT OF DOLLAR AMOUNTS. (1) From  
15 time to time the dollar amount specified in sections 116 and 409(2)  
16 of this act must change, as provided in subsections (2) and (3) of  
17 this section, according to and to the extent of changes in the  
18 consumer price index for urban wage earners and clerical workers:  
19 U.S. city average, all items 1967 = 100, compiled by the bureau of  
20 labor statistics, United States department of labor, (the "index").  
21 The index for December 1979, which was 230, is the reference base  
22 index.

23 (2) The dollar amounts specified in sections 116 and 409(2) of  
24 this act and any amount stated in the declaration pursuant to  
25 sections 116 and 409(2) of this act must change on July 1st of each  
26 year if the percentage of change, calculated to the nearest whole  
27 percentage point, between the index at the end of the preceding year  
28 and the reference base index, is ten percent or more, but: (a) The  
29 portion of the percentage change in the index in excess of a multiple  
30 of ten percent must be disregarded and the dollar amount may only  
31 change in multiples of ten percent of the amount appearing in this  
32 chapter on the effective date of this section; (b) the dollar amount  
33 must not change if the amount required under this section is that  
34 currently in effect pursuant to this chapter as a result of earlier  
35 application of this section; and (c) the dollar amount must not be  
36 reduced below the amount appearing in this chapter on the effective  
37 date of this section.

1 (3) If the index is revised after December 1979, the percentage  
2 of change pursuant to this section must be calculated on the basis of  
3 the revised index. If the revision of the index changes the reference  
4 base index, a revised reference base index must be determined by  
5 multiplying the reference base index then applicable by the rebasing  
6 factor furnished by the bureau of labor statistics. If the index is  
7 superseded, the index referred to in this section is the one  
8 represented by the bureau of labor statistics as reflecting most  
9 accurately the changes in the purchasing power of the dollar for  
10 consumers.

11 NEW SECTION. **Sec. 115.** RELATION TO ELECTRONIC SIGNATURES IN  
12 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and  
13 supersedes the federal electronic signatures in global and national  
14 commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify,  
15 limit, or supersede 15 U.S.C. Sec. 7001(c) or authorize electronic  
16 delivery of any of the notices described in 15 U.S.C. Sec. 7003(b).

17 NEW SECTION. **Sec. 116.** APPLICABILITY TO NEW COMMON INTEREST  
18 COMMUNITIES. (1) Except as provided otherwise in this section, this  
19 chapter applies to all common interest communities created within  
20 this state after the effective date of this section. Chapters 58.19,  
21 64.32, 64.34, and 64.38 RCW do not apply to common interest  
22 communities created after the effective date of this section.

23 (2) Unless the declaration provides that this entire chapter is  
24 applicable, a plat community or miscellaneous community that is not  
25 subject to any development right is subject only to sections 104,  
26 105, and 106 of this act, if the community: (a) Contains no more than  
27 twelve units; and (b) provides in its declaration that the annual  
28 average assessment of all units restricted to residential purposes,  
29 exclusive of optional user fees and any insurance premiums paid by  
30 the association, may not exceed three hundred dollars, as adjusted  
31 pursuant to section 114 of this act.

32 (3) The exemption provided in subsection (2) of this section  
33 applies only if:

34 (a) The declarant reasonably believes in good faith that the  
35 maximum stated assessment will be sufficient to pay the expenses of  
36 the association for the community; and

37 (b) The declaration provides that the assessment may not be  
38 increased above the limitation in subsection (2) of this section

1 prior to the transition meeting without the consent of unit owners,  
2 other than the declarant, holding ninety percent of the votes in the  
3 association.

4 NEW SECTION. **Sec. 117.** APPLICABILITY TO PREEXISTING COMMON  
5 INTEREST COMMUNITIES. (1) Except for a nonresidential common interest  
6 community described in section 121 of this act, sections 120 and 226  
7 of this act apply, and any inconsistent provisions of chapter 59.18,  
8 64.32, 64.34, or 64.38 RCW do not apply, to a common interest  
9 community created in this state before the effective date of this  
10 section.

11 (2) Except to the extent provided in this subsection, the  
12 sections listed in subsection (1) of this section apply only to  
13 events and circumstances occurring after the effective date of this  
14 section and do not invalidate existing provisions of the governing  
15 documents of those common interest communities. To protect the public  
16 interest, sections 120 and 226 of this act supersede existing  
17 provisions of the governing documents of all plat communities and  
18 miscellaneous communities previously subject to chapter 64.38 RCW.

19 NEW SECTION. **Sec. 118.** APPLICABILITY OF AMENDMENTS TO NEW  
20 COMMON INTEREST COMMUNITIES. Amendments to this chapter apply to all  
21 common interest communities except those that (1) were created prior  
22 to the effective date of this section and (2) have not subsequently  
23 amended their governing documents to provide that this chapter will  
24 apply to the common interest community pursuant to section 120 of  
25 this act.

26 NEW SECTION. **Sec. 119.** APPLICABILITY OF PRIOR CONDOMINIUM  
27 STATUTES. Chapter 64.32 RCW does not apply to condominiums created  
28 after July 1, 1990, and chapter 64.34 RCW does not apply to  
29 condominiums created after the effective date of this section.

30 NEW SECTION. **Sec. 120.** AMENDMENTS TO GOVERNING DOCUMENTS. (1)  
31 The governing documents of any common interest community created  
32 before the effective date of this section may be amended to achieve  
33 any result permitted by this chapter, regardless of what applicable  
34 law provided before this chapter was adopted.

35 (2) Except as provided otherwise in section 218 (9), (10), (11),  
36 (12), or (13) of this act, an amendment to the governing documents

1 authorized under this section must be adopted in conformity with any  
2 procedures and requirements for amending the instruments specified by  
3 those instruments and in conformity with the amendment procedures of  
4 this chapter. If the governing documents do not contain provisions  
5 authorizing amendment, the amendment procedures of this chapter  
6 apply. If an amendment grants to a person a right, power, or  
7 privilege permitted under this chapter, any correlative obligation,  
8 liability, or restriction in this chapter also applies to the person.

9 NEW SECTION. **Sec. 121.** APPLICABILITY TO NONRESIDENTIAL AND  
10 MIXED-USE COMMON INTEREST COMMUNITIES. (1) A plat community,  
11 miscellaneous community, or cooperative in which all the units are  
12 restricted exclusively to nonresidential use is not subject to this  
13 chapter except to the extent the declaration provides that:

- 14 (a) This entire chapter applies to the community;  
15 (b) Sections 101 through 226 of this act apply to the community;  
16 or  
17 (c) Only sections 104, 105, and 106 of this act apply to the  
18 community.

19 (2) A condominium in which all the units are restricted  
20 exclusively to nonresidential use is subject to this chapter, but the  
21 declaration may provide that only sections 101 through 226 of this  
22 act apply to the community.

23 (3) If this entire chapter applies to a common interest community  
24 in which all the units are restricted exclusively to nonresidential  
25 use, the declaration may also require, subject to section 111 of this  
26 act, that:

- 27 (a) Any management, maintenance, operations, or employment  
28 contract, lease of recreational or parking areas or facilities, and  
29 any other contract or lease between the association and a declarant  
30 or an affiliate of a declarant continues in force after the declarant  
31 turns over control of the association; and  
32 (b) Purchasers of units must execute proxies, powers of attorney,  
33 or similar devices in favor of the declarant regarding particular  
34 matters enumerated in those instruments.

35 (4) A common interest community that contains both units  
36 restricted to nonresidential purposes and units that may be used for  
37 residential purposes is not subject to this chapter unless the units  
38 that may be used for residential purposes would comprise a common  
39 interest community subject to this chapter in the absence of such

1 nonresidential units or the declaration provides that this chapter  
2 applies as provided in subsection (2) or (3) of this section.

3 NEW SECTION. **Sec. 122.** APPLICABILITY TO OUT-OF-STATE COMMON  
4 INTEREST COMMUNITIES. This chapter does not apply to a common  
5 interest community located outside this state.

6 NEW SECTION. **Sec. 123.** OTHER EXEMPT REAL ESTATE ARRANGEMENTS.  
7 (1) An arrangement between the associations for two or more common  
8 interest communities to share the costs of real estate taxes,  
9 insurance premiums, services, maintenance or improvements of real  
10 estate, or other activities specified in their arrangement or  
11 declarations does not create a separate common interest community.

12 (2) An arrangement between an association for a common interest  
13 community and the owner of real estate that is not part of a common  
14 interest community to share the costs of real estate taxes, insurance  
15 premiums, services, maintenance or improvements of real estate, or  
16 other activities specified in their arrangement does not create a  
17 separate common interest community. However, costs payable by the  
18 common interest community as a result of the arrangement must be  
19 included in the periodic budget for the common interest community,  
20 and the arrangement must be disclosed in all public offering  
21 statements and resale certificates required under this chapter.

22 (3) Except for a cooperative, a lease in which the tenant is  
23 obligated to share the costs of real estate taxes, insurance  
24 premiums, services, maintenance or improvements of real estate, or  
25 other activities specified in an arrangement does not create a  
26 separate common interest community.

27 NEW SECTION. **Sec. 124.** OTHER EXEMPT COVENANTS. An easement or  
28 covenant that requires the owners of separately owned parcels of real  
29 estate to share costs or other obligations associated with a party  
30 wall, driveway, well, or other similar use does not create a common  
31 interest community.

32 **II. CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST**  
33 **COMMUNITIES**

34 NEW SECTION. **Sec. 201.** CREATION OF COMMON INTEREST COMMUNITIES.  
35 (1)(a) A common interest community may be created under this chapter

1 only by (i) recording a declaration executed in the same manner as a  
2 deed, and (ii) recording a map pursuant to section 210(3) of this  
3 act, and (iii) with respect to a cooperative, conveying the real  
4 estate subject to that declaration to the association.

5 (b) The declaration and map must be recorded in every county in  
6 which any portion of the common interest community is located. The  
7 name of a condominium must not be identical to the name of any other  
8 existing condominium or plat community, whether created under this  
9 chapter or chapter 64.32 or 64.34 RCW, in any county in which the  
10 condominium is located.

11 (2) A declaration or an amendment to a declaration adding units  
12 to a common interest community other than a plat community may not be  
13 recorded unless a certification required under section 210(6) (a) or  
14 (b) of this act regarding the map is also recorded.

15 (3)(a) Except as provided otherwise in the declaration or map,  
16 if, in a common interest community other than a condominium or  
17 cooperative, real estate described as a common element in the  
18 declaration or map is not conveyed to the association or expressly  
19 dedicated in the declaration or map to the unit owners as tenants in  
20 common, that real estate is deemed to be conveyed to the association  
21 at the time the first unit is conveyed, subject to the authority and  
22 jurisdiction of the association and subject to development rights, if  
23 any, reserved in the declaration.

24 (b) Except as provided otherwise in the declaration or map, in  
25 the event of the dissolution of an association, any real estate owned  
26 by the association vests in the unit owners as tenants in common with  
27 each unit owner's interest being determined in accordance with the  
28 provisions of section 219 of this act regarding a termination of the  
29 common interest community.

30 NEW SECTION. **Sec. 202.** RESERVATION OF NAME. Upon the filing of  
31 a written request with the county office in which the declaration is  
32 to be recorded, using a form of written request as may be required by  
33 the county office and paying a fee as the county office may establish  
34 not in excess of fifty dollars, a person may reserve the exclusive  
35 right to use a particular name for a condominium to be created in  
36 that county. The reserved name must not be identical to any other  
37 condominium or plat community located in that county. The name  
38 reservation expires unless within three hundred sixty-five days from  
39 the date on which the name reservation is filed the person reserving

1 that name either records a declaration using the reserved name or  
2 files a new name reservation request.

3 NEW SECTION. **Sec. 203.** UNIT BOUNDARIES. (1) Except as provided  
4 by the declaration or, in the case of a plat community or  
5 miscellaneous community, by the map:

6 (a) If walls, floors, or ceilings are designated as boundaries of  
7 a unit, all lath, furring, wallboard, plasterboard, plaster,  
8 paneling, tiles, wallpaper, paint, finished flooring, and any other  
9 materials constituting any part of the finished surfaces thereof are  
10 a part of the unit, and all other portions of the walls, floors, or  
11 ceilings are a part of the common elements.

12 (b) If any chute, flue, duct, wire, conduit, bearing wall,  
13 bearing column, or any other fixture lies partially within and  
14 partially outside the designated boundaries of a unit, any portion  
15 thereof serving only that unit is a limited common element allocated  
16 solely to that unit, and any portion thereof serving more than one  
17 unit or any portion of the common elements is a part of the common  
18 elements.

19 (2) Subject to subsection (1)(b) of this section, all spaces,  
20 interior partitions, and other fixtures and improvements within the  
21 boundaries of a unit are a part of the unit.

22 (3) Any fireplaces, shutters, awnings, window boxes, doorsteps,  
23 stoops, porches, balconies, decks, patios, and all exterior doors and  
24 windows or other fixtures designed to serve a single unit, but  
25 located outside the unit's boundaries, are limited common elements  
26 allocated exclusively to that unit.

27 NEW SECTION. **Sec. 204.** CONSTRUCTION AND VALIDITY OF GOVERNING  
28 DOCUMENTS. (1) All provisions of the governing documents are  
29 severable. If any provision of a governing document, or its  
30 application to any person or circumstances, is held invalid, the  
31 remainder of the governing document or application to other persons  
32 or circumstances is not affected.

33 (2) The rule against perpetuities may not be applied to defeat  
34 any provision of the governing documents adopted pursuant to section  
35 302(1)(a) of this act.

36 (3) If a conflict exists between the declaration and the  
37 organizational documents, the declaration prevails except to the  
38 extent the declaration is inconsistent with this chapter.

1 (4)(a) The creation of a common interest community must not be  
2 impaired and title to a unit and any common elements must not be  
3 rendered unmarketable or otherwise affected by reason of an  
4 insignificant failure of the governing documents, or any amendment to  
5 the governing documents, to comply with this chapter.

6 (b) This chapter does not determine whether a significant failure  
7 impairs marketability. Any unit owner, record owner of a security  
8 interest in any portion of the common interest community, or the  
9 association has standing to obtain a court order compelling the  
10 recordation of a declaration or map or adoption of organizational  
11 documents, or any appropriate amendment thereto, or to any other  
12 governing document, necessary to comply with the requirements of this  
13 chapter and to effectuate the reasonably ascertainable intent of the  
14 parties, including the intent to create a common interest community  
15 in compliance with this chapter. The failure to (i) include in the  
16 declaration or any amendment to the declaration cross-references by  
17 recording number to the map or any amendment to the map, or (ii)  
18 include in the map or any amendment to the map cross-references by  
19 recording number to the declaration or any amendment to the  
20 declaration is deemed an insignificant failure to comply with this  
21 chapter.

22 NEW SECTION. **Sec. 205.** DESCRIPTION OF UNITS. (1) In a  
23 condominium or a cooperative, a description of a unit that sets forth  
24 the name of the common interest community, the recording data for the  
25 declaration, the county and state in which the common interest  
26 community is located, and the identifying number of the unit is a  
27 legally sufficient description of that unit and all rights,  
28 obligations, and interests appurtenant to that unit that were created  
29 by the governing documents.

30 (2) In a plat community or miscellaneous community, a description  
31 of a unit that sets forth the name of the common interest community,  
32 the recording data for the map, the county and state in which the  
33 common interest community is located, and the identifying number of  
34 the unit is a legally sufficient description of that unit and all  
35 rights, obligations, and interests appurtenant to that unit.

36 NEW SECTION. **Sec. 206.** CONTENTS OF DECLARATION. (1) The  
37 declaration must contain:

1 (a) The names of the common interest community and the  
2 association and, immediately following the initial recital of the  
3 name of the community, a statement that the common interest community  
4 is a condominium, cooperative, plat community, or miscellaneous  
5 community;

6 (b) A legal description of the real estate included in the common  
7 interest community;

8 (c) A statement of the number of units that the declarant has  
9 created and, if the declarant has reserved the right to create  
10 additional units, the maximum number of such additional units;

11 (d) In all common interest communities, a reference to the  
12 recorded map creating the units and common elements, if any, subject  
13 to the declaration, and in a common interest community other than a  
14 plat community, the identifying number of each unit created by the  
15 declaration, a description of the boundaries of each unit if and to  
16 the extent they are different from the boundaries stated in section  
17 203(1)(a) of this act, and with respect to each existing unit, and if  
18 known at the time the declaration is recorded, the (i) approximate  
19 square footage, (ii) number of whole or partial bathrooms, (iii)  
20 number of rooms designated primarily as bedrooms, and (iv) level or  
21 levels on which each unit is located. The data described in this  
22 subsection (1)(d)(ii) and (iii) may be omitted with respect to units  
23 restricted to nonresidential use;

24 (e) A description of any limited common elements, other than  
25 those specified in section 203 (1)(b) and (2) of this act;

26 (f) A description of any real estate that may be allocated  
27 subsequently by the declarant as limited common elements, other than  
28 limited common elements specified in section 203 (1)(b) and (2) of  
29 this act, together with a statement that they may be so allocated;

30 (g) A description of any development right and any other special  
31 declarant rights reserved by the declarant, and, if the boundaries of  
32 the real estate subject to those rights are fixed in the declaration  
33 pursuant to (h)(i) of this subsection, a description of the real  
34 property affected by those rights, and a time limit within which each  
35 of those rights must be exercised;

36 (h) If any development right may be exercised with respect to  
37 different parcels of real estate at different times, a statement to  
38 that effect together with:

39 (i) Either a statement fixing the boundaries of those portions  
40 and regulating the order in which those portions may be subjected to

1 the exercise of each development right or a statement that no  
2 assurances are made in those regards; and

3 (ii) A statement as to whether, if any development right is  
4 exercised in any portion of the real estate subject to that  
5 development right, that development right must be exercised in all or  
6 in any other portion of the remainder of that real estate;

7 (i) Any other conditions or limitations under which the rights  
8 described in (g) of this subsection may be exercised or will lapse;

9 (j) An allocation to each unit of the allocated interests in the  
10 manner described in section 208 of this act;

11 (k) Any restrictions on alienation of the units, including any  
12 restrictions on leasing that exceed the restrictions on leasing units  
13 that boards may impose pursuant to section 323(9)(c) of this act and  
14 on the amount for which a unit may be sold or on the amount that may  
15 be received by a unit owner on sale, condemnation, or casualty loss  
16 to the unit or to the common interest community, or on termination of  
17 the common interest community;

18 (l) A cross-reference by recording number to the map for the  
19 units created by the declaration;

20 (m) Any authorization pursuant to which the association may  
21 establish and enforce construction and design criteria and aesthetic  
22 standards as provided in section 322 of this act;

23 (n) All matters required under sections 207, 208, 209, 216, 217,  
24 and 303 of this act.

25 (2) All amendments to the declaration must contain a cross-  
26 reference by recording number to the declaration and to any prior  
27 amendments to the declaration. All amendments to the declaration  
28 adding units must contain a cross-reference by recording number to  
29 the map relating to the added units and set forth all information  
30 required under subsection (1) of this section with respect to the  
31 added units.

32 (3) The declaration may contain any other matters the declarant  
33 considers appropriate, including any restrictions on the uses of a  
34 unit or the number or other qualifications of persons who may occupy  
35 units.

36 NEW SECTION. **Sec. 207.** LEASEHOLD COMMON INTEREST COMMUNITIES.

37 (1) Any lease the expiration or termination of which may terminate  
38 the common interest community or reduce its size, or a memorandum of  
39 the lease, must be recorded. Every lessor of these leases in a

1 condominium, plat community, or miscellaneous community must sign the  
2 declaration. The declaration must state:

3 (a) The recording number of the lease or a statement of where the  
4 complete lease may be inspected;

5 (b) The date on which the lease is scheduled to expire;

6 (c) A legal description of the real estate subject to the lease;

7 (d) Any right of the unit owners to redeem the reversion and the  
8 manner in which those rights may be exercised, or a statement that  
9 they do not have those rights;

10 (e) Any right of the unit owners to remove any improvements  
11 within a reasonable or stated time after the expiration or  
12 termination of the lease, or a statement that they do not have those  
13 rights; and

14 (f) Any rights of the unit owners to renew the lease and the  
15 conditions of any renewal, or a statement that they do not have those  
16 rights.

17 (2) The declaration may provide for the collection by the  
18 association of the proportionate rents paid on the lease by the unit  
19 owners and may designate the association as the representative of the  
20 unit owners on all matters relating to the lease.

21 (3) After the declaration for a condominium, miscellaneous  
22 community, or plat community is recorded, neither the lessor nor the  
23 lessor's successor in interest may terminate the leasehold interest  
24 of a unit owner who makes timely payment of a unit owner's share of  
25 the rent and otherwise complies with all covenants that, if violated,  
26 would entitle the lessor to terminate the lease. A unit owner's  
27 leasehold interest in a condominium, miscellaneous community, or plat  
28 community is not affected by failure of any other person to pay rent  
29 or fulfill any other covenant.

30 (4) Acquisition of the leasehold interest of any unit owner by  
31 the owner of the reversion or remainder does not merge the leasehold  
32 and fee simple interests unless the leasehold interests of all unit  
33 owners subject to that reversion or remainder are acquired and the  
34 owner of the reversion or remainder records a document confirming the  
35 merger.

36 (5) If the expiration or termination of a lease decreases the  
37 number of units in a common interest community, the allocated  
38 interests must be reallocated in accordance with section 106(1) of  
39 this act as though those units had been taken by condemnation.

1 Reallocations must be confirmed by an amendment to the declaration  
2 and map prepared, executed, and recorded by the association.

3 NEW SECTION. **Sec. 208.** ALLOCATION OF ALLOCATED INTERESTS. (1)

4 The declaration must allocate to each unit:

5 (a) In a condominium, a fraction or percentage of undivided  
6 interests in the common elements and in the common expenses of the  
7 association and a portion of the votes in the association;

8 (b) In a cooperative, an ownership interest in the association, a  
9 fraction or percentage of the common expenses of the association, and  
10 a portion of the votes in the association; and

11 (c) In a plat community and miscellaneous community, a fraction  
12 or percentage of the common expenses of the association and a portion  
13 of the votes in the association.

14 (2) The declaration must state the formulas used to establish  
15 allocations of interests. Those allocations may not discriminate in  
16 favor of units owned by the declarant or an affiliate of the  
17 declarant.

18 (3) If units may be added to or withdrawn from the common  
19 interest community, the declaration must state the formulas to be  
20 used to reallocate the allocated interests among all units included  
21 in the common interest community after the addition or withdrawal.

22 (4)(a) The declaration may provide:

23 (i) That different allocations of votes are made to the units on  
24 particular matters specified in the declaration;

25 (ii) For cumulative voting only for the purpose of electing board  
26 members; and

27 (iii) For class voting on specified issues affecting the class if  
28 necessary to protect valid interests of the class.

29 (b) A declarant may not utilize cumulative or class voting for  
30 the purpose of evading any limitation imposed on declarants under  
31 this chapter, and units do not constitute a class because they are  
32 owned by a declarant.

33 (5) Except for minor variations due to rounding, the sum of the  
34 common expense liabilities and, in a condominium, the sum of the  
35 undivided interests in the common elements allocated at any time to  
36 all the units must each equal one if stated as a fraction or one  
37 hundred percent if stated as a percentage. In the event of  
38 discrepancy between an allocated interest and the result derived from

1 application of the pertinent formula, the allocated interest  
2 prevails.

3 (6)(a) In a condominium, the common elements are not subject to  
4 partition, and any purported conveyance, encumbrance, judicial sale,  
5 or other voluntary or involuntary transfer of an undivided interest  
6 in the common elements made without the unit to which that interest  
7 is allocated is void.

8 (b) In a cooperative, any purported conveyance, encumbrance,  
9 judicial sale, or other voluntary or involuntary transfer of an  
10 ownership interest in the association made without the possessory  
11 interest in the unit to which that interest is related is void.

12 NEW SECTION. **Sec. 209.** LIMITED COMMON ELEMENTS. (1)(a) Except  
13 for the limited common elements described in section 203 (1)(b) and  
14 (3) of this act, the declaration must specify to which unit or units  
15 each limited common element is allocated.

16 (b) An allocation of a limited common element may not be altered  
17 without the consent of the owners of the units from which and to  
18 which the limited common element is allocated.

19 (2)(a) Except in the case of a reallocation being made by a  
20 declarant pursuant to a development right reserved in the  
21 declaration, a limited common element may be reallocated between  
22 units only with the approval of the board and by an amendment to the  
23 declaration executed by the unit owners between or among whose units  
24 the reallocation is made.

25 (b) The board must approve the request of the unit owner or  
26 owners under this subsection (2) within thirty days, or within such  
27 other period provided by the declaration, unless the proposed  
28 reallocation does not comply with this chapter or the declaration.  
29 The failure of the board to act upon a request within such period is  
30 deemed an approval of the request.

31 (c) The amendment must be executed and recorded by the  
32 association and be recorded in the name of the common interest  
33 community.

34 (3) Unless provided otherwise in the declaration, the unit owners  
35 of units to which at least sixty-seven percent of the votes are  
36 allocated, including the unit owner of the unit to which the common  
37 element or limited common element will be assigned or incorporated,  
38 must agree to reallocate a common element as a limited common element  
39 or to incorporate a common element or a limited common element into

1 an existing unit. Such reallocation or incorporation must be  
2 reflected in an amendment to the declaration and the map.

3 NEW SECTION. **Sec. 210.** MAPS. (1) A map is required for all  
4 common interest communities. For purposes of this chapter, a map must  
5 be construed as part of the declaration.

6 (2) With the exception of subsections (1), (3), (4), and (14) of  
7 this section, this section does not apply to a plat as defined in RCW  
8 58.17.020.

9 (3) The map for a common interest community must be executed by  
10 the declarant and recorded concurrently with, and contain cross-  
11 references by recording number to, the declaration.

12 (4) An amendment to a map for a common interest community must be  
13 executed by the same party or parties authorized or required to  
14 execute an amendment to the declaration, contain cross-references by  
15 recording number to the declaration and any amendments to the  
16 declaration, and be recorded concurrently with an amendment to the  
17 declaration. With respect to a plat community, (a) any amendment to  
18 the map must be prepared and recorded in compliance with the  
19 requirements, processes, and procedures in chapter 58.17 RCW and of  
20 the local subdivision ordinances of the city, town, or county in  
21 which the plat community is located, and (b) any amendment to the  
22 declaration must conform to the map as so approved and recorded.

23 (5) A map for a cooperative may be prepared by a licensed land  
24 surveyor, and may be incorporated into the declaration to satisfy  
25 subsection (3) of this section and section 206(1)(d) of this act. If  
26 the map for a cooperative is not prepared by a licensed land  
27 surveyor, the map need not contain the certification required in  
28 subsection (6)(a) of this section.

29 (6) The map for a common interest community must be clear and  
30 legible and must contain:

31 (a) If the map is a survey, a certification by a licensed land  
32 surveyor in substantially the following form:

33 SURVEYOR CERTIFICATE: This map correctly represents a survey made  
34 by me or under my direction in conformance with the requirements of  
35 the Survey Recording Act at the request of ..... (name of party  
36 requesting the survey) on ..... (date). I hereby certify that this  
37 map for ..... (name of common interest community) is based upon an  
38 actual survey of the property herein described; that the bearings and

1 distances are correctly shown; that all information required by the  
2 Washington Uniform Common Interest Ownership Act is supplied herein;  
3 and that all horizontal and vertical boundaries of the units, (1) to  
4 the extent determined by the walls, floors, or ceilings thereof, or  
5 other physical monuments, are substantially completed in accordance  
6 with said map, or (2) to the extent such boundaries are not defined  
7 by physical monuments, such boundaries are shown on the map.  
8 (Surveyor's name, signature, license or certificate number, and  
9 acknowledgment)

10 (b) If the map is not a survey, a certification in substantially  
11 the following form:

12 DECLARANT CERTIFICATE: I hereby certify on behalf of .....  
13 (declarant) that this map for ..... (name of common interest  
14 community) was made by me or under my direction in conformance with  
15 the requirements of RCW ..... (this section); that all information  
16 required by the Washington Uniform Common Interest Ownership Act is  
17 supplied herein; and that all horizontal and vertical boundaries of  
18 the units, (1) to the extent determined by the walls, floors, or  
19 ceilings thereof, or other physical monuments, are substantially  
20 completed in accordance with said map, or (2) to the extent such  
21 boundaries are not defined by physical monuments, such boundaries are  
22 shown on the map. (Declarant's name, signature, and acknowledgment)

23 (c) A declaration by the declarant in substantially the following  
24 form:

25 DECLARANT DECLARATION: The undersigned owner or owners of the  
26 interest in the real estate described herein hereby declare this map  
27 and dedicate the same for a common interest community named .....  
28 (name of common interest community), a ..... (type of community), as  
29 that term is defined in the Washington Uniform Common Interest  
30 Ownership Act, solely to meet the requirements of the Washington  
31 Uniform Common Interest Ownership Act and not for any public purpose.  
32 This map and any portion thereof is restricted by law and the  
33 Declaration for ..... (name of common interest community), recorded  
34 under (name of county in which the common interest community is  
35 located) County Recording No. .... (recording number). (Declarant's  
36 name, signature, and acknowledgment)

37 (7) Each map filed for a common interest community, and any  
38 amendments to the map, must be in the style, size, form, and quality

1 as prescribed by the recording authority of the county where filed,  
2 and a copy must be delivered to the county assessor.

3 (8) Each map prepared for a common interest community in  
4 compliance with this chapter, and any amendments to the map, must  
5 show or state:

6 (a) The name of the common interest community and, immediately  
7 following the name of the community, a statement that the common  
8 interest community is a condominium, cooperative, or miscellaneous  
9 community as defined in this chapter. A local jurisdiction may also  
10 require that the name of a plat community on the survey, plat, or map  
11 be followed by a statement that the common interest community is a  
12 plat community as defined in this chapter;

13 (b) A legal description of the land in the common interest  
14 community;

15 (c) As to a condominium, a survey of the land in the condominium,  
16 and as to a cooperative, a survey or a drawing of the land included  
17 in the entire cooperative that complies with the other requirements  
18 of this section;

19 (d) If the boundaries of land subject to the development right to  
20 withdraw are fixed in the declaration or an amendment to the  
21 declaration pursuant to section 206(1)(h)(i) of this act, and subject  
22 to the provisions of the declaration, an amendment to the map if not  
23 contained in the initial recorded map, the legal description and  
24 boundaries of that land, labeled "MAY BE WITHDRAWN FROM THE [COMMON  
25 INTEREST COMMUNITY];

26 (e) If the boundaries of land subject to the development right to  
27 add units that will result in the reallocation of allocated interests  
28 is fixed in the declaration or an amendment to the declaration  
29 pursuant to section 206(1)(h)(i) of this act, and subject to the  
30 provisions of the declaration, the legal description and boundaries  
31 of that land, labeled "SUBJECT TO DEVELOPMENT RIGHTS TO ADD UNITS  
32 THAT WILL RESULT IN A REALLOCATION OF ALLOCATED INTERESTS";

33 (f) The location and dimensions of all existing buildings  
34 containing or comprising units;

35 (g) The extent of any encroachments by or upon any portion of the  
36 common interest community;

37 (h) To the extent feasible, the location and dimensions of all  
38 recorded easements serving or burdening any portion of the common  
39 interest community and any unrecorded easements of which a surveyor  
40 or declarant knows or reasonably should have known;

1 (i) The location and dimensions of vertical unit boundaries;

2 (j) The location with reference to an established datum of  
3 horizontal unit boundaries. With respect to a cooperative,  
4 miscellaneous community, or condominium for which the horizontal  
5 boundaries are not defined by physical monuments, reference to an  
6 established datum is not required if the location of the horizontal  
7 boundaries of a unit is otherwise reasonably described or depicted;

8 (k) The legal description and the location and dimensions of any  
9 real estate in which the unit owners will own only an estate for  
10 years, labeled as "LEASEHOLD REAL ESTATE";

11 (l) The distance between any noncontiguous parcels of real estate  
12 comprising the common interest community;

13 (m) The general location of any existing principal common  
14 amenities listed in a public offering statement under section  
15 403(1)(k) of this act;

16 (n) The general location of porches, decks, balconies, patios,  
17 storage facilities, moorage spaces, or parking spaces that are  
18 allocated as limited common elements, and any applicable identifying  
19 number or designation; and

20 (o) As to any survey, all other matters customarily shown on land  
21 surveys.

22 (9) The map for a common interest community may also show the  
23 anticipated approximate location and dimensions of any contemplated  
24 improvement to be constructed anywhere within the common interest  
25 community, and any contemplated improvement shown must be labeled  
26 either "MUST BE BUILT" or "NEED NOT BE BUILT."

27 (10) The map for a common interest community must identify any  
28 unit in which the declarant has reserved the right to create  
29 additional units or common elements under section 211(3) of this act.

30 (11) Unless the declaration provides otherwise, any horizontal  
31 boundary of part of a unit located outside a building has the same  
32 elevation as the horizontal boundary of the inside part and need not  
33 be depicted on the map.

34 (12) Upon exercising any development right, the declarant must  
35 record either new maps necessary to conform to the requirements of  
36 subsections (3), (4), (6), and (8) of this section, or new  
37 certifications of any map previously recorded if that map otherwise  
38 conforms to the requirements of subsections (3), (4), (6), and (8) of  
39 this section.

1 (13) Any survey and the surveyor certifications required under  
2 this section must be made by a licensed surveyor.

3 (14) As to a plat community, the information required under  
4 subsections (6) (a) and (c), (8) (d) through (g), (k), (m), and (n),  
5 (9), and (10) of this section is required, but may be shown on a map  
6 incorporated in or attached to the declaration, and need not be shown  
7 on the plat community map. Any such map is deemed a map for purposes  
8 of applying the provisions of this section, and the declarant must  
9 provide the certification required under subsection (6)(b) of this  
10 section.

11 (15) In showing or projecting the location and dimensions of the  
12 vertical boundaries of a unit located in a building, it is not  
13 necessary to show the thickness of the walls constituting the  
14 vertical boundaries or otherwise show the distance of those vertical  
15 boundaries either from the exterior surface of the building  
16 containing that unit or from adjacent vertical boundaries of other  
17 units if: (a) The walls are designated to be the vertical boundaries  
18 of that unit; (b) the unit is located within a building, the location  
19 and dimensions of the building having been shown on the map under  
20 subsection (8)(f) of this section; and (c) the graphic general  
21 location of the vertical boundaries are shown in relation to the  
22 exterior surfaces of that building and to the vertical boundaries of  
23 other units within that building.

24 NEW SECTION. **Sec. 211.** EXERCISE OF DEVELOPMENT RIGHTS. (1) To  
25 exercise any development right reserved under section 206(1)(h) of  
26 this act, the declarant must prepare, execute, and record any  
27 amendments to the declaration and map in accordance with the  
28 requirements of sections 210 and 218(3) of this act. The declarant is  
29 the unit owner of any units created. The amendment to the declaration  
30 must assign an identifying number to each new unit created and,  
31 except in the case of subdivision, combination, or conversion of  
32 units described in subsection (3) of this section, reallocate the  
33 allocated interests among all units. The amendment must describe any  
34 common elements and any limited common elements created and, in the  
35 case of limited common elements, designate the unit to which each is  
36 allocated to the extent required under section 209 of this act. The  
37 amendments are effective upon recording.

38 (2) Development rights may be reserved within any real estate  
39 added to the common interest community if the amendment to the

1 declaration adding that real estate includes all matters required  
2 under sections 206 and 207 of this act and the amendment to the map  
3 includes all matters required under section 210 of this act. This  
4 subsection does not extend the time limit on the exercise of  
5 development rights imposed by the declaration pursuant to section  
6 206(1)(h) of this act.

7 (3) When a declarant exercises a development right to subdivide,  
8 combine, or convert a unit previously created into additional units  
9 or common elements, or both:

10 (a) If the declarant converts the unit entirely into common  
11 elements, the amendment to the declaration must reallocate all the  
12 allocated interests of that unit among the other units as if that  
13 unit had been taken by condemnation under section 106 of this act; or

14 (b) If the declarant subdivides the unit into two or more units,  
15 whether or not any part of the unit is converted into common  
16 elements, the amendment to the declaration must reallocate all the  
17 allocated interests of the unit among the units created by the  
18 subdivision in any reasonable manner prescribed by the declarant.

19 (4) If the declaration provides, pursuant to section 206(1)(h) of  
20 this act, that all or a portion of the real estate is subject to a  
21 right of withdrawal:

22 (a) If all the real estate is subject to withdrawal, and the  
23 declaration or map or amendment to the declaration or map does not  
24 describe separate portions of real estate subject to that right, none  
25 of the real estate may be withdrawn if a unit in that real estate has  
26 been conveyed to a purchaser; or

27 (b) If any portion of the real estate is subject to withdrawal as  
28 described in the declaration or map or amendment to the declaration  
29 or map, none of that portion of the real estate may be withdrawn if a  
30 unit in that portion has been conveyed to a purchaser.

31 (5) If the declarant combines two or more units into a lesser  
32 number of units, whether or not any part of a unit is converted into  
33 common elements or common elements are converted units, the amendment  
34 to the declaration must reallocate all of the allocated interests of  
35 the units being combined into the unit or units created by the  
36 combination in any reasonable manner prescribed by the declarant.

37 (6) A unit conveyed to a purchaser may not be withdrawn pursuant  
38 to subsection (4)(a) or (b) of this section without the consent of  
39 the unit owner of that unit and the holder of a security interest in  
40 the unit.

1        NEW SECTION.        **Sec. 212.**        ALTERATIONS OF COMMON ELEMENTS AND  
2 UNITS. Subject to the provisions of the governing documents and other  
3 provisions of law, a unit owner:

4        (1) May make any improvements or alterations to the unit owner's  
5 unit that do not impair the structural integrity or mechanical or  
6 electrical systems or lessen the support of any portion of the common  
7 interest community;

8        (2) May not change the appearance of the common elements without  
9 approval of the board;

10       (3) After acquiring an adjoining unit or an adjoining part of an  
11 adjoining unit, with approval of the board, may remove or alter any  
12 intervening partition or create apertures in the unit or adjoining  
13 unit, even if the partition in whole or in part is a common element.  
14 The removal of partitions or creation of apertures under this  
15 subsection is not an alteration of boundaries. The board must approve  
16 a unit owner's request, which must include the plans and  
17 specifications for the proposed removal or alteration, under this  
18 subsection (3) after receipt of all required information unless the  
19 proposed alteration does not comply with this section or the  
20 governing documents; and

21       (4) May eliminate the title to a mobile home or manufactured home  
22 within the unit as permitted under chapter 65.20 RCW without the  
23 consent or joinder by the association, any other unit owner, or any  
24 party having a security interest in any other unit or the common  
25 elements.

26       NEW SECTION.        **Sec. 213.**        RELOCATION OF UNIT BOUNDARIES. (1)  
27 Subject to the provisions of the declaration, section 212 of this  
28 act, and other provisions of law, the boundaries between adjoining  
29 units may be relocated upon application to the board by the unit  
30 owners of those units and upon approval by the board pursuant to this  
31 section. The application must include plans showing the relocated  
32 boundaries and such other information as the board may require. If  
33 the unit owners of the adjoining units have specified a reallocation  
34 between their units of their allocated interests, the application  
35 must state the proposed reallocations. Unless the board determines,  
36 after receipt of all required information, that the reallocations are  
37 unreasonable or that the proposed boundary relocation does not comply  
38 with the declaration, section 212 of this act, or other provisions of  
39 law, the board must approve the application and prepare any

1 amendments to the declaration and map in accordance with the  
2 requirements of subsection (3) of this section.

3 (2)(a) Subject to the provisions of the declaration and other  
4 provisions of law, boundaries between units and common elements may  
5 be relocated to incorporate common elements within a unit by an  
6 amendment to the declaration upon application to the association by  
7 the unit owner of the unit who proposes to relocate a boundary. The  
8 amendment may be approved only if the unit owner of the unit, the  
9 boundary of which is being relocated, and, unless the declaration  
10 provides otherwise, persons entitled to cast at least sixty-seven  
11 percent of the votes in the association, including sixty-seven  
12 percent of the votes allocated to units not owned by the declarant,  
13 agree.

14 (b) The association may require payment to the association of a  
15 one-time fee or charge or continuing fees or charges payable by the  
16 unit owners of the units whose boundaries are being relocated to  
17 include common elements.

18 (3)(a) The association must prepare any amendment to the  
19 declaration in accordance with the requirements of section 206 of  
20 this act and any amendment to the map in accordance with the  
21 requirements of section 210 of this act necessary to show or describe  
22 the altered boundaries of affected units and their dimensions and  
23 identifying numbers.

24 (b) The amendment to the declaration must be executed by the unit  
25 owner of the unit, the boundaries of which are being relocated, and  
26 by the association, contain words of conveyance between them, and be  
27 recorded in the names of the unit owner or owners and the  
28 association, as grantor or grantee, as appropriate and as required  
29 under section 218(3) of this act. The amendments are effective upon  
30 recording.

31 (4) All costs, including reasonable attorneys' fees, incurred by  
32 the association for preparing and recording amendments to the  
33 declaration and map under this section must be assessed to the unit,  
34 the boundaries of which are being relocated.

35 NEW SECTION. **Sec. 214.** SUBDIVISION AND COMBINATION OF UNITS.

36 (1) Unless prohibited in the declaration, subject to the provisions  
37 of the declaration, section 212 of this act, and other provisions of  
38 law, a unit may be subdivided into two or more units upon application  
39 to the association by the unit owner of the unit and upon approval by

1 the board pursuant to this section. The application must include  
2 plans showing the relocated boundaries, a reallocation of all the  
3 allocated interests of the units among the units created by the  
4 subdivision, and such other information as the board may require.  
5 Unless the board determines, after receipt of all required  
6 information, that the reallocations are unreasonable or that the  
7 proposed boundary relocation does not comply with the declaration,  
8 sections 209 and 212 of this act, or other provisions of law, the  
9 board must approve the application and prepare any amendments to the  
10 declaration and map in accordance with the requirements of subsection  
11 (4) of this section.

12 (2) Unless prohibited in the declaration, subject to the  
13 provisions of the declaration, section 212 of this act, and other  
14 provisions of law, two or more units may be combined into a lesser  
15 number of units upon application to the association by the owners of  
16 those units and upon approval by the board pursuant to this section.  
17 The application must include plans showing the relocated boundaries,  
18 a reallocation of all the allocated interests of the units being  
19 combined among the units resulting from the combination, and such  
20 other information as the board may require. Unless the board  
21 determines, after receipt of all required information, that the  
22 reallocations are unreasonable or that the proposed boundary  
23 relocation does not comply with the declaration, sections 209 and 212  
24 of this act, or other provisions of law, the board shall approve the  
25 application and prepare any amendments to the declaration and map in  
26 accordance with the requirements of subsection (4) of this section.

27 (3) The association may require payment to the association of a  
28 one-time fee or charge or continuing fees or charges payable by the  
29 owners of the units whose boundaries are being relocated to include  
30 common elements.

31 (4) The association must prepare, execute, and record any  
32 amendments to the declaration and, in a condominium, cooperative, or  
33 miscellaneous community, the map, prepared in accordance with the  
34 requirements of sections 210 and 218(3) of this act, subdividing or  
35 combining those units. The amendment to the declaration must be  
36 executed by the association and unit owner or owners of the units  
37 from which the subdivided or combined unit or units are derived,  
38 assign an identifying number to each resulting unit, and reallocate  
39 the allocated interests formerly allocated to the unit from which a  
40 combination was derived to the new unit or, if two or more units are

1 derived from such combination, among the new units in any reasonable  
2 manner prescribed by such owners in the amendment or on any other  
3 basis the declaration requires. The amendments are effective upon  
4 recording.

5 (5) All costs, including reasonable attorneys' fees, incurred by  
6 the association for preparing and recording amendments to the  
7 declaration and map under this section must be assessed to the unit,  
8 the boundaries of which are being relocated.

9 (6) This section does not apply to the declarant's exercise of  
10 any development right to subdivide or combine a unit previously  
11 created.

12 NEW SECTION. **Sec. 215.** MONUMENTS AS BOUNDARIES. (1) The  
13 physical boundaries of a unit located in a building containing or  
14 comprising that unit constructed or reconstructed in substantial  
15 accordance with the map, or amendment to the map, are its boundaries  
16 rather than any boundaries shown on the map, regardless of settling  
17 or lateral movement of the unit or of any building containing or  
18 comprising the unit, or of any minor variance between boundaries of  
19 the unit or any building containing or comprising the unit shown on  
20 the map.

21 (2) This section does not relieve a unit owner from liability in  
22 case of the unit owner's willful misconduct or relieve a declarant or  
23 any other person from liability for failure to adhere to the map.

24 NEW SECTION. **Sec. 216.** USE FOR SALES PURPOSES. (1) A declarant  
25 may maintain sales offices, management offices, and models in units  
26 or on common elements in the common interest community only if the  
27 declaration so provides. In a cooperative or condominium, any sales  
28 office, management office, or model not designated a unit by the  
29 declaration is a common element.

30 (2) When a declarant no longer owns a unit or has the right to  
31 create a unit in the common interest community, the declarant ceases  
32 to have any rights under this section unless the unit is removed  
33 promptly from the common interest community in accordance with a  
34 right to remove reserved in the declaration.

35 (3) Subject to any limitations in the declaration, a declarant  
36 may maintain signs in or on units owned by the declarant or the  
37 common elements advertising the common interest community.

1 (4) This section is subject to the provisions of other state law  
2 and local ordinances.

3 NEW SECTION. **Sec. 217.** EASEMENT AND USE RIGHTS. (1) Subject to  
4 the declaration, a declarant has an easement through the common  
5 elements as may be reasonably necessary for the purpose of  
6 discharging the declarant's obligations or exercising special  
7 declarant rights, whether arising under this chapter or reserved in  
8 the declaration.

9 (2) Subject to sections 302(2)(f) and 314 of this act, the unit  
10 owners have an easement in the common elements for access to their  
11 units.

12 (3) Subject to the declaration and rules, the unit owners have a  
13 right to use the common elements that are not limited common elements  
14 for the purposes for which the common elements were intended.

15 NEW SECTION. **Sec. 218.** AMENDMENT OF DECLARATION. (1)(a) Except  
16 in cases of amendments that may be executed by: A declarant under  
17 subsection (10) of this section, sections 209(2), 210(12), 211, or  
18 304(2)(d) of this act; the association under section 106, 207(5),  
19 209(3), 213(1), or 214 of this act or subsection (11) of this  
20 section; or certain unit owners under section 209(2), 213(1), 214(2),  
21 or 219(2) of this act, and except as limited by subsections (4), (6),  
22 (7), (8), and (12) of this section, the declaration may be amended  
23 only by vote or agreement of unit owners of units to which at least  
24 sixty-seven percent of the votes in the association are allocated,  
25 unless the declaration specifies a different percentage not to exceed  
26 ninety percent for all amendments or for specific subjects of  
27 amendment. For purposes of this section, "amendment" means any change  
28 to the declaration, including adding, removing, or modifying  
29 restrictions contained in a declaration.

30 (b) If the declaration requires the approval of another person as  
31 a condition of its effectiveness, the amendment is not valid without  
32 that approval; however, any right of approval may not result in an  
33 expansion of special declarant rights reserved in the declaration or  
34 violate any other section of this chapter, including sections 103,  
35 111, 112, and 113 of this act.

36 (2) In the absence of fraud, any action to challenge the validity  
37 of an amendment adopted by the association may not be brought more  
38 than one year after the amendment is recorded.

1 (3) Every amendment to the declaration must be recorded in every  
2 county in which any portion of the common interest community is  
3 located and is effective only upon recordation. An amendment, except  
4 an amendment pursuant to section 213(1) of this act, must be indexed  
5 in the grantee's index in the name of the common interest community  
6 and the association and in the grantor's index in the name of the  
7 parties executing the amendment.

8 (4) Except to the extent expressly permitted or required under  
9 this chapter, an amendment may not create or increase special  
10 declarant rights, increase the number of units, change the boundaries  
11 of any unit, or change the allocated interests of a unit without the  
12 consent of unit owners to which at least ninety percent of the votes  
13 in the association are allocated, including the consent of any unit  
14 owner of a unit, the boundaries of which or allocated interest of  
15 which is changed by the amendment.

16 (5) Amendments to the declaration required to be executed by the  
17 association must be executed by any authorized officer of the  
18 association who must certify in the amendment that it was properly  
19 adopted.

20 (6) The declaration may require a higher percentage of unit owner  
21 approval for an amendment that is intended to prohibit or materially  
22 restrict the uses of units permitted under the applicable zoning  
23 ordinances, or to protect the interests of members of a defined class  
24 of owners, or to protect other legitimate interests of the  
25 association or its members. Subject to subsection (13) of this  
26 section, a declaration may not require, as a condition for amendment,  
27 approval by more than ninety percent of the votes in the association  
28 or by all but one unit owner, whichever is less. An amendment  
29 approved under this subsection must provide reasonable protection for  
30 a use permitted at the time the amendment was adopted.

31 (7) The time limits specified in the declaration pursuant to  
32 section 206(1)(g) of this act within which reserved development  
33 rights must be exercised may be extended, and additional development  
34 rights may be created, if persons entitled to cast at least eighty  
35 percent of the votes in the association, including eighty percent of  
36 the votes allocated to units not owned by the declarant, agree to  
37 that action. The agreement is effective thirty days after an  
38 amendment to the declaration reflecting the terms of the agreement is  
39 recorded unless all the persons holding the affected special  
40 declarant rights, or security interests in those rights, record a

1 written objection within the thirty-day period, in which case the  
2 amendment is void, or consent in writing at the time the amendment is  
3 recorded, in which case the amendment is effective when recorded.

4 (8) A provision in the declaration creating special declarant  
5 rights that have not expired may not be amended without the consent  
6 of the declarant.

7 (9) If any provision of this chapter or the declaration requires  
8 the consent of a holder of a security interest in a unit as a  
9 condition to the effectiveness of an amendment to the declaration,  
10 the consent is deemed granted if a refusal to consent in a record is  
11 not received by the association within sixty days after the  
12 association delivers notice of the proposed amendment to the holder  
13 at an address for notice provided by the holder or mails the notice  
14 to the holder by certified mail, return receipt requested, at that  
15 address. If the holder has not provided an address for notice to the  
16 association, the association must provide notice to the address in  
17 the security interest of record.

18 (10) Upon thirty-day advance notice to unit owners, the declarant  
19 may, without a vote of the unit owners or approval by the board,  
20 unilaterally adopt, execute, and record a corrective amendment or  
21 supplement to the governing documents to correct a mathematical  
22 mistake, an inconsistency, or a scrivener's error, or clarify an  
23 ambiguity in the governing documents with respect to an objectively  
24 verifiable fact including, without limitation, recalculating the  
25 undivided interest in the common elements, the liability for common  
26 expenses, or the number of votes in the unit owners' association  
27 appertaining to a unit, within five years after the recordation or  
28 adoption of the governing document containing or creating the  
29 mistake, inconsistency, error, or ambiguity. Any such amendment or  
30 supplement may not materially reduce what the obligations of the  
31 declarant would have been if the mistake, inconsistency, error, or  
32 ambiguity had not occurred.

33 (11) Upon thirty-day advance notice to unit owners, the  
34 association may, upon a vote of two-thirds of the members of the  
35 board, without a vote of the unit owners, adopt, execute, and record  
36 an amendment to the declaration for the following purposes:

37 (a) To correct or supplement the governing documents as provided  
38 in subsection (10) of this section;

39 (b) To remove language and otherwise amend as necessary to effect  
40 the removal of language purporting to forbid or restrict the

1 conveyance, encumbrance, occupancy, or lease to: Individuals of a  
2 specified race, creed, color, sex, or national origin; individuals  
3 with sensory, mental, or physical disabilities; and families with  
4 children or any other legally protected classification;

5 (c) To remove language and otherwise amend as necessary to effect  
6 the removal of language that purports to impose limitations on the  
7 power of the association beyond the limit authorized in section  
8 302(1)(u) of this act to deal with the declarant that are more  
9 restrictive than the limitations imposed on the power of the  
10 association to deal with other persons; and

11 (d) To remove any other language and otherwise amend as necessary  
12 to effect the removal of language purporting to limit the rights of  
13 the association or its unit owners in direct conflict with this  
14 chapter.

15 (12) If the declaration requires that amendments to the  
16 declaration may be adopted only if the amendment is signed by a  
17 specified number or percentage of unit owners and if the common  
18 interest community contains more than twenty units, such requirement  
19 is deemed satisfied if the association obtains such signatures or the  
20 vote or agreement of unit owners holding such number or percentage.

21 (13)(a) If the declaration requires that amendments to the  
22 declaration may be adopted only by the vote or agreement of unit  
23 owners of units to which more than sixty-seven percent of the votes  
24 in the association are allocated, and the percentage required is  
25 otherwise consistent with this chapter, the amendment is approved if:

26 (i) The approval of the percentage specified in the declaration  
27 is obtained;

28 (ii)(A) Unit owners of units to which at least sixty-seven  
29 percent of the votes in the association are allocated vote for or  
30 agree to the proposed amendment;

31 (B) A unit owner does not vote against the proposed amendment;  
32 and

33 (C) Notice of the proposed amendment, including notice that the  
34 failure of a unit owner to object may result in the adoption of the  
35 amendment, is delivered to the unit owners holding the votes in the  
36 association that have not voted or agreed to the proposed amendment  
37 and no written objection to the proposed amendment is received by the  
38 association within sixty days after the association delivers notice;  
39 or

1 (iii)(A) Unit owners of units to which at least sixty-seven  
2 percent of the votes in the association are allocated vote for or  
3 agree to the proposed amendment;

4 (B) At least one unit owner objects to the proposed amendment;  
5 and

6 (C) Pursuant to an action brought by the association in the  
7 county in which the common interest community is situated against all  
8 objecting unit owners, the court finds, under the totality of  
9 circumstances including, but not limited to, the subject matter of  
10 the amendment, the purpose of the amendment, the percentage voting to  
11 approve the amendment, and the percentage objecting to the amendment,  
12 that the amendment is reasonable.

13 (b) If the declaration requires the affirmative vote or approval  
14 of any particular unit owner or class of unit owners as a condition  
15 of its effectiveness, the amendment is not valid without that vote or  
16 approval.

17 NEW SECTION. **Sec. 219.** TERMINATION OF COMMON INTEREST  
18 COMMUNITY. (1) Except for a taking of all the units by condemnation,  
19 foreclosure against an entire cooperative or a security interest that  
20 has priority over the declaration, or in the circumstances described  
21 in section 226 of this act, a common interest community may be  
22 terminated only by agreement of unit owners of units to which at  
23 least eighty percent of the votes in the association are allocated,  
24 or any larger percentage the declaration specifies, and with any  
25 other approvals required by the declaration. The declaration may  
26 specify a smaller percentage only if all of the units are restricted  
27 exclusively to nonresidential uses.

28 (2) An agreement to terminate must be evidenced by the execution  
29 of a termination agreement, or ratifications of the agreement, in the  
30 same manner as a deed, by the requisite number of unit owners. The  
31 termination agreement must specify a date after which the agreement  
32 is void unless it is recorded before that date. A termination  
33 agreement and all ratifications of the agreement must be recorded in  
34 every county in which a portion of the common interest community is  
35 situated and is effective only upon recordation. An agreement to  
36 terminate may only be amended by complying with the requirements of  
37 this subsection and subsection (1) of this section.

38 (3)(a) In the case of a condominium, plat community, or  
39 miscellaneous community containing only units having horizontal

1 boundaries between units, a termination agreement may provide that  
2 all of the common elements and units of the common interest community  
3 must be sold following termination. If, pursuant to the agreement,  
4 any real estate in the common interest community is to be sold  
5 following termination, the termination agreement must set forth the  
6 minimum purchase price, manner of payment, and outside closing date,  
7 and may include any other terms of the sale.

8 (b) In the case of a condominium, plat community, or  
9 miscellaneous community containing no units having horizontal  
10 boundaries between units, a termination agreement may provide for  
11 sale of the common elements that are not necessary for the  
12 habitability of a unit, but it may not require that any unit be sold  
13 following termination, unless the declaration as originally recorded  
14 provided otherwise or all the unit owners consent to the sale. If,  
15 pursuant to the agreement, any real estate in the common interest  
16 community is to be sold following termination, the termination  
17 agreement must set forth the minimum purchase price, manner of  
18 payment, and outside closing date, and may include any other terms of  
19 sale.

20 (c) In the case of a condominium, plat community, or  
21 miscellaneous community containing some units having horizontal  
22 boundaries between units and some units without horizontal boundaries  
23 between units, a termination agreement may provide for sale of the  
24 common elements that are not necessary for the habitability of a  
25 unit, but it may not require that any unit be sold following  
26 termination, unless the declaration as originally recorded provided  
27 otherwise or all the unit owners of units in the building to be sold  
28 consent to the sale. If, pursuant to the agreement, any real estate  
29 in the common interest community is to be sold following termination,  
30 the termination agreement must set forth the minimum purchase price,  
31 manner of payment, and outside closing date, and may include any  
32 other terms of sale.

33 (4)(a) The association, on behalf of the unit owners, may  
34 contract for the sale of real estate in a common interest community,  
35 but the contract is not binding on the unit owners until approved  
36 pursuant to subsections (1) and (2) of this section. If any real  
37 estate is to be sold following termination, title to that real  
38 estate, upon termination, vests in the association as trustee for the  
39 holders of all interests in the units. Thereafter, the association  
40 has all powers necessary and appropriate to effect the sale. Until

1 the sale has been concluded and the proceeds of the sale distributed,  
2 the association continues in existence with all powers it had before  
3 termination.

4 (b) Proceeds of the sale must be distributed to unit owners and  
5 lienholders as their interests may appear, in accordance with  
6 subsections (6) and (8) of this section. Unless otherwise specified  
7 in the termination agreement, as long as the association holds title  
8 to the real estate, each unit owner and the unit owner's successors  
9 in interest have an exclusive right to occupancy of the portion of  
10 the real estate that formerly constituted the unit. During the period  
11 of that occupancy, each unit owner and the unit owner's successors in  
12 interest remain liable for all assessments and other obligations  
13 imposed on unit owners under this chapter or the declaration.

14 (5) In a condominium, plat community, or miscellaneous community,  
15 if any portion of the real estate constituting the common interest  
16 community is not to be sold following termination, title to those  
17 portions of the real estate constituting the common elements and, in  
18 a common interest community containing units having horizontal  
19 boundaries between units described in the declaration, title to all  
20 the real estate containing such boundaries in the common interest  
21 community vests in the unit owners upon termination as tenants in  
22 common in proportion to their respective interests as provided in  
23 subsection (8) of this section, and liens on the units shift  
24 accordingly. While the tenancy in common exists, each unit owner and  
25 the unit owner's successors in interest have an exclusive right to  
26 occupancy of the portion of the real estate that formerly constituted  
27 the unit.

28 (6)(a) Following termination of the common interest community,  
29 the proceeds of a sale of real estate, together with the assets of  
30 the association, are held by the association as trustee for unit  
31 owners and holders of liens on the units as their interests may  
32 appear.

33 (b) Following termination of a condominium, plat community, or  
34 miscellaneous community, creditors of the association holding liens  
35 on the units that were recorded or perfected under RCW 4.64.020  
36 before termination may enforce those liens in the same manner as any  
37 lienholder.

38 (c) All other creditors of the association are to be treated as  
39 if they had perfected liens on the units immediately before  
40 termination.

1 (7) In a cooperative, the declaration may provide that all  
2 creditors of the association have priority over any interests of unit  
3 owners and creditors of unit owners. In that event, following  
4 termination, creditors of the association holding liens on the  
5 cooperative that were recorded or perfected under RCW 4.64.020 before  
6 termination may enforce their liens in the same manner as any  
7 lienholder, and any other creditor of the association is to be  
8 treated as if the creditor had perfected a lien against the  
9 cooperative immediately before termination. Unless the declaration  
10 provides that all creditors of the association have that priority:

11 (a) The lien of each creditor of the association that was  
12 perfected against the association before termination becomes, upon  
13 termination, a lien against each unit owner's interest in the unit as  
14 of the date the lien was perfected;

15 (b) Any other creditor of the association must be treated, upon  
16 termination, as if the creditor had perfected a lien against each  
17 unit owner's interest immediately before termination;

18 (c) The amount of the lien of an association's creditor described  
19 in (a) and (b) of this subsection against each of the unit owners'  
20 interest must be proportionate to the ratio that each unit's common  
21 expense liability bears to the common expense liability of all of the  
22 units;

23 (d) The lien of each creditor of each unit owner that was  
24 perfected before termination continues as a lien against that unit  
25 owner's unit as of the date the lien was perfected;

26 (e) The assets of the association must be distributed to all unit  
27 owners and all lienholders as their interests may appear in the order  
28 described in this subsection; and

29 (f) Creditors of the association are not entitled to payment from  
30 any unit owner in excess of the amount of the creditor's lien against  
31 that unit owner's interest.

32 (8) The respective interests of unit owners referred to in  
33 subsections (4), (5), (6), and (7) of this section are as follows:

34 (a) Except as otherwise provided in (b) of this subsection, the  
35 respective interests of unit owners are the fair market values of  
36 their units, allocated interests, and any limited common elements  
37 immediately before the termination, as determined by one or more  
38 independent appraisers selected by the association. The decision of  
39 the independent appraisers must be distributed to the unit owners and  
40 becomes final unless disapproved within thirty days after

1 distribution by unit owners of units to which twenty-five percent of  
2 the votes in the association are allocated. The proportion of any  
3 unit owner's interest to that of all unit owners is determined by  
4 dividing the fair market value of that unit owner's unit and its  
5 allocated interests by the total fair market values of all the units  
6 and their allocated interests.

7 (b) If any unit or any limited common element is destroyed to the  
8 extent that an appraisal of the fair market value of the unit or  
9 limited common element before destruction cannot be made, the  
10 interests of all unit owners are:

11 (i) In a condominium, their respective common element interests  
12 immediately before the termination;

13 (ii) In a cooperative, their respective ownership interests  
14 immediately before the termination; and

15 (iii) In a plat community or miscellaneous community, their  
16 respective common expense liabilities immediately before the  
17 termination.

18 (9) In a condominium, plat community, or miscellaneous community,  
19 except as otherwise provided in subsection (10) of this section,  
20 foreclosure or enforcement of a lien or encumbrance against the  
21 entire common interest community does not terminate the common  
22 interest community, and foreclosure or enforcement of a lien or  
23 encumbrance against a portion of the common interest community, other  
24 than withdrawable real estate, does not withdraw that portion from  
25 the common interest community. Foreclosure or enforcement of a lien  
26 or encumbrance against withdrawable real estate, or against common  
27 elements that have been subjected to a security interest by the  
28 association under section 314 of this act, does not withdraw that  
29 real estate from the common interest community, but the person taking  
30 title to the real estate may require from the association, upon  
31 request, an amendment excluding the real estate from the common  
32 interest community.

33 (10) In a condominium, plat community, or miscellaneous  
34 community, if a lien or encumbrance against a portion of the real  
35 estate comprising the common interest community has priority over the  
36 declaration and the lien or encumbrance has not been partially  
37 released, the parties foreclosing the lien or encumbrance, upon  
38 foreclosure, may record an instrument excluding the real estate  
39 subject to that lien or encumbrance from the common interest  
40 community.

1 (11) The right of partition under chapter 7.52 RCW is suspended  
2 if an agreement to sell property is provided for in the termination  
3 agreement pursuant to subsection (3)(a), (b), or (c) of this section.  
4 The suspension of the right to partition continues unless a binding  
5 obligation to sell does not exist three months after the recording of  
6 the termination agreement, the binding sale agreement is terminated,  
7 or one year after the termination agreement is recorded, whichever  
8 occurs first.

9 NEW SECTION. **Sec. 220.** RIGHTS OF SECURED LENDERS. (1) The  
10 declaration may require that all or a specified number or percentage  
11 of the lenders who hold security interests encumbering the units or  
12 who have extended credit to the association approve specified actions  
13 of the unit owners or the association as a condition to the  
14 effectiveness of those actions, but no requirement for approval may  
15 operate to:

16 (a) Deny or delegate control over the general administrative  
17 affairs of the association by the unit owners or the board;

18 (b) Prevent the association or the board from commencing,  
19 intervening in, or settling any litigation or proceeding; or

20 (c) Prevent any insurance trustee or the association from  
21 receiving and distributing any insurance proceeds except pursuant to  
22 section 315 of this act.

23 (2) With respect to any action requiring the consent of a  
24 specified number or percentage of mortgagees, the consent of only  
25 eligible mortgagees holding a first lien security interest need be  
26 obtained and the percentage must be based upon the votes attributable  
27 to units with respect to which eligible mortgagees have an interest.

28 (3) A lender who has extended credit to an association secured by  
29 an assignment of income or an encumbrance on the common elements may  
30 enforce its security agreement in accordance with its terms, subject  
31 to the requirements of this chapter and other law. A requirement that  
32 the association must deposit its periodic common charges before  
33 default with the lender to which the association's income has been  
34 assigned, or increase its common charges at the lender's direction by  
35 amounts reasonably necessary to amortize the loan in accordance with  
36 its terms, does not violate the prohibitions on lender approval  
37 contained in subsection (1) of this section.

1        NEW SECTION.

2        **Sec. 221.**

3        MASTER ASSOCIATIONS. (1) If the

4        declaration provides that any of the powers described in section 302  
5        of this act are to be exercised by or may be delegated to a for-  
6        profit or nonprofit corporation or limited liability company that  
7        exercises those or other powers on behalf of one or more common  
8        interest communities or for the benefit of the unit owners of one or  
9        more common interest communities, all provisions of this chapter  
10       applicable to unit owners associations apply to any such corporation  
11       or limited liability company, except as modified by this section.

12       (2) Unless it is acting in the capacity of an association  
13       described in section 301 of this act, a master association may  
14       exercise the powers set forth in section 302(1)(b) of this act only  
15       to the extent expressly permitted in the declarations of common  
16       interest communities that are part of the master association or  
17       expressly described in the delegations of power from those common  
18       interest communities to the master association.

19       (3) If the declaration of any common interest community provides  
20       that the board may delegate certain powers to a master association,  
21       the board is not liable for the acts or omissions of the master  
22       association with respect to those powers following delegation.

23       (4) The rights and responsibilities of unit owners with respect  
24       to the unit owners' association set forth in sections 303, 310, 311,  
25       312, 314, and 322 of this act apply in the conduct of the affairs of  
26       a master association only to persons who elect the board of a master  
27       association, whether or not those persons are otherwise unit owners  
28       within the meaning of this chapter.

29       (5) If a master association is also an association described in  
30       section 301 of this act, the organizational documents of the master  
31       association and the declaration of each common interest community,  
32       the powers of which are assigned by the declaration or delegated to  
33       the master association, may provide that the board of the master  
34       association must be elected after the period of declarant control in  
35       any of the following ways:

36       (a) All unit owners of all common interest communities subject to  
37       the master association may elect all members of the master  
38       association's board;

39       (b) All board members of all common interest communities subject  
40       to the master association may elect all members of the master  
41       association's board;

1 (c) All unit owners of each common interest community subject to  
2 the master association may elect specified members of the master  
3 association's board; or

4 (d) All board members of each common interest community subject  
5 to the master association may elect specified members of the master  
6 association's board.

7 NEW SECTION. **Sec. 222.** DELEGATION OF POWER TO SUBASSOCIATIONS.

8 (1)(a) If the declaration provides that any of the powers described  
9 in section 302 of this act are to be exercised by or may be delegated  
10 to a for-profit corporation or limited liability company that  
11 exercises those or other powers on behalf of unit owners owning less  
12 than all of the units in a common interest community, and if those  
13 unit owners share the exclusive use of one or more limited common  
14 elements within the common interest community or share some property  
15 or other interest in the common interest community in common that is  
16 not shared by the remainder of the unit owners in the common interest  
17 community, all provisions of this chapter applicable to unit owners  
18 associations apply to any such corporation or limited liability  
19 company, except as modified under this section.

20 (b) The delegation of powers to a subassociation must not be used  
21 to discriminate in favor of units owned by the declarant or an  
22 affiliate of the declarant.

23 (2) A subassociation may exercise the powers set forth in section  
24 302 of this act only to the extent expressly permitted by the  
25 declaration of the common interest community of which the units in  
26 the subassociation are a part of or expressly described in the  
27 delegations of power from that common interest community to the  
28 subassociation.

29 (3) If the declaration of any common interest community contains  
30 a delegation of certain powers to a subassociation, or provides that  
31 the board of the common interest community may make such a  
32 delegation, the board members are not liable for the acts or  
33 omissions of the subassociation with respect to those powers so  
34 exercised by the subassociation following delegation.

35 (4) The rights and responsibilities of unit owners with respect  
36 to the unit owners association set forth in sections 301 through 321  
37 of this act apply to the conduct of the affairs of a subassociation.

38 (5) Notwithstanding section 304(4) of this act, the board of the  
39 subassociation must be elected after any period of declarant control

1 by the unit owners of all of the units in the common interest  
2 community subject to the subassociation.

3 (6) The declaration of the common interest community creating the  
4 subassociation may provide that the authority of the board of the  
5 subassociation is exclusive with regard to the powers and  
6 responsibilities delegated to it. In the alternative, the declaration  
7 may provide as to some or all such powers that the authority of the  
8 board of a subassociation is concurrent with and subject to the  
9 authority of the board of the unit owners association, in which case  
10 the declaration must also contain standards and procedures for the  
11 review of the decisions of the board of the subassociation and  
12 procedures for resolving any dispute between the board of the unit  
13 owners association and the board of the subassociation.

14 NEW SECTION. **Sec. 223.** MERGER OR CONSOLIDATION OF COMMON  
15 INTEREST COMMUNITIES. (1) Any two or more common interest communities  
16 of the same form of ownership, by agreement of the unit owners as  
17 provided in subsection (2) of this section, may be merged or  
18 consolidated into a single common interest community. In the event of  
19 a merger or consolidation, unless the agreement otherwise provides,  
20 the resultant common interest community is the legal successor, for  
21 all purposes, of all of the preexisting common interest communities,  
22 and the operations and activities of all associations of the  
23 preexisting common interest communities are merged or consolidated  
24 into a single association that holds all powers, rights, obligations,  
25 assets, and liabilities of all preexisting associations.

26 (2) An agreement of two or more common interest communities to  
27 merge or consolidate pursuant to subsection (1) of this section must  
28 be evidenced by an agreement prepared, executed, recorded, and  
29 certified by the president of the association of each of the  
30 preexisting common interest communities following approval by unit  
31 owners of units to which are allocated the percentage of votes in  
32 each common interest community required to terminate that common  
33 interest community. The agreement must be recorded in every county in  
34 which a portion of the common interest community is located and is  
35 not effective until recorded.

36 (3) Every merger or consolidation agreement, and every amendment  
37 providing for a merger or consolidation made by a declarant when  
38 exercising a special declarant right, must identify the declaration  
39 that will apply to the resultant common interest community and

1 provide for the reallocation of allocated interests among the units  
2 of the resultant common interest community either (a) by stating the  
3 reallocations or the formulas upon which they are based or (b) by  
4 stating the percentage of overall allocated interests of the  
5 resultant common interest community that are allocated to all of the  
6 units comprising each of the preexisting common interest communities,  
7 and providing that the portion of the percentages allocated to each  
8 unit formerly comprising a part of the preexisting common interest  
9 community is equal to the percentages of allocated interests  
10 allocated to that unit by the declaration of the preexisting common  
11 interest community.

12 NEW SECTION. **Sec. 224.** ADDITION OF UNSPECIFIED REAL ESTATE. In  
13 a plat community or miscellaneous community, if the right is  
14 originally reserved in the declaration, the declarant, in addition to  
15 any other development right, may amend the declaration at any time  
16 during as many years as are specified in the declaration for adding  
17 additional real estate to the plat community or miscellaneous  
18 community without describing the location of that real estate in the  
19 original declaration. The amount of real estate added to the plat  
20 community or miscellaneous community pursuant to this section may not  
21 exceed ten percent of the real estate described in section 206(1)(b)  
22 of this act together with any real estate that is described in the  
23 declaration for addition to the plat community or miscellaneous  
24 community, and the declarant may not increase the number of units in  
25 the plat community or miscellaneous community beyond the number  
26 stated in the original declaration pursuant to section 206(1)(c) of  
27 this act.

28 NEW SECTION. **Sec. 225.** LARGE SCALE COMMUNITIES. (1) The  
29 declaration for a common interest community may state that it is a  
30 large scale community if the declarant has reserved the development  
31 right to create at least five hundred units that may be used for  
32 residential purposes and, at the time of the reservation, that  
33 declarant owns or controls more than five hundred acres on which the  
34 units may be built.

35 (2) If the requirements of subsection (1) of this section are  
36 satisfied, the declaration for the large scale community need not  
37 state a maximum number of units and need not contain any of the  
38 information required under section 206(1) (c) through (n) of this act

1 until the declaration is amended under subsection (3) of this  
2 section.

3 (3) When each unit in a large scale community is conveyed to a  
4 purchaser, the declaration must contain:

5 (a) A sufficient legal description of the unit and all portions  
6 of the large scale community in which any other units have been  
7 conveyed to a purchaser; and

8 (b) All the information required under section 206(1) (c) through  
9 (n) of this act with respect to that real estate.

10 (4) The only real estate in a large scale community subject to  
11 this chapter are units that have been made subject to the declaration  
12 or that are being offered for sale and any other real estate  
13 described pursuant to subsection (3) of this section. Other real  
14 estate that is or may become part of the large scale community is  
15 only subject to other law and to any other restrictions and  
16 limitations that appear of record.

17 (5) If the public offering statement conspicuously identifies the  
18 fact that the community is a large scale community, the disclosure  
19 requirements contained in sections 401 through 420 of this act apply  
20 only to units that have been made subject to the declaration or are  
21 being offered for sale in connection with the public offering  
22 statement and to any other real estate described pursuant to  
23 subsection (3) of this section.

24 (6) Limitations in this chapter on the addition of unspecified  
25 real estate do not apply to a large scale community.

26 (7) The period of declarant control of the association for a  
27 large scale community terminates in accordance with any conditions  
28 specified in the declaration or otherwise at the time the declarant,  
29 in a recorded instrument and after giving notice in a record to the  
30 board of the association, voluntarily surrenders all rights to  
31 control the activities of the association.

32 NEW SECTION. **Sec. 226.** JUDICIAL TERMINATION. (1) If  
33 substantially all the units in a common interest community have been  
34 destroyed or abandoned or are uninhabitable and the available methods  
35 for giving notice under section 324 of this act of a meeting of unit  
36 owners to consider termination under section 219 of this act will not  
37 likely result in receipt of the notice, the board or any other  
38 interested person may commence an action seeking to terminate the  
39 common interest community in the superior court for any county in

1 which a portion of the common interest community is located. If any  
2 portion of the common interest community is located in a county other  
3 than the county in which the action is commenced, the person  
4 commencing the action must record a copy of the judgment in the other  
5 county.

6 (2) During the pendency of the action, the court may issue  
7 whatever orders it considers appropriate, including appointment of a  
8 receiver. After a hearing, the court may terminate the common  
9 interest community or reduce its size and may issue any other order  
10 the court considers to be in the best interest of the unit owners and  
11 persons holding an interest in the common interest community.

12 **III. MANAGEMENT OF THE COMMON INTEREST COMMUNITY**

13 NEW SECTION. **Sec. 301.** ORGANIZATION OF UNIT OWNERS ASSOCIATION.

14 (1) A unit owners association must be organized no later than the  
15 date the first unit in the common interest community is conveyed to a  
16 purchaser.

17 (2) The membership of the association at all times consists  
18 exclusively of all unit owners or, following termination of the  
19 common interest community, of all former unit owners entitled to  
20 distributions of proceeds under section 219 of this act or their  
21 heirs, successors, or assigns.

22 (3) The association must have a board and be organized as a for-  
23 profit or nonprofit corporation or limited liability company.

24 (4) In case of any conflict between Title 23B RCW or chapter  
25 23.86, 24.03, 24.06, or 25.15 RCW and this chapter, this chapter  
26 controls.

27 NEW SECTION. **Sec. 302.** POWERS AND DUTIES OF UNIT OWNERS  
28 ASSOCIATION. (1) An association must:

29 (a) Adopt organizational documents;  
30 (b) Adopt budgets as provided in section 326 of this act;  
31 (c) Impose assessments for common expenses and specially  
32 allocated expenses on the unit owners as provided in sections 117(1)  
33 and 326 of this act;

34 (d) Prepare financial statements as provided in section 327 of  
35 this act; and

36 (e) Deposit and maintain the funds of the association in accounts  
37 as provided in section 327 of this act.

1 (2) Except as provided otherwise in subsection (4) of this  
2 section and subject to the provisions of the declaration, the  
3 association may:

4 (a) Amend organizational documents and adopt and amend rules;

5 (b) Amend budgets under section 326 of this act;

6 (c) Hire and discharge managing agents and other employees,  
7 agents, and independent contractors;

8 (d) Institute, defend, or intervene in litigation or in  
9 arbitration, mediation, or administrative proceedings or any other  
10 legal proceeding in its own name on behalf of itself or two or more  
11 unit owners on matters affecting the common interest community;

12 (e) Make contracts and incur liabilities subject to subsection  
13 (4) of this section;

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

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

18 (h) Acquire, hold, encumber, and convey in its own name any  
19 right, title, or interest to real estate or personal property, but:

20 (i) Common elements in a condominium, plat community, or  
21 miscellaneous community may be conveyed or subjected to a security  
22 interest pursuant to section 314 of this act only; and

23 (ii) Part of a cooperative may be conveyed, or all or part of a  
24 cooperative may be subjected to a security interest pursuant to  
25 section 314 of this act only;

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

29 (j) Impose and collect any reasonable payments, fees, or charges  
30 for:

31 (i) The use, rental, or operation of the common elements, other  
32 than limited common elements described in section 203 (1)(b) and (3)  
33 of this act;

34 (ii) Services provided to unit owners; and

35 (iii) Moving in, moving out, or transferring title to units to  
36 the extent provided for in the declaration;

37 (k) Collect assessments and impose and collect reasonable charges  
38 for late payment of assessments;

39 (l) Enforce the governing documents and, after notice and  
40 opportunity to be heard, impose and collect reasonable fines for

1 violations of the governing documents in accordance with a previously  
2 established schedule of fines adopted by the board of directors and  
3 furnished to the owners;

4 (m) Impose and collect reasonable charges for the preparation and  
5 recordation of amendments to the declaration, resale certificates  
6 required under section 409 of this act, lender questionnaires, or  
7 statements of unpaid assessments;

8 (n) Provide for the indemnification of its officers and board  
9 members, to the extent provided in RCW 23B.17.030;

10 (o) Maintain directors' and officers' liability insurance;

11 (p) Subject to subsection (4) of this section, assign its right  
12 to future income, including the right to receive assessments;

13 (q) Join in a petition for the establishment of a parking and  
14 business improvement area, participate in the ratepayers' board or  
15 other advisory body set up by the legislative authority for operation  
16 of a parking and business improvement area, and pay special  
17 assessments levied by the legislative authority on a parking and  
18 business improvement area encompassing the condominium property for  
19 activities and projects that benefit the condominium directly or  
20 indirectly;

21 (r) Establish and administer a reserve account as described in  
22 section 328 of this act;

23 (s) Prepare a reserve study as described in section 330 of this  
24 act;

25 (t) Exercise any other powers conferred by the declaration or  
26 organizational documents;

27 (u) Exercise all other powers that may be exercised in this state  
28 by the same type of entity as the association;

29 (v) Exercise any other powers necessary and proper for the  
30 governance and operation of the association;

31 (w) Require that disputes between the association and unit owners  
32 or between two or more unit owners regarding the common interest  
33 community, other than those governed by chapter 64.50 RCW, be  
34 submitted to nonbinding alternative dispute resolution as a  
35 prerequisite to commencement of a judicial proceeding; and

36 (x) Suspend any right or privilege of a unit owner who fails to  
37 pay an assessment, but may not:

38 (i) Deny a unit owner or other occupant access to the owner's  
39 unit;

40 (ii) Suspend a unit owner's right to vote; or

1 (iii) Withhold services provided to a unit or a unit owner by the  
2 association if the effect of withholding the service would be to  
3 endanger the health, safety, or property of any person.

4 (3) The declaration may not limit the power of the association  
5 beyond the limit authorized in subsection (2)(w) of this section to:

6 (a) Deal with the declarant if the limit is more restrictive than  
7 the limit imposed on the power of the association to deal with other  
8 persons; or

9 (b) Institute litigation or an arbitration, mediation, or  
10 administrative proceeding against any person, subject to the  
11 following:

12 (i) The association must comply with chapter 64.50 RCW, if  
13 applicable, before instituting any proceeding described in chapter  
14 64.50 RCW in connection with construction defects; and

15 (ii) The board must promptly provide notice to the unit owners of  
16 any legal proceeding in which the association is a party other than  
17 proceedings involving enforcement of rules or to recover unpaid  
18 assessments or other sums due the association.

19 (4) Any borrowing by an association that is to be secured by an  
20 assignment of the association's right to receive future income  
21 pursuant to subsection (2)(e) and (p) of this section requires  
22 ratification by the unit owners as provided in this subsection.

23 (a) The board must provide notice of the intent to borrow to all  
24 unit owners. The notice must include the purpose and maximum amount  
25 of the loan, the estimated amount and term of any assessments  
26 required to repay the loan, a reasonably detailed projection of how  
27 the money will be expended, and the interest rate and term of the  
28 loan.

29 (b) In the notice, the board must set a date for a meeting of the  
30 unit owners, which must not be less than fourteen and no more than  
31 sixty days after mailing of the notice, to consider ratification of  
32 the borrowing.

33 (c) Unless at that meeting, whether or not a quorum is present,  
34 unit owners holding a majority of the votes in the association or any  
35 larger percentage specified in the declaration reject the proposal to  
36 borrow funds, the association may proceed to borrow the funds in  
37 substantial accordance with the terms contained in the notice.

38 (5) If a tenant of a unit owner violates the governing documents,  
39 in addition to exercising any of its powers against the unit owner,  
40 the association may:

1 (a) Exercise directly against the tenant the powers described in  
2 subsection (2)(1) of this section;

3 (b) After giving notice to the tenant and the unit owner and an  
4 opportunity to be heard, levy reasonable fines against the tenant and  
5 unit owner for the violation; and

6 (c) Enforce any other rights against the tenant for the violation  
7 that the unit owner as the landlord could lawfully have exercised  
8 under the lease or that the association could lawfully have exercised  
9 directly against the unit owner, or both; but the association does  
10 not have the right to terminate a lease or evict a tenant unless  
11 permitted by the declaration. The rights referred to in this  
12 subsection (5)(c) may be exercised only if the tenant or unit owner  
13 fails to cure the violation within ten days after the association  
14 notifies the tenant and unit owner of that violation.

15 (6) Unless a lease otherwise provides, this section does not:

16 (a) Affect rights that the unit owner has to enforce the lease or  
17 that the association has under other law; or

18 (b) Permit the association to enforce a lease to which it is not  
19 a party in the absence of a violation of the governing documents.

20 (7) The board may determine whether to take enforcement action by  
21 exercising the association's power to impose sanctions or commencing  
22 an action for a violation of the governing documents, including  
23 whether to compromise any claim for unpaid assessments or other claim  
24 made by or against it.

25 (8) The board does not have a duty to take enforcement action if  
26 it determines that, under the facts and circumstances presented:

27 (a) The association's legal position does not justify taking any  
28 or further enforcement action;

29 (b) The covenant, restriction, or rule being enforced is, or is  
30 likely to be construed as, inconsistent with law;

31 (c) Although a violation may exist or may have occurred, it is  
32 not so material as to be objectionable to a reasonable person or to  
33 justify expending the association's resources; or

34 (d) It is not in the association's best interests to pursue an  
35 enforcement action.

36 (9) The board's decision under subsections (7) and (8) of this  
37 section to not pursue enforcement under one set of circumstances does  
38 not prevent the board from taking enforcement action under another  
39 set of circumstances, but the board may not be arbitrary or  
40 capricious in taking enforcement action.

1        NEW SECTION.    **Sec. 303.**    BOARD MEMBERS, OFFICERS, AND COMMITTEES.

2    (1)(a) Except as provided otherwise in the governing documents,  
3    subsection (4) of this section, or other provisions of this chapter,  
4    the board may act on behalf of the association.

5        (b) In the performance of their duties, officers and board  
6    members must exercise the degree of care and loyalty to the  
7    association required of an officer or director of a corporation  
8    organized, and are subject to the conflict of interest rules  
9    governing directors and officers, under chapter 24.06 RCW. The  
10   standards of care and loyalty described in this section apply  
11   regardless of the form in which the association is organized.

12        (2)(a) Except as provided otherwise in section 221(5) of this  
13   act, effective as of the transition meeting held in accordance with  
14   section 304(4) of this act, the board must be comprised of at least  
15   three members, at least a majority of whom must be unit owners.  
16   However, the number of board members need not exceed the number of  
17   units then in the common interest community.

18        (b) Unless the declaration or organizational documents provide  
19   for the election of officers by the unit owners, the board must elect  
20   the officers.

21        (c) Unless provided otherwise in the declaration or  
22   organizational documents, board members and officers must take office  
23   upon adjournment of the meeting at which they were elected or  
24   appointed or, if not elected or appointed at a meeting, at the time  
25   of such election or appointment, and must serve until their successor  
26   takes office.

27        (d) In determining the qualifications of any officer or board  
28   member of the association, "unit owner" includes, unless the  
29   declaration or organizational documents provide otherwise, any board  
30   member, officer, member, partner, or trustee of any person, who is,  
31   either alone or in conjunction with another person or persons, a unit  
32   owner.

33        (e) Any officer or board member of the association who would not  
34   be eligible to serve as such if he or she were not a board member,  
35   officer, partner in, or trustee of such a person is disqualified from  
36   continuing in office if he or she ceases to have any such affiliation  
37   with that person or that person would have been disqualified from  
38   continuing in such office as a natural person.

1 (3) Except when voting as a unit owner, the declarant may not  
2 appoint or elect any person or to serve itself as a voting, ex  
3 officio or nonvoting board member following the transition meeting.

4 (4) The board may not, without vote or agreement of the unit  
5 owners:

6 (a) Amend the declaration, except as provided in section 218 of  
7 this act;

8 (b) Amend the organizational documents of the association;

9 (c) Terminate the common interest community;

10 (d) Elect members of the board, but may fill vacancies in its  
11 membership not resulting from removal for the unexpired portion of  
12 any term or, if earlier, until the next regularly scheduled election  
13 of board members; or

14 (e) Determine the qualifications, powers, duties, or terms of  
15 office of board members.

16 (5) The board must adopt budgets as provided in section 326 of  
17 this act.

18 (6) Except for committees appointed by the declarant pursuant to  
19 special declarant rights, all committees of the association must be  
20 appointed by the board. Committees authorized to exercise any power  
21 reserved to the board must include at least two board members who  
22 have exclusive voting power for that committee. Committees that are  
23 not so composed may not exercise the authority of the board and are  
24 advisory only.

25 NEW SECTION. **Sec. 304.** PERIOD OF DECLARANT CONTROL—TRANSITION.

26 (1)(a) Subject to subsection (3) of this section, the declaration may  
27 provide for a period of declarant control of the association, during  
28 which period a declarant, or persons designated by the declarant,  
29 may:

30 (i) Appoint and remove the officers and board members; or

31 (ii) Veto or approve a proposed action of the board or  
32 association.

33 (b) A declarant may voluntarily surrender the right to appoint  
34 and remove officers and board members before the period ends. In that  
35 event, the declarant may require that during the remainder of the  
36 period, specified actions of the association or board, as described  
37 in a recorded amendment to the declaration executed by the declarant,  
38 be approved by the declarant before they become effective. A  
39 declarant's failure to veto or approve such proposed action in

1 writing within thirty days after receipt of written notice of the  
2 proposed action is deemed approval by the declarant.

3 (2) Regardless of the period provided in the declaration, and  
4 except as provided in section 225(7) of this act, a period of  
5 declarant control terminates no later than the earliest of:

6 (a) Sixty days after conveyance of seventy-five percent of the  
7 units that may be created to unit owners other than a declarant;

8 (b) Two years after the last conveyance of a unit, except to a  
9 dealer;

10 (c) Two years after any right to add new units was last  
11 exercised; or

12 (d) The day the declarant, after giving notice in a record to  
13 unit owners, records an amendment to the declaration voluntarily  
14 surrendering all rights to appoint and remove officers and board  
15 members.

16 (3) Not later than sixty days after conveyance of twenty-five  
17 percent of the units that may be created to unit owners other than a  
18 declarant, at least one member and not less than twenty-five percent  
19 of the members of the board must be elected by unit owners other than  
20 the declarant. Not later than sixty days after conveyance of fifty  
21 percent of the units that may be created to unit owners other than a  
22 declarant, not less than thirty-three and one-third percent of the  
23 members of the board must be elected by unit owners other than the  
24 declarant. Until such members are elected and take office, the  
25 existing board may continue to act on behalf of the association.

26 (4) Within thirty days after the termination of any period of  
27 declarant control or, in the absence of such period, not later than a  
28 date that is sixty days after the conveyance of seventy-five percent  
29 of the units that may be created to unit owners other than a  
30 declarant, the board must schedule a transition meeting and provide  
31 notice to the unit owners in accordance with section 310(1)(c) of  
32 this act. At the transition meeting, the board elected by the unit  
33 owners must be elected in accordance with section 303(2) of this act.

34 NEW SECTION. **Sec. 305.** TRANSFER OF ASSOCIATION PROPERTY. (1) No  
35 later than thirty days following the date of the transition meeting  
36 held pursuant to section 304(4) of this act, the declarant must  
37 deliver or cause to be delivered to the board elected at the  
38 transition meeting all property of the unit owners and association as

1 required by the declaration or this chapter including, but not  
2 limited to:

3 (a) The original or a copy of the recorded declaration and each  
4 amendment to the declaration;

5 (b) The organizational documents of the association;

6 (c) The minute books, including all minutes, and other books and  
7 records of the association;

8 (d) Current rules and regulations that have been adopted;

9 (e) Resignations of officers and members of the board who are  
10 required to resign because the declarant is required to relinquish  
11 control of the association;

12 (f) The financial records, including canceled checks, bank  
13 statements, and financial statements of the association, and source  
14 documents from the time of formation of the association through the  
15 date of transfer of control to the unit owners;

16 (g) Association funds or the control of the funds of the  
17 association;

18 (h) Originals or copies of any recorded instruments of conveyance  
19 for any common elements included within the common interest community  
20 but not appurtenant to the units;

21 (i) All tangible personal property of the association;

22 (j) Except for alterations to a unit done by a unit owner other  
23 than the declarant, a copy of the most recent plans and  
24 specifications used in the construction or remodeling of the common  
25 interest community, except for buildings containing fewer than three  
26 units;

27 (k) Originals or copies of insurance policies for the common  
28 interest community and association;

29 (l) Originals or copies of any certificates of occupancy that may  
30 have been issued for the common interest community;

31 (m) Originals or copies of any other permits obtained by or on  
32 behalf of the declarant and issued by governmental bodies applicable  
33 to the common interest community;

34 (n) Originals or copies of all written warranties that are still  
35 in effect for the common elements, or any other areas or facilities  
36 that the association has the responsibility to maintain and repair,  
37 from the contractor, subcontractors, suppliers, and manufacturers and  
38 all owners' manuals or instructions furnished to the declarant with  
39 respect to installed equipment or building systems;

1 (o) A roster of unit owners and eligible mortgagees and their  
2 addresses and telephone numbers, if known, as shown on the  
3 declarant's records and the date of closing of the first sale of each  
4 unit sold by the declarant;

5 (p) Originals or copies of any leases of the common elements and  
6 other leases to which the association is a party;

7 (q) Originals or photocopies of any employment contracts or  
8 service contracts in which the association is one of the contracting  
9 parties or service contracts in which the association or the unit  
10 owners have an obligation or a responsibility, directly or  
11 indirectly, to pay some or all of the fee or charge of the person  
12 performing the service;

13 (r) Originals or copies of any qualified warranty issued to the  
14 association as provided for in RCW 64.35.505; and

15 (s) Originals or copies of all other contracts to which the  
16 association is a party.

17 (2) Within sixty days of the transition meeting, the board must  
18 retain the services of a certified public accountant to audit the  
19 records of the association as the date of the transition meeting in  
20 accordance with generally accepted auditing standards unless the unit  
21 owners, other than the declarant, to which a majority of the votes  
22 are allocated elect to waive the audit. The cost of the audit must be  
23 a common expense unless otherwise provided in the declaration. The  
24 accountant performing the audit must examine supporting documents and  
25 records, including the cash disbursements and related paid invoices,  
26 to determine if expenditures were for association purposes and the  
27 billings, cash receipts, and related records to determine if the  
28 declarant was charged for and paid the proper amount of assessments.

29 (3) A declaration may provide for the appointment of specified  
30 positions on the board by persons other than the declarant or an  
31 affiliate of the declarant during or after the period of declarant  
32 control. It also may provide a method for filling vacancies in those  
33 positions, other than by election by the unit owners. However, after  
34 the period of declarant control, appointed members:

35 (a) May not comprise more than one-third of the board; and

36 (b) Have no greater authority than any other board member.

37 NEW SECTION. **Sec. 306.** TRANSFER OF SPECIAL DECLARANT RIGHTS.

38 (1) Except as provided in subsection (3) of this section, a special  
39 declarant right created or reserved under this chapter may be

1 transferred only by an instrument effecting the transfer and executed  
2 by the transferor, to be recorded in every county in which any  
3 portion of the common interest community is located. The transferee  
4 must provide the association with a copy of the recorded instrument,  
5 but the failure to furnish the copy does not invalidate the transfer.

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

8 (a) A transferor is not relieved of any obligation or liability  
9 arising before the transfer and remains liable for such warranty  
10 obligations arising before the transfer imposed upon the transferor  
11 under this chapter. Lack of privity does not deprive any unit owner  
12 of standing to maintain an action to enforce any obligation of the  
13 transferor.

14 (b) If a successor to any special declarant right is an affiliate  
15 of a declarant the transferor is jointly and severally liable with  
16 the successor for any obligations or liabilities of the successor  
17 relating to the common interest community.

18 (c) If a transferor retains any special declarant rights, but  
19 transfers other special declarant rights to a successor who is not an  
20 affiliate of the declarant, the transferor is liable for any  
21 obligations or liabilities imposed on a declarant under this chapter  
22 or by the declaration relating to the retained special declarant  
23 rights, whether arising before or after the transfer.

24 (d) A transferor is not liable for any act or omission or any  
25 breach of a contractual or warranty obligation by a successor  
26 declarant who is not an affiliate of the transferor.

27 (3) Upon foreclosure of a security interest, sale by a trustee  
28 under an agreement creating a security interest, tax sale, judicial  
29 sale, or sale under bankruptcy code or receivership proceedings of  
30 any unit owned by a declarant or real property in a common interest  
31 community that is subject to any special declarant rights, a person  
32 acquiring title to the real property being foreclosed or sold  
33 succeeds to all of the special declarant rights related to that real  
34 property held by that declarant and to any rights reserved in the  
35 declaration pursuant to section 216 of this act and held by that  
36 declarant to maintain models, sales offices, and signs except to the  
37 extent the judgment or instrument effecting the transfer states  
38 otherwise.

39 (4) Upon foreclosure of a security interest, sale by a trustee  
40 under an agreement creating a security interest, tax sale, judicial

1 sale, or sale under bankruptcy code or receivership proceedings of  
2 all interests in a common interest community owned by a declarant,  
3 any special declarant rights that are not transferred as stated in  
4 subsection (3) of this section terminate.

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

7 (a) A successor to any special declarant right who is an  
8 affiliate of a declarant is subject to all obligations and  
9 liabilities imposed on the transferor under this chapter or by the  
10 declaration.

11 (b) A successor to any special declarant right, other than a  
12 successor who is an affiliate of a declarant, is subject to the  
13 obligations and liabilities imposed under this chapter or the  
14 declaration:

15 (i) On a declarant that relate to the successor's exercise of  
16 special declarant rights; and

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

18 (A) Misrepresentations by any previous declarant;

19 (B) Any warranty obligations pursuant to section 415 (1) through  
20 (3) of this act on improvements made or contracted for, or units sold  
21 by, a previous declarant or that were made before the common interest  
22 community was created;

23 (C) Breach of any fiduciary obligation by any previous declarant  
24 or the previous declarant's appointees to the board; or

25 (D) Any liability or obligation imposed on the transferor as a  
26 result of the transferor's acts or omissions after the transfer.

27 (c) A successor to only a right reserved in the declaration to  
28 maintain models, sales offices, and signs may not exercise any other  
29 special declarant right, and is not subject to any liability or  
30 obligation as a declarant, except the obligation to provide a public  
31 offering statement and any liability arising as a result of such  
32 reserved rights.

33 (6) This section does not subject any successor to a special  
34 declarant right to any claims against or other obligations of a  
35 transferor declarant, other than claims and obligations arising under  
36 this chapter or the declaration.

37 NEW SECTION. **Sec. 307.** TERMINATION OF CONTRACTS AND LEASES. (1)  
38 Within two years after the transition meeting, the association may  
39 terminate without penalty, upon not less than ninety days' notice to

1 the other party, any of the following if it was entered into before  
2 the board was elected:

3 (a) Any management, maintenance, operations, or employment  
4 contract, or lease of recreational or parking areas or facilities; or

5 (b) Any other contract or lease between the association and a  
6 declarant or an affiliate of a declarant.

7 (2) The association may terminate without penalty, at any time  
8 after the board elected by the unit owners pursuant to section 304(4)  
9 of this act takes office upon not less than ninety days' notice to  
10 the other party, any contract or lease that is not bona fide or was  
11 unconscionable to the unit owners at the time entered into.

12 (3) This section does not apply to:

13 (a) Any lease the termination of which would terminate the common  
14 interest community or reduce its size, unless the real estate subject  
15 to that lease was included in the common interest community for the  
16 purpose of avoiding the right of the association to terminate a lease  
17 under this section; or

18 (b) A proprietary lease.

19 NEW SECTION. **Sec. 308.** ORGANIZATIONAL DOCUMENTS. (1) Unless  
20 provided for in the declaration, the organizational documents of the  
21 association must:

22 (a) Provide the number of board members and the titles of the  
23 officers of the association;

24 (b) Provide for election by the board or, if the declaration  
25 requires, by the unit owners of a president, treasurer, secretary,  
26 and any other officers of the association the organizational  
27 documents specify;

28 (c) Specify the qualifications, powers and duties, terms of  
29 office, and manner of electing and removing board members and  
30 officers and filling vacancies in accordance with section 303 of this  
31 act;

32 (d) Specify the powers the board or officers may delegate to  
33 other persons or to a managing agent;

34 (e) Specify a method for the unit owners to amend the  
35 organizational documents;

36 (f) Describe the budget ratification process required under  
37 section 326 of this act, if not provided in the declaration;

1 (g) Contain any provision necessary to satisfy requirements in  
2 this chapter or the declaration concerning meetings, voting, quorums,  
3 and other activities of the association; and

4 (h) Provide for any matter required by law of this state other  
5 than this chapter to appear in the organizational documents of  
6 organizations of the same type as the association.

7 (2) Subject to the declaration and this chapter, the  
8 organizational documents may provide for any other necessary or  
9 appropriate matters.

10 NEW SECTION. Sec. 309. UPKEEP OF COMMON INTEREST COMMUNITY. (1)  
11 Except to the extent provided by the declaration, subsections (2) and  
12 (4) of this section, or section 315(8) of this act, the association  
13 must maintain, repair, and replace the common elements, including  
14 limited common elements, and each unit owner must maintain, repair,  
15 and replace that owner's unit.

16 (2) The board may by rule designate physical components of the  
17 property for which a unit owner is otherwise responsible that present  
18 a heightened risk of damage or harm to persons or property if the  
19 physical components fail. The association may require that specific  
20 measures be taken by the unit owner or the association to diminish  
21 that risk of harm. If a unit owner fails to accomplish any necessary  
22 maintenance, repair, or replacement to those components, or fails to  
23 take any other measures required of the unit owner under this  
24 subsection, the association may, after notice to a unit owner and an  
25 opportunity to be heard, enter the unit in the manner pursuant to  
26 subsection (3) of this section to perform such maintenance, repair,  
27 replacement, or measure at the expense of that unit owner.

28 (3) Upon prior notice, except in case of an emergency, each unit  
29 owner must afford to the association and the other unit owners, and  
30 to their agents or employees, access through that owner's unit and  
31 limited common elements reasonably necessary for the purposes stated  
32 in subsections (1) and (2) of this section, including necessary  
33 inspections by the association. If damage is inflicted on the common  
34 elements or on any unit through which access is taken, the unit owner  
35 responsible for the damage, or the association if it is responsible,  
36 is liable for the prompt repair of the damage.

37 (4) In addition to the liability that a declarant as a unit owner  
38 has under this chapter, the declarant alone is liable for all  
39 expenses in connection with real estate subject to development rights

1 and no other unit owner and no other portion of the common interest  
2 community is subject to a claim for payment of those expenses.  
3 However, the declaration may provide that the expenses associated  
4 with the operation, maintenance, repair, and replacement of a common  
5 element that the owners have a right to use must be paid by the  
6 association as a common expense. Unless the declaration provides  
7 otherwise, any income or proceeds from real estate subject to  
8 development rights inures to the declarant.

9 (5) In a plat community or miscellaneous community, if all  
10 development rights have expired with respect to any real estate, the  
11 declarant remains liable for all expenses of that real estate unless,  
12 upon expiration, the declaration provides that the real estate  
13 becomes common elements or units.

14 NEW SECTION. **Sec. 310.** MEETINGS. (1) The following requirements  
15 apply to unit owner meetings:

16 (a) A meeting of the association must be held at least once each  
17 year. Failure to hold an annual meeting does not cause a forfeiture  
18 or give cause for dissolution of the association and does not affect  
19 otherwise valid association acts.

20 (b)(i) An association must hold a special meeting of unit owners  
21 to address any matter affecting the common interest community or the  
22 association if its president, a majority of the board, or unit owners  
23 having at least twenty percent, or any lower percentage specified in  
24 the organizational documents, of the votes in the association request  
25 that the secretary call the meeting.

26 (ii) If the association does not provide notice to unit owners of  
27 a special meeting within thirty days after the requisite number or  
28 percentage of unit owners request the secretary to do so, the  
29 requesting members may directly provide notice to all the unit owners  
30 of the meeting. Only matters described in the meeting notice required  
31 in (c) of this subsection may be considered at a special meeting.

32 (c) An association must provide notice to unit owners of the  
33 time, date, and place of each annual and special unit owners meeting  
34 not less than fourteen days and not more than fifty days before the  
35 meeting date. Notice may be by any means described in section 324 of  
36 this act. The notice of any meeting must state the time, date, and  
37 place of the meeting and the items on the agenda, including:

38 (i) The text of any proposed amendment to the declaration or  
39 organizational documents;

1 (ii) Any changes in the previously approved budget that result in  
2 a change in the assessment obligations; and

3 (iii) Any proposal to remove a board member or officer.

4 (d) The minimum time to provide notice required in (c) of this  
5 subsection may be reduced or waived for a meeting called to deal with  
6 an emergency.

7 (e) Unit owners must be given a reasonable opportunity at any  
8 meeting to comment regarding any matter affecting the common interest  
9 community or the association.

10 (f) The declaration or organizational documents may allow for  
11 meetings of unit owners to be conducted by telephonic, video, or  
12 other conferencing process, if the process is consistent with  
13 subsection (2)(i) of this section.

14 (2) The following requirements apply to meetings of the board and  
15 committees authorized to act for the board:

16 (a) Meetings must be open to the unit owners except during  
17 executive sessions, but the board may expel or prohibit attendance by  
18 any person who, after warning by the chair of the meeting, disrupts  
19 the meeting. The board and those committees may hold an executive  
20 session only during a regular or special meeting of the board or a  
21 committee. A final vote or action may not be taken during an  
22 executive session.

23 (b) An executive session may be held only to:

24 (i) Consult with the association's attorney concerning legal  
25 matters;

26 (ii) Discuss existing or potential litigation or mediation,  
27 arbitration, or administrative proceedings;

28 (iii) Discuss labor or personnel matters;

29 (iv) Discuss contracts, leases, and other commercial transactions  
30 to purchase or provide goods or services currently being negotiated,  
31 including the review of bids or proposals, if premature general  
32 knowledge of those matters would place the association at a  
33 disadvantage; or

34 (v) Prevent public knowledge of the matter to be discussed if the  
35 board or committee determines that public knowledge would violate the  
36 privacy of any person.

37 (c) For purposes of this subsection, a gathering of members of  
38 the board or committees at which the board or committee members do  
39 not conduct association business is not a meeting of the board or  
40 committee. Board members and committee members may not use incidental

1 or social gatherings to evade the open meeting requirements of this  
2 subsection.

3 (d) During the period of declarant control, the board must meet  
4 at least four times a year. At least one of those meetings must be  
5 held at the common interest community or at a place convenient to the  
6 community. After the transition meeting, all board meetings must be  
7 at the common interest community or at a place convenient to the  
8 common interest community unless the unit owners amend the bylaws to  
9 vary the location of those meetings.

10 (e) At each board meeting, the board must provide a reasonable  
11 opportunity for unit owners to comment regarding matters affecting  
12 the common interest community and the association.

13 (f) Unless the meeting is included in a schedule given to the  
14 unit owners or the meeting is called to deal with an emergency, the  
15 secretary or other officer specified in the organizational documents  
16 must provide notice of each board meeting to each board member and to  
17 the unit owners. The notice must be given at least fourteen days  
18 before the meeting and must state the time, date, place, and agenda  
19 of the meeting.

20 (g) If any materials are distributed to the board before the  
21 meeting, the board must make copies of those materials reasonably  
22 available to those unit owners, except that the board need not make  
23 available copies of unapproved minutes or materials that are to be  
24 considered in executive session.

25 (h) Unless the organizational documents provide otherwise, fewer  
26 than all board members may participate in a regular or special  
27 meeting by or conduct a meeting through the use of any means of  
28 communication by which all board members participating can hear each  
29 other during the meeting. A board member participating in a meeting  
30 by these means is deemed to be present in person at the meeting.

31 (i) Unless the organizational documents provide otherwise, the  
32 board may meet by participation of all board members by telephonic,  
33 video, or other conferencing process if:

34 (i) The meeting notice states the conferencing process to be used  
35 and provides information explaining how unit owners may participate  
36 in the conference directly or by meeting at a central location or  
37 conference connection; and

38 (ii) The process provides all unit owners the opportunity to hear  
39 or perceive the discussion and to comment as provided in (e) of this  
40 subsection.

1 (j) After the transition meeting, unit owners may amend the  
2 organizational documents to vary the procedures for meetings  
3 described in (i) of this subsection.

4 (k) Instead of meeting, the board may act by unanimous consent as  
5 documented in a record by all its members. Actions taken by unanimous  
6 consent must be kept as a record of the association with the meeting  
7 minutes. After the transition meeting, the board may act by unanimous  
8 consent only to undertake ministerial actions, actions subject to  
9 ratification by the unit owners, or to implement actions previously  
10 taken at a meeting of the board.

11 (l) A board member who is present at a board meeting at which any  
12 action is taken is presumed to have assented to the action taken  
13 unless the board member's dissent or abstention to such action is  
14 lodged with the person acting as the secretary of the meeting before  
15 adjournment of the meeting or provided in a record to the secretary  
16 of the association immediately after adjournment of the meeting. The  
17 right to dissent or abstain does not apply to a board member who  
18 voted in favor of such action at the meeting.

19 (m) A board member may not vote by proxy or absentee ballot.

20 (n) Even if an action by the board is not in compliance with this  
21 section, it is valid unless set aside by a court. A challenge to the  
22 validity of an action of the board for failure to comply with this  
23 section may not be brought more than ninety days after the minutes of  
24 the board of the meeting at which the action was taken are approved  
25 or the record of that action is distributed to unit owners, whichever  
26 is later.

27 (3) Minutes of all unit owner meetings and board meetings,  
28 excluding executive sessions, must be maintained in a record. The  
29 decision on each matter voted upon at a board meeting or unit owner  
30 meeting must be recorded in the minutes.

31 NEW SECTION. **Sec. 311.** QUORUM. (1) Unless the organizational  
32 documents provide otherwise, a quorum is present throughout any  
33 meeting of the unit owners if persons entitled to cast twenty percent  
34 of the votes in the association:

35 (a) Are present in person or by proxy at the beginning of the  
36 meeting;

37 (b) Have voted by absentee ballot; or

38 (c) Are present by any combination of (a) and (b) of this  
39 subsection.

1 (2) Unless the organizational documents specify a larger number,  
2 a quorum of the board is present for purposes of determining the  
3 validity of any action taken at a meeting of the board only if  
4 individuals entitled to cast a majority of the votes on that board  
5 are present at the time a vote regarding that action is taken. If a  
6 quorum is present when a vote is taken, the affirmative vote of a  
7 majority of the board members present is the act of the board unless  
8 a greater vote is required by the organizational documents.

9 NEW SECTION. **Sec. 312.** UNIT OWNER VOTING. (1) Unit owners may  
10 vote at a meeting in person, by absentee ballot pursuant to  
11 subsection (3)(d) of this section, or by a proxy pursuant to  
12 subsection (5) of this section.

13 (2) When a vote is conducted without a meeting, unit owners may  
14 vote by ballot pursuant to subsection (6) of this section.

15 (3) At a meeting of unit owners the following requirements apply:

16 (a) Unit owners or their proxies who are present in person may  
17 vote by voice vote, show of hands, standing, written ballot, or any  
18 other method for determining the votes of unit owners, as designated  
19 by the person presiding at the meeting.

20 (b) If only one of several unit owners of a unit is present, that  
21 unit owner is entitled to cast all the votes allocated to that unit.  
22 If more than one of the unit owners are present, the votes allocated  
23 to that unit may be cast only in accordance with the agreement of a  
24 majority in interest of the unit owners, unless the declaration  
25 expressly provides otherwise. There is a majority agreement if any  
26 one of the unit owners casts the votes allocated to the unit without  
27 protest being made promptly to the person presiding over the meeting  
28 by any of the other unit owners of the unit.

29 (c) Unless a greater number or fraction of the votes in the  
30 association is required under this chapter or the declaration or  
31 organizational documents, a majority of the votes cast determines the  
32 outcome of any action of the association.

33 (d) Whenever proposals or board members are to be voted upon at a  
34 meeting, a unit owner may vote by duly executed absentee ballot if:

35 (i) The name of each candidate and the text of each proposal to  
36 be voted upon are set forth in a writing accompanying or contained in  
37 the notice of meeting; and

38 (ii) A ballot is provided by the association for such purpose.

1 (4) When a unit owner votes by absentee ballot, the association  
2 must be able to verify that the ballot is cast by the unit owner  
3 having the right to do so.

4 (5) Except as provided otherwise in the declaration or  
5 organizational documents, the following requirements apply with  
6 respect to proxy voting:

7 (a) Votes allocated to a unit may be cast pursuant to a directed  
8 or undirected proxy duly executed by a unit owner in the same manner  
9 as provided in RCW 24.06.110.

10 (b) If a unit is owned by more than one person, each unit owner  
11 of the unit may vote or register protest to the casting of votes by  
12 the other unit owners of the unit through a duly executed proxy.

13 (c) A unit owner may revoke a proxy given pursuant to this  
14 section only by actual notice of revocation to the secretary or the  
15 person presiding over a meeting of the association or by delivery of  
16 a subsequent proxy. The death or disability of a unit owner does not  
17 revoke a proxy given by the unit owner unless the person presiding  
18 over the meeting has actual notice of the death or disability.

19 (d) A proxy is void if it is not dated or purports to be  
20 revocable without notice.

21 (e) Unless stated otherwise in the proxy, a proxy terminates  
22 eleven months after its date of issuance.

23 (6) Unless prohibited or limited by the declaration or  
24 organizational documents, an association may conduct a vote without a  
25 meeting. In that event, the following requirements apply:

26 (a) The association must notify the unit owners that the vote  
27 will be taken by ballot.

28 (b) The notice must state:

29 (i) The time and date by which a ballot must be delivered to the  
30 association to be counted, which may not be fewer than fourteen days  
31 after the date of the notice, and which deadline may be extended in  
32 accordance with (g) of this subsection;

33 (ii) The percent of votes necessary to meet the quorum  
34 requirements;

35 (iii) The percent of votes necessary to approve each matter other  
36 than election of board members; and

37 (iv) The time, date, and manner by which unit owners wishing to  
38 deliver information to all unit owners regarding the subject of the  
39 vote may do so.

1 (c) The association must deliver a ballot to every unit owner  
2 with the notice.

3 (d) The ballot must set forth each proposed action and provide an  
4 opportunity to vote for or against the action.

5 (e) A ballot cast pursuant to this section may be revoked only by  
6 actual notice to the association of revocation. The death or  
7 disability of a unit owner does not revoke a ballot unless the  
8 association has actual notice of the death or disability prior to the  
9 date set forth in (b)(i) of this subsection.

10 (f) Approval by ballot pursuant to this subsection is valid only  
11 if the number of votes cast by ballot equals or exceeds the quorum  
12 required to be present at a meeting authorizing the action.

13 (g) If the association does not receive a sufficient number of  
14 votes to constitute a quorum or to approve the proposal by the date  
15 and time established for return of ballots, the board may extend the  
16 deadline for a reasonable period not to exceed eleven months upon  
17 further notice to all members in accordance with (b) of this  
18 subsection. In that event, all votes previously cast on the proposal  
19 must be counted unless subsequently revoked as provided in this  
20 section.

21 (h) A ballot or revocation is not effective until received by the  
22 association.

23 (i) The association must give notice to unit owners of any action  
24 taken pursuant to this subsection within a reasonable time after the  
25 action is taken.

26 (j) When an action is taken pursuant to this subsection, a record  
27 of the action, including the ballots or a report of the persons  
28 appointed to tabulate such ballots, must be kept with the minutes of  
29 meetings of the association.

30 (7) If the governing documents require that votes on specified  
31 matters affecting the common interest community be cast by lessees  
32 rather than unit owners of leased units:

33 (a) This section applies to lessees as if they were unit owners;

34 (b) Unit owners that have leased their units to other persons may  
35 not cast votes on those specified matters; and

36 (c) Lessees are entitled to notice of meetings, access to  
37 records, and other rights respecting those matters as if they were  
38 unit owners.

1 (8) Unit owners must also be given notice, in the manner provided  
2 in section 324 of this act, of all meetings at which lessees may be  
3 entitled to vote.

4 (9) In any vote of the unit owners, votes allocated to a unit  
5 owned by the association must be cast in the same proportion as the  
6 votes cast on the matter by unit owners other than the association.

7 NEW SECTION. **Sec. 313.** TORT AND CONTRACT LIABILITY—TOLLING OF  
8 LIMITATION PERIOD. (1) A unit owner is not liable, solely by reason  
9 of being a unit owner, for an injury or damage arising out of the  
10 condition or use of the common elements. Neither the association nor  
11 any unit owner except the declarant is liable for that declarant's  
12 torts in connection with any part of the common interest community  
13 which that declarant must maintain.

14 (2)(a) An action alleging a wrong done by the association,  
15 including an action arising out of the condition or use of the common  
16 elements, may be maintained only against the association and not  
17 against any unit owner.

18 (b) If the wrong occurred during any period of declarant control  
19 and the association gives the declarant reasonable notice of and an  
20 opportunity to defend against the action, the declarant who then  
21 controlled the association is liable to the association or to any  
22 unit owner for (i) all tort losses not covered by insurance suffered  
23 by the association or that unit owner and (ii) all costs that the  
24 association would not have incurred but for a breach of contract or  
25 other wrongful act or omission by the association.

26 (c) If a declarant is liable to an association under this  
27 section, the declarant is also liable for all expenses of litigation,  
28 including reasonable attorneys' fees and costs, incurred by the  
29 association.

30 (3)(a) Except as provided in section 417 of this act with respect  
31 to warranty claims, any statute of limitation affecting the  
32 association's right of action against a declarant under this chapter  
33 is tolled until any period of declarant control terminates.

34 (b) A unit owner is not precluded from maintaining an action  
35 contemplated under this section because that person is a unit owner,  
36 board member, or officer of the association. Liens resulting from  
37 judgments against the association are governed under section 319 of  
38 this act.

1        NEW SECTION.        **Sec. 314.**        CONVEYANCE OR ENCUMBRANCE OF COMMON

2 ELEMENTS. (1)(a) In a common interest community other than a  
3 cooperative, portions of the common elements may be conveyed or  
4 subjected to a security interest by the association if unit owners  
5 entitled to cast at least eighty percent of the votes in the  
6 association, including eighty percent of the votes allocated to units  
7 not owned by a declarant, or any larger percentage the declaration  
8 specifies, agree to that action; but all unit owners of units to  
9 which any limited common element is allocated must agree to convey  
10 that limited common element or subject it to a security interest. The  
11 declaration may specify a smaller percentage only if all of the units  
12 are restricted exclusively to nonresidential uses.

13        (b) Proceeds of the sale or a loan are an asset of the  
14 association, but the proceeds of the sale of limited common elements  
15 must be distributed equitably among the unit owners of units to which  
16 the limited common elements were allocated. This subsection (1) does  
17 not apply to the incorporation of common elements into units as a  
18 result of relocating unit boundaries pursuant to section 213 of this  
19 act, to subdividing or combining units pursuant to section 214 of  
20 this act, or to eminent domain proceedings pursuant to section 106 of  
21 this act.

22        (2)(a) Part of a cooperative may be conveyed and all or part of a  
23 cooperative may be subjected to a security interest by the  
24 association if unit owners entitled to cast at least eighty percent  
25 of the votes in the association, including eighty percent of the  
26 votes allocated to units not owned by a declarant, or any larger  
27 percentage the declaration specifies, agree to that action; but, if  
28 fewer than all of the units or limited common elements are to be  
29 conveyed or subjected to a security interest, all unit owners of  
30 those units, or the units to which those limited common elements are  
31 allocated, must agree to convey those units or limited common  
32 elements or subject them to a security interest. The declaration may  
33 specify a smaller percentage only if all of the units are restricted  
34 exclusively to nonresidential uses.

35        (b) Proceeds of the sale or a loan are an asset of the  
36 association. Any purported conveyance or other voluntary transfer of  
37 an entire cooperative, unless made pursuant to section 219 of this  
38 act, is void. This subsection (2) does not apply to the incorporation  
39 of common elements into units as a result of relocating unit  
40 boundaries pursuant to section 213 of this act, to subdividing or

1 combining units pursuant to section 214 of this act, or to eminent  
2 domain proceedings pursuant to section 106 of this act.

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

14 (4) The association, on behalf of the unit owners, may contract  
15 to convey or dedicate an interest in a common interest community  
16 pursuant to subsection (1) of this section, but the contract is not  
17 enforceable against the association until approved pursuant to  
18 subsection (1), (2), or (3) of this section. Thereafter, the  
19 association has all powers necessary and appropriate to effect the  
20 conveyance or encumbrance, including the power to execute deeds or  
21 other instruments.

22 (5) Unless made pursuant to this section, any purported  
23 conveyance, encumbrance, judicial sale, or other voluntary transfer  
24 of common elements or of any other part of a cooperative is void.

25 (6) A conveyance or encumbrance of common elements or of a  
26 cooperative pursuant to this section does not deprive any unit of its  
27 rights of access and support.

28 (7) Unless the declaration requires a higher percentage, if the  
29 consent of eligible mortgagees holding security interests on at least  
30 eighty percent of the units subject to security interests held by  
31 eligible mortgagees on the day the unit owners' agreement under  
32 subsection (3) of this section is recorded, is obtained:

33 (a) A conveyance of common elements pursuant to this section  
34 terminates both the undivided interests in those common elements  
35 allocated to the units and the security interests in those undivided  
36 interests held by all persons holding security interests in the  
37 units; and

38 (b) An encumbrance of common elements pursuant to this section  
39 has priority over all preexisting encumbrances on the undivided

1 interests in those common elements held by all persons holding  
2 security interests in the units.

3 (8) The consents of eligible mortgagees, or a certificate of the  
4 secretary affirming that the requisite percentage of eligible  
5 mortgagees have consented, may be recorded at any time before the  
6 date on which the agreement under subsection (3) of this section  
7 becomes void. Such consents or certificates recorded are valid from  
8 the date they are recorded for purposes of calculating the percentage  
9 of consenting eligible mortgagees, regardless of later conveyance or  
10 encumbrances on those units. If the required percentage of eligible  
11 mortgagees consent, a conveyance or encumbrance of common elements  
12 does not affect interests having priority over the declaration or  
13 created by the association after the declaration was recorded.

14 (9) In a cooperative, the association may acquire, hold,  
15 encumber, or convey a proprietary lease without complying with this  
16 section.

17 NEW SECTION. **Sec. 315.** INSURANCE. (1) Commencing not later than  
18 the time of the first conveyance of a unit to a person other than a  
19 declarant, the association must maintain in its own name, to the  
20 extent reasonably available and subject to reasonable deductibles:

21 (a) Property insurance on the common elements and, in a plat  
22 community or miscellaneous community, also on property that must  
23 become common elements, insuring against risks of direct physical  
24 loss commonly insured against, which insurance, after application of  
25 any deductibles, must be not less than eighty percent of the actual  
26 cash value of the insured property at the time the insurance is  
27 purchased and at each renewal date, exclusive of land, excavations,  
28 foundations, and other items normally excluded from property  
29 policies;

30 (b) Commercial general liability insurance, including medical  
31 payments insurance, in an amount determined by the board, but not  
32 less than any amount specified in the declaration, covering all  
33 occurrences commonly insured against for bodily injury and property  
34 damage arising out of or in connection with the use, ownership, or  
35 maintenance of the common elements and, in cooperatives, of all  
36 units;

37 (c) Fidelity insurance; and

38 (d) Other insurance required under the declaration.

1 (2) In the case of a building that contains units divided by  
2 horizontal boundaries described in the declaration, or vertical  
3 boundaries that comprise common walls between units, the insurance  
4 maintained under subsection (1)(a) of this section, to the extent  
5 reasonably available, must include the units and, unless provided  
6 otherwise in the declaration, all improvements and betterments to the  
7 units.

8 (3) If the insurance described in subsections (1) and (2) of this  
9 section is not reasonably available, the association must promptly  
10 cause notice of that fact to be given to all unit owners. The  
11 association may carry any other insurance it considers appropriate to  
12 protect the association or the unit owners.

13 (4) Insurance policies carried pursuant to subsections (1) and  
14 (2) of this section must provide that:

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

18 (b) The insurer waives its right to subrogation under the policy  
19 against any unit owner or member of the unit owner's household;

20 (c) Any act or omission by a unit owner, unless acting within the  
21 unit owner's scope of authority on behalf of the association, does  
22 not void the policy and is not a condition to recovery under the  
23 policy; and

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

27 (5) Any loss covered by the property insurance policy under  
28 subsection (1)(a) and (b) of this section must be adjusted with the  
29 association, but the insurance proceeds for that loss are payable to  
30 any insurance trustee designated for that purpose, or otherwise to  
31 the association, and not to any holder of a security interest. The  
32 insurance trustee or the association must hold any insurance proceeds  
33 in trust for the association, unit owners, and lienholders as their  
34 interests may appear. Subject to subsection (8) of this section, the  
35 proceeds must be disbursed first for the repair or replacement of the  
36 damaged property, and the association, unit owners, and lienholders  
37 are not entitled to receive payment of any portion of the proceeds  
38 unless there is a surplus of proceeds after the property has been  
39 completely repaired or replaced, or the common interest community is  
40 terminated.

1 (6) An insurance policy issued to the association does not  
2 prevent a unit owner from obtaining insurance for the unit owner's  
3 own benefit.

4 (7) An insurer that has issued an insurance policy under this  
5 section must issue certificates or memoranda of insurance to the  
6 association and, upon a request made in a record, to any unit owner  
7 or holder of a security interest. The insurer issuing the policy may  
8 not modify the amount or the extent of the coverage of the policy or  
9 cancel or refuse to renew the policy unless the insurer has complied  
10 with all applicable provisions of chapter 48.18 RCW pertaining to the  
11 cancellation or nonrenewal of contracts of insurance. The insurer may  
12 not modify the amount or the extent of the coverage of the policy or  
13 cancel or refuse to renew the policy without complying with this  
14 section.

15 (8) Any portion of the common interest community for which  
16 insurance is required under this section that is damaged or destroyed  
17 must be repaired or replaced promptly by the association unless:

18 (a) The common interest community is terminated, in which case  
19 section 219 of this act applies;

20 (b) Repair or replacement would be illegal; or

21 (c) Eighty percent of the unit owners, including every unit owner  
22 of a unit or assigned limited common element that will not be  
23 rebuilt, vote not to rebuild.

24 (9) The cost of repair or replacement not paid from insurance  
25 proceeds is a common expense. If all of the damaged or destroyed  
26 portions of the common interest community are not repaired or  
27 replaced:

28 (a) The insurance proceeds attributable to the damaged common  
29 elements must be used to restore the damaged area to a condition  
30 compatible with the remainder of the common interest community; and

31 (b) Except to the extent that other persons will be distributees:

32 (i) The insurance proceeds attributable to units and limited  
33 common elements that are not repaired or replaced must be distributed  
34 to the unit owners of those units and the unit owners of the units to  
35 which those limited common elements were allocated, or to  
36 lienholders, as their interests may appear; and

37 (ii) The remainder of the proceeds must be distributed to all the  
38 unit owners or lienholders, as their interests may appear, as  
39 follows:

1 (A) In a condominium, in proportion to the common element  
2 interests of all the units; and

3 (B) In a cooperative, plat community, or miscellaneous community,  
4 in proportion to the common expense liabilities of all the units.

5 (10) If the unit owners vote not to rebuild any unit, that unit's  
6 allocated interests are automatically reallocated upon the vote as if  
7 the unit had been condemned under section 106 of this act, and the  
8 association promptly must prepare, execute, and record an amendment  
9 to the declaration reflecting the reallocations.

10 (11) The provisions of this section may be varied or waived as  
11 provided in the declaration if all units of a common interest  
12 community are restricted to nonresidential use.

13 NEW SECTION. **Sec. 316.** ACCOUNTS—RECONCILIATION. (1) The  
14 association must establish and maintain its accounts and records in a  
15 manner that will enable it to credit assessments for common expenses  
16 and specially allocated expenses, including allocations to reserves,  
17 and other income to the association, and to charge expenditures, to  
18 the account of the appropriate units in accordance with the  
19 provisions of the declaration.

20 (2) To assure that the unit owners are correctly assessed for the  
21 actual expenses of the association, the accounts of the association  
22 must be reconciled at least annually unless the board determines that  
23 a reconciliation would not result in a material savings to any unit  
24 owner. Unless provided otherwise in the declaration, any surplus  
25 funds of the association remaining after the payment of or provision  
26 for common expenses and any prepayment of reserves must be paid  
27 annually to the unit owners in proportion to their common expense  
28 liabilities or credited to them to reduce their future common expense  
29 assessments.

30 NEW SECTION. **Sec. 317.** ASSESSMENTS AND CAPITAL CONTRIBUTIONS.  
31 (1)(a) Assessments for common expenses and those specially allocated  
32 expenses that are subject to inclusion in a budget must be made at  
33 least annually based on a budget adopted at least annually by the  
34 association in the manner provided in section 326 of this act.

35 (b) Assessments for common expenses and specially allocated  
36 expenses must commence on all units that have been created upon the  
37 conveyance of the first unit in the common interest community;  
38 however, the declarant may delay commencement of assessments for some

1 or all common expenses or specially allocated expenses, in which  
2 event the declarant must pay all of the common expenses or specially  
3 allocated expenses that have been delayed. In a common interest  
4 community in which units may be added pursuant to reserved  
5 development rights, the declarant may delay commencement of  
6 assessments for such units in the same manner.

7 (2) The declaration may provide that, upon closing of the first  
8 conveyance of each unit to a purchaser or first occupancy of a unit,  
9 whichever occurs first, the association may assess and collect a  
10 working capital contribution for such unit. The working capital  
11 contribution may be collected prior to the commencement of common  
12 assessments under subsection (1) of this section. A working capital  
13 contribution may not be used to defray expenses that are the  
14 obligation of the declarant.

15 (3) Except as provided otherwise in this section, all common  
16 expenses must be assessed against all the units in accordance with  
17 their common expense liabilities, subject to the right of the  
18 declarant to delay commencement of certain common expenses under  
19 subsections (1) and (2) of this section. Any past due assessment or  
20 installment of past due assessment bears interest at the rate  
21 established by the association pursuant to section 318 of this act.

22 (4) The declaration may provide that any of the following  
23 expenses of the association must be assessed against the units on  
24 some basis other than common expense liability. If and to the extent  
25 the declaration so provides, the association must assess:

26 (a) Expenses associated with the operation, maintenance, repair,  
27 or replacement of any specified limited common element against the  
28 units to which that limited common element is assigned, equally or in  
29 any other proportion that the declaration provides;

30 (b) Expenses specified in the declaration as benefiting fewer  
31 than all of the units or their unit owners exclusively against the  
32 units benefited in proportion to their common expense liability or in  
33 any other proportion that the declaration provides;

34 (c) The costs of insurance in proportion to risk; and

35 (d) The costs of one or more specified utilities in proportion to  
36 respective usage or upon the same basis as such utility charges are  
37 made by the utility provider.

38 (5) Assessments to pay a judgment against the association may be  
39 made only against the units in the common interest community at the

1 time the judgment was entered, in proportion to their common expense  
2 liabilities.

3 (6) To the extent that any expense of the association is caused  
4 by willful misconduct or gross negligence of any unit owner or that  
5 unit owner's tenant, guest, invitee, or occupant, the association may  
6 assess that expense against the unit owner's unit after notice and an  
7 opportunity to be heard, even if the association maintains insurance  
8 with respect to that damage or common expense.

9 (7) If the declaration so provides, to the extent that any  
10 expense of the association is caused by the negligence of any unit  
11 owner or that unit owner's tenant, guest, invitee, or occupant, the  
12 association may assess that expense against the unit owner's unit  
13 after notice and an opportunity to be heard, to the extent of the  
14 association's deductible and any expenses not covered under an  
15 insurance policy issued to the association.

16 (8) In the event of a loss or damage to a unit that would be  
17 covered by the association's property insurance policy, excluding  
18 policies for earthquake, flood, or similar losses that have higher  
19 than standard deductibles, but that is within the deductible under  
20 that policy and if the declaration so provides, the association may  
21 assess the amount of the loss up to the deductible against that unit.  
22 This subsection does not prevent a unit owner from asserting a claim  
23 against another person for the amount assessed if that other person  
24 would be liable for the damages under general legal principles.

25 (9) If common expense liabilities are reallocated, assessments  
26 and any installment of assessments not yet due must be recalculated  
27 in accordance with the reallocated common expense liabilities.

28 NEW SECTION. **Sec. 318.** LIEN FOR SUMS DUE ASSOCIATION—  
29 ENFORCEMENT. (1) The association has a statutory lien on each unit  
30 for any unpaid assessment against the unit from the time such  
31 assessment is due.

32 (2) A lien under this section is prior to all other liens and  
33 encumbrances on a unit except:

34 (a) Liens and encumbrances recorded before the recordation of the  
35 declaration and, in a cooperative, liens and encumbrances that the  
36 association creates, assumes, or takes subject to;

37 (b) Except as otherwise provided in subsection (3) of this  
38 section, a first security interest on the unit recorded before the  
39 date on which the unpaid assessment became due or, in a cooperative,

1 the first priority security interest encumbering only the unit  
2 owner's interest and perfected before the date on which the unpaid  
3 assessment became due; and

4 (c) Liens for real estate taxes and other state or local  
5 governmental assessments or charges against the unit or cooperative.

6 (3)(a) A lien under this section is also prior to the security  
7 interests described in subsection (2)(b) of this section to the  
8 extent of an amount equal to the following:

9 (i) The common expense assessments, excluding any amounts for  
10 capital improvements, based on the periodic budget adopted by the  
11 association pursuant to section 317(1) of this act, along with any  
12 specially allocated assessments that are properly assessable against  
13 the unit under such periodic budget, which would have become due in  
14 the absence of acceleration during the six months immediately  
15 preceding the institution of proceedings to foreclose either the  
16 association's lien or a security interest described in subsection  
17 (2)(b) of this section; and

18 (ii) The association's actual costs and reasonable attorneys'  
19 fees incurred in foreclosing its lien up to the time when any person  
20 pays to the association the full amount described in (a)(i) of this  
21 subsection, including the association's attorneys' fees and costs.

22 (b) For the purposes of this subsection:

23 (i) "Institution of proceedings" means either:

24 (A) The date of recording of a notice of trustee's sale by a deed  
25 of trust beneficiary;

26 (B) The date of commencement, pursuant to applicable court rules,  
27 of an action for judicial foreclosure either by the association or by  
28 the holder of a recorded security interest; or

29 (C) The date of recording of a notice of intention to forfeit in  
30 a real estate contract forfeiture proceeding by the vendor under a  
31 real estate contract.

32 (ii) "Capital improvements" does not include making, in the  
33 ordinary course of management, repairs to common elements or  
34 replacements of the common elements with substantially similar items,  
35 subject to: (A) Availability of materials and products, (B)  
36 prevailing law, or (C) sound engineering and construction standards  
37 then prevailing.

38 (c) The adoption of a periodic budget that purports to allocate  
39 to a unit any fines, late charges, interest, attorneys' fees and  
40 costs incurred for services unrelated to the foreclosure of the

1 association's lien, other collection charges, or specially allocated  
2 assessments assessed under section 317 (6) or (7) of this act does  
3 not cause any such items to be included in the priority amount  
4 affecting such unit.

5 (4) Subsections (2) and (3) of this section do not affect the  
6 priority of mechanics' or material suppliers' liens, or the priority  
7 of liens for other assessments made by the association.

8 (5) A lien under this section is not subject to chapter 6.13 RCW.

9 (6) If the association forecloses its lien under this section  
10 nonjudicially pursuant to chapter 61.24 RCW, as provided under  
11 subsection (13) of this section, the association is not entitled to  
12 the lien priority provided for under subsection (3) of this section,  
13 and is subject to the limitations on deficiency judgments as provided  
14 in chapter 61.24 RCW.

15 (7) Unless the declaration provides otherwise, if two or more  
16 associations have liens for assessments created at any time on the  
17 same property, those liens have equal priority.

18 (8) Recording of the declaration constitutes record notice and  
19 perfection of the statutory lien created under this section. Further  
20 notice or recordation of any claim of lien for assessment under this  
21 section is not required, but is not prohibited.

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

27 (10) This section does not prohibit actions against unit owners  
28 to recover sums for which subsection (1) of this section creates a  
29 lien or prohibit an association from taking a deed in lieu of  
30 foreclosure.

31 (11) The association upon written request must furnish to a unit  
32 owner or a mortgagee a statement signed by an officer or authorized  
33 agent of the association setting forth the amount of unpaid  
34 assessments or the priority amount against that unit, or both. The  
35 statement must be furnished within fifteen days after receipt of the  
36 request and is binding on the association, the board, and every unit  
37 owner unless, and to the extent, known by the recipient to be false.  
38 The liability of a recipient who reasonably relies upon the statement  
39 must not exceed the amount set forth in any statement furnished  
40 pursuant to this section or section 409(1)(b) of this act.

1 (12) In a cooperative, upon nonpayment of an assessment on a  
2 unit, the unit owner may be evicted in the same manner as provided by  
3 law in the case of an unlawful holdover by a commercial tenant, and  
4 the lien may be foreclosed as provided under this section.

5 (13) The association's lien may be foreclosed in accordance with  
6 (a) and (b) of this subsection.

7 (a) In a common interest community other than a cooperative, the  
8 association's lien may be foreclosed judicially in accordance with  
9 chapter 61.12 RCW, subject to any rights of redemption under chapter  
10 6.23 RCW.

11 (b) The lien may be enforced nonjudicially in the manner set  
12 forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of  
13 trust if the declaration: Contains a grant of the common interest  
14 community in trust to a trustee qualified under RCW 61.24.010 to  
15 secure the obligations of the unit owners to the association for the  
16 payment of assessments, contains a power of sale, provides in its  
17 terms that the units are not used principally for agricultural  
18 purposes, and provides that the power of sale is operative in the  
19 case of a default in the obligation to pay assessments. The  
20 association or its authorized representative may, unless prohibited  
21 by the declaration, purchase the unit at the foreclosure sale and  
22 acquire, hold, lease, mortgage, or convey the unit. Upon an express  
23 waiver in the complaint of any right to a deficiency judgment in a  
24 judicial foreclosure action, the period of redemption is eight  
25 months.

26 (c) In a cooperative in which the unit owners' interests in the  
27 units are real estate, the association's lien must be foreclosed in  
28 like manner as a mortgage on real estate or by power of sale under  
29 (b) of this subsection.

30 (d) In a cooperative in which the unit owners' interests in the  
31 units are personal property, the association's lien must be  
32 foreclosed in like manner as a security interest under chapter 62A.9A  
33 RCW.

34 (e) In a foreclosure under chapter 61.24 RCW, the association  
35 must give the notice required by statute or, if there is no such  
36 requirement, reasonable notice of its action to all lienholders of  
37 the unit whose interest would be affected.

38 (14) If the unit owner's interest in a unit in a cooperative is  
39 real estate, the following requirements apply:

1 (a) The association, upon nonpayment of assessments and  
2 compliance with this subsection, may sell that unit at a public sale  
3 or by private negotiation, and at any time and place. The association  
4 must give to the unit owner and any lessee of the unit owner  
5 reasonable notice in a record of the time, date, and place of any  
6 public sale or, if a private sale is intended, of the intention of  
7 entering into a contract to sell and of the time and date after which  
8 a private conveyance may be made. Such notice must also be sent to  
9 any other person that has a recorded interest in the unit that would  
10 be cut off by the sale, but only if the recorded interest was on  
11 record seven weeks before the date specified in the notice as the  
12 date of any public sale or seven weeks before the date specified in  
13 the notice as the date after which a private sale may be made. The  
14 notices required under this subsection may be sent to any address  
15 reasonable in the circumstances. A sale may not be held until five  
16 weeks after the sending of the notice. The association may buy at any  
17 public sale and, if the sale is conducted by a fiduciary or other  
18 person not related to the association, at a private sale.

19 (b) Unless otherwise agreed to or as stated in this section, the  
20 unit owner is liable for any deficiency in a foreclosure sale.

21 (c) The proceeds of a foreclosure sale must be applied in the  
22 following order:

23 (i) The reasonable expenses of sale;

24 (ii) The reasonable expenses of securing possession before sale;  
25 the reasonable expenses of holding, maintaining, and preparing the  
26 unit for sale, including payment of taxes and other governmental  
27 charges and premiums on insurance; and, to the extent provided for by  
28 agreement between the association and the unit owner, reasonable  
29 attorneys' fees, costs, and other legal expenses incurred by the  
30 association;

31 (iii) Satisfaction of the association's lien;

32 (iv) Satisfaction in the order of priority of any subordinate  
33 claim of record; and

34 (v) Remittance of any excess to the unit owner.

35 (d) A good-faith purchaser for value acquires the unit free of  
36 the association's debt that gave rise to the lien under which the  
37 foreclosure sale occurred and any subordinate interest, even though  
38 the association or other person conducting the sale failed to comply  
39 with this section. The person conducting the sale must execute a  
40 conveyance to the purchaser sufficient to convey the unit and stating

1 that it is executed by the person after a foreclosure of the  
2 association's lien by power of sale and that the person was empowered  
3 to make the sale. Signature and title or authority of the person  
4 signing the conveyance as grantor and a recital of the facts of  
5 nonpayment of the assessment and of the giving of the notices  
6 required under this subsection are sufficient proof of the facts  
7 recited and of the authority to sign. Further proof of authority is  
8 not required even though the association is named as grantee in the  
9 conveyance.

10 (e) At any time before the association has conveyed a unit in a  
11 cooperative or entered into a contract for its conveyance under the  
12 power of sale, the unit owners or the holder of any subordinate  
13 security interest may cure the unit owner's default and prevent sale  
14 or other conveyance by tendering the performance due under the  
15 security agreement, including any amounts due because of exercise of  
16 a right to accelerate, plus the reasonable expenses of proceeding to  
17 foreclosure incurred to the time of tender, including reasonable  
18 attorneys' fees and costs of the creditor.

19 (15) In an action by an association to collect assessments or to  
20 foreclose a lien on a unit under this section, the court may appoint  
21 a receiver to collect all sums alleged to be due and owing to a unit  
22 owner before commencement or during pendency of the action. The  
23 receivership is governed under chapter 7.60 RCW. During pendency of  
24 the action, the court may order the receiver to pay sums held by the  
25 receiver to the association for any assessments against the unit. The  
26 exercise of rights under this subsection by the association does not  
27 affect the priority of preexisting liens on the unit.

28 (16) Except as provided in subsection (3) of this section, the  
29 holder of a mortgage or other purchaser of a unit who obtains the  
30 right of possession of the unit through foreclosure is not liable for  
31 assessments or installments of assessments that became due prior to  
32 such right of possession. Such unpaid assessments are deemed to be  
33 common expenses collectible from all the unit owners, including such  
34 mortgagee or other purchaser of the unit. Foreclosure of a mortgage  
35 does not relieve the prior unit owner of personal liability for  
36 assessments accruing against the unit prior to the date of such sale  
37 as provided in this subsection.

38 (17) In addition to constituting a lien on the unit, each  
39 assessment is the joint and several obligation of the unit owner of  
40 the unit to which the same are assessed as of the time the assessment

1 is due. A unit owner may not exempt himself or herself from liability  
2 for assessments. In a voluntary conveyance other than by foreclosure,  
3 the grantee of a unit is jointly and severally liable with the  
4 grantor for all unpaid assessments against the grantor up to the time  
5 of the grantor's conveyance, without prejudice to the grantee's right  
6 to recover from the grantor the amounts paid by the grantee. Suit to  
7 recover a personal judgment for any delinquent assessment is  
8 maintainable in any court of competent jurisdiction without  
9 foreclosing or waiving the lien securing such sums.

10 (18) The association may from time to time establish reasonable  
11 late charges and a rate of interest to be charged, not to exceed the  
12 maximum rate calculated under RCW 19.52.020, on all subsequent  
13 delinquent assessments or installments of assessments. If the  
14 association does not establish such a rate, delinquent assessments  
15 bear interest from the date of delinquency at the maximum rate  
16 calculated under RCW 19.52.020 on the date on which the assessments  
17 became delinquent.

18 (19) The association is entitled to recover any costs and  
19 reasonable attorneys' fees incurred in connection with the collection  
20 of delinquent assessments, whether or not such collection activities  
21 result in a suit being commenced or prosecuted to judgment. The  
22 prevailing party is also entitled to recover costs and reasonable  
23 attorneys' fees in such suits, including any appeals, if it prevails  
24 on appeal and in the enforcement of a judgment.

25 (20) To the extent not inconsistent with this section, the  
26 declaration may provide for such additional remedies for collection  
27 of assessments as may be permitted by law.

28 (21) An association may not commence an action to foreclose a  
29 lien on a unit under this section unless:

- 30 (a) The unit owner, at the time the action is commenced, owes a  
31 sum equal to at least three months of common expense assessments; and  
32 (b) The board approves commencement of a foreclosure action  
33 specifically against that unit.

34 (22) Unless the parties agree otherwise, the association may  
35 apply any sums paid by unit owners who are delinquent in paying  
36 assessments (a) to the oldest debt on account, or (b) in the  
37 following order:

- 38 (i) Unpaid assessments;  
39 (ii) Late charges;

1 (iii) Reasonable attorneys' fees and costs and other reasonable  
2 collection charges; and

3 (iv) All other unpaid fees, charges, fines, penalties, interest,  
4 and late charges.

5 (23) Every aspect of a collection, foreclosure, sale, or other  
6 conveyance under this section, including the method, advertising,  
7 time, date, place, and terms, must be commercially reasonable.

8 NEW SECTION. **Sec. 319.** OTHER LIENS. (1) In a condominium, plat  
9 community, and miscellaneous community:

10 (a) Except as otherwise provided in (b) of this subsection, a  
11 judgment for money against the association perfected under RCW  
12 4.64.020 is not a lien on the common elements, but is a lien in favor  
13 of the judgment lienholder against all of the other real estate of  
14 the association and all of the units in the common interest community  
15 at the time the judgment was entered. Other property of a unit owner  
16 is not subject to the claims of creditors of the association.

17 (b) If the association has granted a security interest in the  
18 common elements to a creditor of the association pursuant to section  
19 314 of this act, the holder of that security interest must exercise  
20 its right against the common elements before its judgment lien on any  
21 unit may be enforced.

22 (c) Whether perfected before or after the creation of the common  
23 interest community, if a lien, other than a deed of trust or  
24 mortgage, including a judgment lien or lien attributable to work  
25 performed or materials supplied before creation of the common  
26 interest community, becomes effective against two or more units, the  
27 unit owner of an affected unit may pay to the lienholder the amount  
28 of the lien attributable to the unit, and the lienholder, upon  
29 receipt of payment, must promptly deliver a release of the lien  
30 covering that unit. The amount of the payment must be proportionate  
31 to the ratio that the unit owner's common expense liability bears to  
32 the common expense liabilities of all unit owners that are subject to  
33 the lien. After payment, the association may not assess or have a  
34 lien against that unit owner's unit for any portion of the common  
35 expenses incurred in connection with that lien.

36 (d) A judgment against the association must be recorded and  
37 indexed in the name of the common interest community and the  
38 association and, when so indexed, is notice of the lien against the  
39 units.

1 (2) In a cooperative:

2 (a) If the association receives notice of an impending  
3 foreclosure on all or any portion of the association's real estate,  
4 the association must promptly transmit a copy of that notice to each  
5 unit owner of a unit located within the real estate to be foreclosed.  
6 Failure of the association to transmit the notice does not affect the  
7 validity of the foreclosure.

8 (b) Whether a unit owner's unit is subject to the claims of the  
9 association's creditors, other property of a unit owner is not  
10 subject to those claims.

11 NEW SECTION. **Sec. 320.** ASSOCIATION RECORDS. (1) An association  
12 must retain the following:

13 (a) The current budget, detailed records of receipts and  
14 expenditures affecting the operation and administration of the  
15 association, and other appropriate accounting records within the last  
16 seven years;

17 (b) Minutes of all meetings of its unit owners and board other  
18 than executive sessions, a record of all actions taken by the unit  
19 owners or board without a meeting, and a record of all actions taken  
20 by a committee in place of the board on behalf of the association;

21 (c) The names of current unit owners, addresses used by the  
22 association to communicate with them, and the number of votes  
23 allocated to each unit;

24 (d) Its original or restated declaration, organizational  
25 documents, all amendments to the declaration and organizational  
26 documents, and all rules currently in effect;

27 (e) All financial statements and tax returns of the association  
28 for the past seven years;

29 (f) A list of the names and addresses of its current board  
30 members and officers;

31 (g) Its most recent annual report delivered to the secretary of  
32 state, if any;

33 (h) Financial and other records sufficiently detailed to enable  
34 the association to comply with section 409 of this act;

35 (i) Copies of contracts to which it is or was a party within the  
36 last seven years;

37 (j) Materials relied upon by the board or any committee to  
38 approve or deny any requests for design or architectural approval for  
39 a period of seven years after the decision is made;

1 (k) Materials relied upon by the board or any committee  
2 concerning a decision to enforce the governing documents for a period  
3 of seven years after the decision is made;

4 (l) Copies of insurance policies under which the association is a  
5 named insured;

6 (m) Any current warranties provided to the association;

7 (n) Copies of all notices provided to unit owners or the  
8 association in accordance with this chapter or the governing  
9 documents; and

10 (o) Ballots, proxies, absentee ballots, and other records related  
11 to voting by unit owners for one year after the election, action, or  
12 vote to which they relate.

13 (2) Subject to subsections (3) and (4) of this section, all  
14 records required to be retained by an association must be made  
15 available for examination and copying by all unit owners, holders of  
16 mortgages on the units, and their respective authorized agents as  
17 follows, unless agreed otherwise:

18 (a) During reasonable business hours or at a mutually convenient  
19 time and location; and

20 (b) At the offices of the association or its managing agent.

21 (3) Records retained by an association may be withheld from  
22 inspection and copying to the extent that they concern:

23 (a) Personnel and medical records relating to specific  
24 individuals;

25 (b) Contracts, leases, and other commercial transactions to  
26 purchase or provide goods or services currently being negotiated;

27 (c) Existing or potential litigation or mediation, arbitration,  
28 or administrative proceedings;

29 (d) Existing or potential matters involving federal, state, or  
30 local administrative or other formal proceedings before a  
31 governmental tribunal for enforcement of the governing documents;

32 (e) Legal advice or communications that are otherwise protected  
33 by the attorney-client privilege or the attorney work product  
34 doctrine, including communications with the managing agent or other  
35 agent of the association;

36 (f) Information the disclosure of which would violate a court  
37 order or law;

38 (g) Records of an executive session of the board;

39 (h) Individual unit files other than those of the requesting unit  
40 owner;

1 (i) Unlisted telephone number or electronic address of any unit  
2 owner or resident;

3 (j) Security access information provided to the association for  
4 emergency purposes; or

5 (k) Agreements that for good cause prohibit disclosure to the  
6 members.

7 (4) An association may charge a reasonable fee for producing and  
8 providing copies of any records under this section and for  
9 supervising the unit owner's inspection.

10 (5) A right to copy records under this section includes the right  
11 to receive copies by photocopying or other means, including through  
12 an electronic transmission if available upon request by the unit  
13 owner.

14 (6) An association is not obligated to compile or synthesize  
15 information.

16 (7) Information provided pursuant to this section may not be used  
17 for commercial purposes.

18 (8) An association's managing agent must deliver all of the  
19 association's original books and records to the association  
20 immediately upon termination of its management relationship with the  
21 association, or upon such other demand as is made by the board. An  
22 association managing agent may keep copies of the association records  
23 at its own expense.

24 NEW SECTION. **Sec. 321.** ASSOCIATION AS TRUSTEE. With respect to  
25 a third person dealing with the association in the association's  
26 capacity as a trustee, the existence of trust powers and their proper  
27 exercise by the association may be assumed without inquiry. A third  
28 person is not bound to inquire whether the association has power to  
29 act as trustee or is properly exercising trust powers. A third  
30 person, without actual knowledge that the association is exceeding or  
31 improperly exercising its powers, is fully protected in dealing with  
32 the association as if it possessed and properly exercised the powers  
33 it purports to exercise. A third person is not bound to assure the  
34 proper application of trust assets paid or delivered to the  
35 association in its capacity as trustee.

36 NEW SECTION. **Sec. 322.** RULES. (1) Unless the declaration  
37 provides otherwise, the board must, before adopting, amending, or  
38 repealing any rule, give all unit owners notice of:

1 (a) Its intention to adopt, amend, or repeal a rule and provide  
2 the text of the rule or the proposed change; and

3 (b) A date on which the board will act on the proposed rule or  
4 amendment after considering comments from unit owners.

5 (2) Following adoption, amendment, or repeal of a rule, the  
6 association must give notice to the unit owners of its action and  
7 provide a copy of any new or revised rule.

8 (3) If the declaration so provides, an association may adopt  
9 rules to establish and enforce construction and design criteria and  
10 aesthetic standards and, if so, must adopt procedures for enforcement  
11 of those standards and for approval of construction applications,  
12 including a reasonable time within which the association must act  
13 after an application is submitted and the consequences of its failure  
14 to act.

15 (4) An association's internal business operating procedures need  
16 not be adopted as rules.

17 (5) Every rule must be reasonable.

18 NEW SECTION. **Sec. 323.** SPECIFIC LIMITATIONS ON ASSOCIATION'S  
19 REGULATORY AUTHORITY. (1) An association may not prohibit display of  
20 the flag of the United States, or the flag of Washington state, on or  
21 within a unit or a limited common element, except that an association  
22 may adopt reasonable restrictions pertaining to the time, place, or  
23 manner of displaying the flag of the United States necessary to  
24 protect a substantial interest of the association. For purposes of  
25 this section, "flag of the United States" means the flag of the  
26 United States as described in 4 U.S.C. Sec. 1 et seq. that is made of  
27 fabric, cloth, or paper. "Flag of the United States" does not mean a  
28 flag, depiction, or emblem made of lights, paint, roofing, siding,  
29 paving materials, flora, or balloons, or of any similar building,  
30 landscaping, or decorative components.

31 (2) The association may not prohibit display of signs regarding  
32 candidates for public or association office, or ballot issues, on or  
33 within a unit or limited common element, but the association may  
34 adopt rules governing the time, place, size, number, and manner of  
35 those displays.

36 (3) The association may not prohibit the installation of a solar  
37 energy panel on or within a unit so long as the solar panel:

38 (a) Meets applicable health and safety standards and requirements  
39 imposed by state and local permitting authorities;

1 (b) If used to heat water, is certified by the solar rating  
2 certification corporation or another nationally recognized  
3 certification agency. Certification must be for the solar energy  
4 panel and for installation; and

5 (c) If used to produce electricity, meets all applicable safety  
6 and performance standards established by the national electric code,  
7 the institute of electrical and electronics engineers, accredited  
8 testing laboratories, such as underwriters laboratories, and, where  
9 applicable, rules of the utilities and transportation commission  
10 regarding safety and reliability.

11 (4) The governing documents may:

12 (a) Prohibit the visibility of any part of a roof-mounted solar  
13 energy panel above the roof line;

14 (b) Permit the attachment of a solar energy panel to the slope of  
15 a roof facing a street only if:

16 (i) The solar energy panel conforms to the slope of the roof; and

17 (ii) The top edge of the solar energy panel is parallel to the  
18 roof ridge; and

19 (c) Require:

20 (i) A solar energy panel frame, a support bracket, or any visible  
21 piping or wiring to be painted to coordinate with the roofing  
22 material;

23 (ii) A unit owner or resident to shield a ground-mounted solar  
24 energy panel if shielding the panel does not prohibit economic  
25 installation of the solar energy panel or degrade the operational  
26 performance quality of the solar energy panel by more than ten  
27 percent; and

28 (iii) Unit owners or residents who install solar energy panels to  
29 indemnify or reimburse the association or its members for loss or  
30 damage caused by the installation, maintenance, or use of a solar  
31 energy panel.

32 (5) The governing documents may include other reasonable rules  
33 regarding the placement and manner of a solar energy panel.

34 (6) For purposes of this section, "solar energy panel" means a  
35 panel device or system or combination of panel devices or systems  
36 that relies on direct sunlight as an energy source, including a panel  
37 device or system or combination of panel devices or systems that  
38 collects sunlight for use in:

39 (a) The heating or cooling of a structure or building;

40 (b) The heating or pumping of water;

1 (c) Industrial, commercial, or agricultural processes; or

2 (d) The generation of electricity.

3 (7) This section must not be construed to permit installation by  
4 a unit owner of a solar panel on or in common elements without  
5 approval of the board.

6 (8) Unit owners may peacefully assemble on the common elements to  
7 consider matters related to the common interest community, but the  
8 association may adopt rules governing the time, place, and manner of  
9 those assemblies.

10 (9) An association may adopt rules that affect the use or  
11 occupancy of or behavior in units that may be used for residential  
12 purposes, only to:

13 (a) Implement a provision of the declaration;

14 (b) Regulate any behavior in or occupancy of a unit that violates  
15 the declaration or adversely affects the use and enjoyment of other  
16 units or the common elements by other occupants; and

17 (c) Restrict the leasing of residential units to the extent those  
18 rules are reasonably designed to meet underwriting requirements of  
19 institutional lenders that regularly make loans secured by first  
20 mortgages on units in comparable common interest communities or that  
21 regularly purchase those mortgages.

22 NEW SECTION. **Sec. 324.** NOTICE. (1) Notice to the association,  
23 board, or any owner or occupant of a unit under this chapter must be  
24 provided in the form of a record.

25 (2) Notice provided in a tangible medium may be transmitted by  
26 mail, private carrier, or personal delivery; telegraph or teletype;  
27 or telephone, wire, or wireless equipment that transmits a facsimile  
28 of the notice.

29 (a) Notice in a tangible medium to an association may be  
30 addressed to the association's registered agent at its registered  
31 office, to the association at its principal office shown in its most  
32 recent annual report or provided by notice to the unit owners, or to  
33 the president or secretary of the association at the address shown in  
34 the association's most recent annual report or provided by notice to  
35 the unit owners.

36 (b) Notice in a tangible medium to a unit owner or occupant must  
37 be addressed to the unit address unless the unit owner or occupant  
38 has requested, in a record delivered to the association, that notices

1 be sent to an alternate address or by other method allowed by this  
2 section and the governing documents.

3 (3) Notice may be provided in an electronic transmission as  
4 follows:

5 (a) Notice to unit owners or board members by electronic  
6 transmission is effective only upon unit owners and board members who  
7 have consented, in the form of a record, to receive electronically  
8 transmitted notices under this chapter and have designated in the  
9 consent the address, location, or system to which such notices may be  
10 electronically transmitted, provided that such notice otherwise  
11 complies with any other requirements of this chapter and applicable  
12 law.

13 (b) Notice to unit owners or board members under this subsection  
14 includes material that this chapter or the governing documents  
15 requires or permits to accompany the notice.

16 (c) A unit owner or board member who has consented to receipt of  
17 electronically transmitted notices may revoke this consent by  
18 delivering a revocation to the association in the form of a record.

19 (d) The consent of any unit owner or board member is revoked if:  
20 The association is unable to electronically transmit two consecutive  
21 notices given by the association in accordance with the consent, and  
22 this inability becomes known to the secretary of the association or  
23 any other person responsible for giving the notice. The inadvertent  
24 failure by the association to treat this inability as a revocation  
25 does not invalidate any meeting or other action.

26 (e) Notice to unit owners or board members who have consented to  
27 receipt of electronically transmitted notices may be provided by  
28 posting the notice on an electronic network and delivering to the  
29 unit owner or board member a separate record of the posting, together  
30 with comprehensible instructions regarding how to obtain access to  
31 the posting on the electronic network.

32 (f) Notice to an association in an electronic transmission is  
33 effective only with respect to an association that has designated in  
34 a record an address, location, or system to which the notices may be  
35 electronically transmitted.

36 (4) Notice may be given by any other method reasonably calculated  
37 to provide notice to the recipient.

38 (5) Notice is effective as follows:

39 (a) Notice provided in a tangible medium is effective as of the  
40 date of hand delivery, deposit with the carrier, or when sent by fax.

1 (b) Notice provided in an electronic transmission is effective as  
2 of the date it:

3 (i) Is electronically transmitted to an address, location, or  
4 system designated by the recipient for that purpose; or

5 (ii) Has been posted on an electronic network and a separate  
6 record of the posting has been sent to the recipient containing  
7 instructions regarding how to obtain access to the posting on the  
8 electronic network.

9 (6) The ineffectiveness of a good-faith effort to deliver notice  
10 by an authorized means does not invalidate action taken at or without  
11 a meeting.

12 (7) If this chapter prescribes different or additional notice  
13 requirements for particular circumstances, those requirements govern.

14 NEW SECTION. **Sec. 325.** REMOVAL OF OFFICERS AND BOARD MEMBERS.

15 (1) Unit owners present in person, by proxy, or by absentee ballot at  
16 any meeting of the unit owners at which a quorum is present may  
17 remove any board member and any officer elected by the unit owners,  
18 with or without cause, if the number of votes in favor of removal  
19 cast by unit owners entitled to vote for election of the board member  
20 or officer proposed to be removed is at least the lesser of (a) a  
21 majority of the votes in the association held by such unit owners or  
22 (b) two-thirds of the votes cast by such unit owners at the meeting,  
23 but:

24 (i) A board member appointed by the declarant may not be removed  
25 by a unit owner vote during any period of declarant control;

26 (ii) A board member appointed under section 305(3) of this act  
27 may be removed only by the person that appointed that member; and

28 (iii) The unit owners may not consider whether to remove a board  
29 member or officer at a meeting of the unit owners unless that subject  
30 was listed in the notice of the meeting.

31 (2) At any meeting at which a vote to remove a board member or  
32 officer is to be taken, the board member or officer being considered  
33 for removal must have a reasonable opportunity to speak before the  
34 vote.

35 (3) At any meeting at which a board member or officer is removed,  
36 the unit owners entitled to vote for the board member or officer may  
37 immediately elect a successor board member or officer consistent with  
38 this chapter.

1 (4) The board may, without a unit owner vote, remove from the  
2 board a board member or officer elected by the unit owners if (a) the  
3 board member or officer is delinquent in the payment of assessments  
4 more than sixty days and (b) the board member or officer has not  
5 cured the delinquency within thirty days after receiving notice of  
6 the board's intent to remove the board member or officer. Unless  
7 provided otherwise by the governing documents, the board may remove  
8 an officer elected by the board at any time, with or without cause.  
9 The removal must be recorded in the minutes of the next board  
10 meeting.

11 NEW SECTION. **Sec. 326.** ADOPTION OF BUDGETS—ASSESSMENTS AND  
12 SPECIAL ASSESSMENTS. (1)(a) Within thirty days after adoption of any  
13 proposed budget for the common interest community, the board must  
14 provide a copy of the budget to all the unit owners and set a date  
15 for a meeting of the unit owners to consider ratification of the  
16 budget not less than fourteen nor more than fifty days after  
17 providing the budget. Unless at that meeting the unit owners of units  
18 to which a majority of the votes in the association are allocated or  
19 any larger percentage specified in the declaration reject the budget,  
20 the budget and the assessments against the units included in the  
21 budget are ratified, whether or not a quorum is present.

22 (b) If the proposed budget is rejected or the required notice is  
23 not given, the periodic budget last ratified by the unit owners  
24 continues until the unit owners ratify a subsequent budget proposed  
25 by the board.

26 (2) The budget must include:

27 (a) The projected income to the association by category;

28 (b) The projected common expenses and those specially allocated  
29 expenses that are subject to being budgeted, both by category;

30 (c) The amount of the assessments per unit and the date the  
31 assessments are due;

32 (d) The current amount of regular assessments budgeted for  
33 contribution to the reserve account;

34 (e) A statement of whether the association has a reserve study  
35 that meets the requirements of section 331 of this act and, if so,  
36 the extent to which the budget meets or deviates from the  
37 recommendations of that reserve study; and

38 (f) The current deficiency or surplus in reserve funding  
39 expressed on a per unit basis.

1 (3) The board, at any time, may propose a special assessment. The  
2 assessment is effective only if the board follows the procedures for  
3 ratification of a budget described in subsection (1) of this section  
4 and the unit owners do not reject the proposed assessment. The board  
5 may provide that the special assessment may be due and payable in  
6 installments over any period it determines and may provide a discount  
7 for early payment.

8 NEW SECTION. **Sec. 327.** FINANCIAL STATEMENTS AND ASSOCIATION  
9 FUNDS. (1) The association must prepare, or cause to be prepared, at  
10 least annually, a financial statement of the association in  
11 accordance with accrual based accounting practices.

12 (2) The financial statements of associations with annual  
13 assessments of fifty thousand dollars or more must be audited at  
14 least annually by a certified public accountant. In the case of an  
15 association with annual assessments of less than fifty thousand  
16 dollars, an annual audit is also required but may be waived annually  
17 by unit owners other than the declarant of units to which a majority  
18 of the votes in the association are allocated, excluding the votes  
19 allocated to units owned by the declarant.

20 (3) The association must keep all funds of the association in the  
21 name of the association with a qualified financial institution. The  
22 funds must not be commingled with the funds of any other association  
23 or with the funds of any managing agent of the association or any  
24 other person, or be kept in any trust account or custodial account in  
25 the name of any trustee or custodian.

26 (4) A managing agent who accepts or receives funds belonging to  
27 the association must promptly deposit all such funds into an account  
28 maintained by the association as provided in subsection (3) of this  
29 section or section 328 of this act, as appropriate.

30 NEW SECTION. **Sec. 328.** RESERVE ACCOUNT—ESTABLISHMENT. An  
31 association required to obtain a reserve study pursuant to section  
32 330 of this act must establish one or more accounts for the deposit  
33 of funds, if any, for the replacement costs of reserve components.  
34 Any reserve account must be an income-earning account maintained  
35 under the direct control of the board, and the board is responsible  
36 for administering the reserve account.

1        NEW SECTION.    **Sec. 329.**    RESERVE ACCOUNT—WITHDRAWALS. (1) The  
2 board may withdraw funds from the association's reserve account to  
3 pay for unforeseen or unbudgeted costs that are unrelated to  
4 replacement costs of the reserve components. Any such withdrawal must  
5 be recorded in the minute books of the association. The board must  
6 give notice of any such withdrawal to each unit owner and adopt a  
7 repayment schedule not to exceed twenty-four months unless the board  
8 determines that repayment within twenty-four months would impose an  
9 unreasonable burden on the unit owners. The board must provide to  
10 unit owners along with the annual budget adopted in accordance with  
11 section 326 of this act (a) notice of any such withdrawal, (b) a  
12 statement of the current deficiency in reserve funding expressed on a  
13 per unit basis, and (c) the repayment plan.

14        (2) The board may withdraw funds from the reserve account without  
15 satisfying the notification of repayment requirements under this  
16 section to pay for replacement costs of reserve components not  
17 included in the reserve study.

18        NEW SECTION.    **Sec. 330.**    RESERVE STUDY—PREPARATION. (1) Unless  
19 exempt under subsection (2) of this section, an association must  
20 prepare and update a reserve study in accordance with this chapter.  
21 An initial reserve study must be prepared by a reserve study  
22 professional and based upon a reserve study professional's visual  
23 site inspection or a review of plans and specifications of or for  
24 unbuilt improvements, or both when construction is not completed. An  
25 updated reserve study must be prepared annually. An updated reserve  
26 study must be prepared at least every third year by a reserve study  
27 professional and based upon a visual site inspection conducted by the  
28 reserve study professional.

29        (2) Unless the governing documents require otherwise, subsection  
30 (1) of this section does not apply (a) to common interest communities  
31 containing units that are restricted in the declaration to  
32 nonresidential use, (b) to common interest communities that have only  
33 nominal reserve costs, or (c) when the cost of the reserve study or  
34 update exceeds ten percent of the association's annual budget.

35        (3) The governing documents may impose greater requirements on  
36 the board.

1        NEW SECTION.    **Sec. 331.**    RESERVE STUDY—CONTENTS. (1) Any reserve  
2 study is supplemental to the association's operating and maintenance  
3 budget.

4        (2) A reserve study must include:

5        (a) A reserve component list, including any reserve component,  
6 the replacement cost of which exceeds one percent of the annual  
7 budget of the association, excluding contributions to the reserves  
8 for that reserve component. If one of these reserve components is not  
9 included in the reserve study, the study must explain the basis for  
10 its exclusion. The study must also include quantities and estimates  
11 for the useful life of each reserve component, the remaining useful  
12 life of each reserve component, and current major replacement costs  
13 for each reserve component;

14        (b) The date of the study and a disclosure as to whether the  
15 study meets the requirements of this section;

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

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

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

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

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

21        (e) The percentage of the fully funded balance to which the  
22 reserve account is funded;

23        (f) Special assessments already implemented or planned;

24        (g) Interest and inflation assumptions;

25        (h) Current reserve account contribution rates for a full funding  
26 plan and a baseline funding plan;

27        (i) A recommended reserve account contribution rate for a full  
28 funding plan to achieve one hundred percent fully funded reserves by  
29 the end of the thirty-year study period, a recommended reserve  
30 account contribution rate for a baseline funding plan to maintain the  
31 reserve account balance above zero throughout the thirty-year study  
32 period without special assessments, and a reserve account  
33 contribution rate recommended by the reserve study professional;

34        (j) A projected reserve account balance for thirty years based on  
35 each funding plan presented in the reserve study;

36        (k) A disclosure on whether the reserve study was prepared with  
37 the assistance of a reserve study professional, and whether the  
38 reserve study professional was independent; and

39        (l) A statement of the amount of any current deficit or surplus  
40 in reserve funding expressed on a dollars per unit basis. The amount

1 is calculated by subtracting the association's reserve account  
2 balance as of the date of the study from the fully funded balance,  
3 and then multiplying the result by the fraction or percentage of the  
4 common expenses of the association allocable to each unit; except  
5 that if the fraction or percentage of the common expenses of the  
6 association allocable vary by unit, the association must calculate  
7 any current deficit or surplus in a manner that reflects the  
8 variation.

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

10 "This reserve study should be reviewed carefully. It may not  
11 include all common and limited common element components that will  
12 require major maintenance, repair, or replacement in future years,  
13 and may not include regular contributions to a reserve account for  
14 the cost of such maintenance, repair, or replacement. The failure to  
15 include a component in a reserve study, or to provide contributions  
16 to a reserve account for a component, may, under some circumstances,  
17 require the association to (1) defer major maintenance, repair, or  
18 replacement, (2) increase future reserve contributions, (3) borrow  
19 funds to pay for major maintenance, repair, or replacement, or (4)  
20 impose special assessments for the cost of major maintenance, repair,  
21 or replacement."

22 NEW SECTION. **Sec. 332.** RESERVE STUDY—DEMAND BY UNIT OWNERS—  
23 ACTION TO ENFORCE. (1) When more than three years have passed since  
24 the date of the last reserve study prepared by a reserve study  
25 professional, unit owners of units to which at least twenty percent  
26 of the votes in the association are allocated may demand in a record  
27 delivered to the board that the cost of a reserve study be included  
28 in the next annual budget and that the study be prepared by the end  
29 of that budget year. The demand must refer to this section. The board  
30 must, upon receipt of the demand, include the cost of a reserve study  
31 in the next budget and, if that budget is not rejected by the unit  
32 owners pursuant to section 326 of this act, arrange for the  
33 preparation of a reserve study.

34 (2) One or more unit owners may bring an action to enforce the  
35 requirements of this section and sections 330 and 331 of this act. In  
36 such an action, a court may order specific performance and may award  
37 reasonable attorneys' fees and costs to the prevailing party.

38 (3) A unit owner's duty to pay assessments is not excused because  
39 of the association's failure to comply with this section and sections

1 330 and 331 of this act. A budget ratified by the unit owners  
2 pursuant to section 326 of this act is not invalidated because of the  
3 association's failure to comply with this section and sections 330  
4 and 331 of this act.

5 NEW SECTION. **Sec. 333.** RESERVE STUDY—RESERVE ACCOUNT—IMMUNITY  
6 FROM LIABILITY. Except for an award for attorneys' fees and costs  
7 under section 332(2) of this act, monetary damages or other liability  
8 may not be awarded against or imposed upon the association or its  
9 officers or board members, or upon any person who may have provided  
10 advice or assistance to the association or its officers or board  
11 members, for failure to: Establish or replenish a reserve account,  
12 have a current reserve study prepared or updated in accordance with  
13 the requirements of this chapter, or make reserve disclosures in  
14 accordance with this chapter.

15 **IV. PROTECTION OF PURCHASERS**

16 NEW SECTION. **Sec. 401.** APPLICABILITY—WAIVER. (1) Sections 402  
17 through 420 of this act apply to all units subject to this chapter,  
18 except as provided in subsections (2) and (3) of this section.

19 (2) Sections 402 through 420 of this act do not apply in the case  
20 of:

21 (a) A conveyance by gift, devise, or descent;

22 (b) A conveyance pursuant to court order;

23 (c) A conveyance by a government or governmental agency;

24 (d) A conveyance by foreclosure;

25 (e) A conveyance of all of the units in a common interest  
26 community in a single transaction;

27 (f) A conveyance to other than a purchaser;

28 (g) An agreement to convey that may be canceled at any time and  
29 for any reason by the purchaser without penalty;

30 (h) A conveyance of a unit restricted to nonresidential uses,  
31 except and to the extent otherwise agreed to in writing by the seller  
32 and purchaser of that unit.

33 (3) Sections 414, 415, 416, 417, 419, and 420 of this act apply  
34 only to condominiums created under this chapter, and do not apply to  
35 other common interest communities.

1        NEW SECTION.    **Sec. 402.**    LIABILITY FOR PUBLIC OFFERING STATEMENT  
2 REQUIREMENTS. (1) Except as provided otherwise in subsection (2) of  
3 this section, a declarant required to deliver a public offering  
4 statement pursuant to subsection (3) of this section must prepare a  
5 public offering statement conforming to the requirements of sections  
6 403, 404, and 405 of this act.

7        (2) A declarant may transfer responsibility for preparation of  
8 all or a part of the public offering statement to a successor  
9 declarant or to a dealer who intends to offer units in the  
10 condominium.

11        (3)(a) Any declarant or dealer who offers to convey a unit for  
12 the person's own account to a purchaser must provide the purchaser of  
13 the unit with a copy of a public offering statement and all material  
14 amendments to the public offering statement before conveyance of that  
15 unit.

16        (b) Any agent, attorney, or other person assisting the declarant  
17 or dealer in preparing the public offering statement may rely upon  
18 information provided by the declarant or dealer without independent  
19 investigation. The agent, attorney, or other person is not liable for  
20 any material misrepresentation in or omissions of material facts from  
21 the public offering statement unless the person had actual knowledge  
22 of the misrepresentation or omission at the time the public offering  
23 statement was prepared.

24        (c) The declarant or dealer is liable for any misrepresentation  
25 contained in the public offering statement or for any omission of  
26 material fact from the public offering statement if the declarant or  
27 dealer had actual knowledge of the misrepresentation or omission or,  
28 in the exercise of reasonable care, should have known of the  
29 misrepresentation or omission.

30        (4) If a unit is part of a common interest community and is part  
31 of any other real estate regime in connection with the sale of which  
32 the delivery of a public offering statement is required under the  
33 laws of this state, a single public offering statement conforming to  
34 the requirements of sections 403, 404, and 405 of this act as those  
35 requirements relate to each regime in which the unit is located, and  
36 to any other requirements imposed under the laws of this state, may  
37 be prepared and delivered in lieu of providing two or more public  
38 offering statements.

39        (5) A declarant is not required to prepare and deliver a public  
40 offering statement in connection with the sale of any unit owned by

1 the declarant, or to obtain for or provide to the purchaser a report  
2 or statement required under sections 403(1)(oo), 405(1), or 412 of  
3 this act, upon the later of:

4 (a) The termination or expiration of all special declarant  
5 rights;

6 (b) The expiration of all periods within which claims or actions  
7 for a breach of warranty arising from defects involving the common  
8 elements under section 417 of this act must be filed or commenced,  
9 respectively, by the association against the declarant; or

10 (c) The time when the declarant ceases to meet the definition of  
11 a dealer under section 102 of this act.

12 (6) After the last to occur of any of the events described in  
13 subsection (5) of this section, a declarant must deliver to the  
14 purchaser of a unit owned by the declarant a resale certificate under  
15 section 409(2) of this act together with:

16 (a) The identification of any real property not in the common  
17 interest community that unit owners have a right to use and a  
18 description of the terms of such use;

19 (b) A brief description or a copy of any express construction  
20 warranties to be provided to the purchaser;

21 (c) A statement of any litigation brought by an owners'  
22 association, unit owner, or governmental entity in which the  
23 declarant or any affiliate of the declarant has been a defendant  
24 arising out of the construction, sale, or administration of any  
25 common interest community within the state of Washington within the  
26 previous five years, together with the results of the litigation, if  
27 known;

28 (d) Whether timesharing is permitted or prohibited, and, if  
29 permitted, a statement that the purchaser of a time share unit is  
30 entitled to receive the disclosure document required under chapter  
31 64.36 RCW; and

32 (e) Any other information and cross-references that the declarant  
33 believes will be helpful in describing the common interest community  
34 to the purchaser, all of which may be included or not included at the  
35 option of the declarant.

36 (7) A declarant is not liable to a purchaser for the failure or  
37 delay of the association to provide the resale certificate in a  
38 timely manner, but the purchase contract is voidable by the purchaser  
39 of a unit sold by the declarant until the resale certificate required  
40 under section 409(2) of this act and the information required under

1 subsection (6) of this section have been provided and for five days  
2 thereafter or until conveyance, whichever occurs first.

3 NEW SECTION. **Sec. 403.** PUBLIC OFFERING STATEMENT—GENERAL  
4 PROVISIONS. (1) A public offering statement must contain the  
5 following information:

- 6 (a) The name and address of the declarant;
- 7 (b) The name and address or location of the management company,  
8 if any;
- 9 (c) The relationship of the management company to the declarant,  
10 if any;
- 11 (d) The name and address of the common interest community;
- 12 (e) A statement whether the common interest community is a  
13 condominium, cooperative, plat community, or miscellaneous community;
- 14 (f) A list, current as of the date the public offering statement  
15 is prepared, of up to the five most recent common interest  
16 communities in which at least one unit was sold by the declarant or  
17 an affiliate of the declarant within the past five years, including  
18 the names of the common interest communities and their addresses;
- 19 (g) The nature of the interest being offered for sale;
- 20 (h) A general description of the common interest community,  
21 including to the extent known to the declarant, the types and number  
22 of buildings that the declarant anticipates including in the common  
23 interest community and the declarant's schedule of commencement and  
24 completion of such buildings and principal common amenities;
- 25 (i) The status of construction of the units and common elements,  
26 including estimated dates of completion if not completed;
- 27 (j) The number of existing units in the common interest  
28 community;
- 29 (k) Brief descriptions of (i) the existing principal common  
30 amenities, (ii) those amenities that will be added to the common  
31 interest community, and (iii) those amenities that may be added to  
32 the common interest community;
- 33 (l) A brief description of the limited common elements, other  
34 than those described in section 203 (1)(b) and (3) of this act, that  
35 may be allocated to the units being offered for sale;
- 36 (m) The identification of any rights of persons other than unit  
37 owners to use any of the common elements, and a description of the  
38 terms of such use;

1 (n) The identification of any real property not in the common  
2 interest community that unit owners have a right to use and a  
3 description of the terms of such use;

4 (o) Any services the declarant provides or expenses that the  
5 declarant pays that are not reflected in the budget, but that the  
6 declarant expects may become at any subsequent time a common expense  
7 of the association, and the projected common expense attributable to  
8 each of those services or expenses;

9 (p) An estimate of any assessment or payment required by the  
10 declaration to be paid by the purchaser of a unit at closing;

11 (q) A brief description of any liens or monetary encumbrances on  
12 the title to the common elements that will not be discharged at  
13 closing;

14 (r) A brief description or a copy of any express construction  
15 warranties to be provided to the purchaser;

16 (s) A statement, as required under RCW 64.35.210, as to whether  
17 the units or common elements of the common interest community are  
18 covered by a qualified warranty;

19 (t) If applicable to the common interest community, a statement  
20 whether the common interest community contains any multiunit  
21 residential building subject to chapter 64.55 RCW and, if so,  
22 whether:

23 (i) The building enclosure has been designed and inspected to the  
24 extent required under RCW 64.55.010 through 64.55.090; and

25 (ii) Any repairs required under RCW 64.55.090 have been made;

26 (u) A statement of any unsatisfied judgments or pending suits  
27 against the association and the status of any pending suits material  
28 to the common interest community of which the declarant has actual  
29 knowledge;

30 (v) A statement of any litigation brought by an owners'  
31 association, unit owner, or governmental entity in which the  
32 declarant or any affiliate of the declarant has been a defendant  
33 arising out of the construction, sale, or administration of any  
34 common interest community within the previous five years, together  
35 with the results of the litigation, if known;

36 (w) A brief description of:

37 (i) Any restrictions on use or occupancy of the units contained  
38 in the governing documents;

39 (ii) Any restrictions on the renting or leasing of units by the  
40 declarant or other unit owners contained in the governing documents;

1 (iii) Any rights of first refusal to lease or purchase any unit  
2 or any of the common elements contained in the governing documents;  
3 and

4 (iv) Any restriction on the amount for which a unit may be sold  
5 or on the amount that may be received by a unit owner on sale;

6 (x) A description of the insurance coverage provided for the  
7 benefit of unit owners;

8 (y) Any current or expected fees or charges not included in the  
9 common expenses to be paid by unit owners for the use of the common  
10 elements and other facilities related to the common interest  
11 community, together with any fees or charges not included in the  
12 common expenses to be paid by unit owners to any master or other  
13 association;

14 (z) The extent, if any, to which bonds or other assurances from  
15 third parties have been provided for completion of all improvements  
16 that the declarant is obligated to build pursuant to section 420 of  
17 this act;

18 (aa) In a cooperative, a statement whether the unit owners are  
19 entitled, for federal, state, and local income tax purposes, to a  
20 pass-through of any deductions for payments made by the association  
21 for real estate taxes and interest paid to the holder of a security  
22 interest encumbering the cooperative;

23 (bb) In a cooperative, a statement as to the effect on every unit  
24 owner's interest in the cooperative if the association fails to pay  
25 real estate taxes or payments due to the holder of a security  
26 interest encumbering the cooperative;

27 (cc) In a leasehold common interest community, a statement  
28 whether the expiration or termination of any lease may terminate the  
29 common interest community or reduce its size, the recording number of  
30 any such lease or a statement of where the complete lease may be  
31 inspected, the date on which such lease is scheduled to expire, a  
32 description of the real estate subject to such lease, a statement  
33 whether the unit owners have a right to redeem the reversion, a  
34 statement whether the unit owners have a right to remove any  
35 improvements at the expiration or termination of such lease, a  
36 statement of any rights of the unit owners to renew such lease, and a  
37 reference to the sections of the declaration where such information  
38 may be found;

39 (dd) A summary of, and information on how to obtain a full copy  
40 of, any reserve study and a statement as to whether or not it was

1 prepared in accordance with sections 330 and 331 of this act or the  
2 governing documents;

3 (ee) A brief description of any arrangement described in section  
4 123 of this act binding the association;

5 (ff) The estimated current common expense liability for the units  
6 being offered;

7 (gg) Except for real property taxes, real property assessments  
8 and utility liens, any assessments, fees, or other charges known to  
9 the declarant and which, if not paid, may constitute a lien against  
10 any unit or common elements in favor of any governmental agency;

11 (hh) A brief description of any parts of the common interest  
12 community, other than the owner's unit, which any owner must  
13 maintain;

14 (ii) Whether timesharing is permitted or prohibited, and, if  
15 permitted, a statement that the purchaser of a timeshare unit is  
16 entitled to receive the disclosure document required under chapter  
17 64.36 RCW;

18 (jj) If the common interest community is subject to any special  
19 declarant rights, the information required under section 404 of this  
20 act;

21 (kk) Any liens on real estate to be conveyed to the association  
22 required to be disclosed pursuant to section 411(3)(b) of this act;

23 (ll) A list of any physical hazards known to the declarant that  
24 particularly affect the common interest community or the immediate  
25 vicinity in which the common interest community is located and which  
26 are not readily ascertainable by the purchaser;

27 (mm) Any building code violation of which the declarant has  
28 actual knowledge and which has not been corrected;

29 (nn) If the common interest community contains one or more  
30 conversion buildings, the information required under sections 405 and  
31 412(6)(a) of this act;

32 (oo) If the public offering statement is related to conveyance of  
33 a unit in a multiunit residential building as defined in RCW  
34 64.55.010, for which the final certificate of occupancy was issued  
35 more than sixty calendar months prior to the preparation of the  
36 public offering statement either: A copy of a report prepared by an  
37 independent, licensed architect or engineer or a statement by the  
38 declarant based on such report that describes, to the extent  
39 reasonably ascertainable, the present condition of all structural  
40 components and mechanical and electrical installations of the

1 conversion buildings material to the use and enjoyment of the  
2 conversion buildings;

3 (pp) Any other information and cross-references that the  
4 declarant believes will be helpful in describing the common interest  
5 community to the recipients of the public offering statement, all of  
6 which may be included or not included at the option of the declarant;  
7 and

8 (qq) A description of any age-related occupancy restrictions  
9 affecting the common interest community.

10 (2) The public offering statement must begin with notices  
11 substantially in the following forms and in conspicuous type:

12 (a) "RIGHT TO CANCEL. (1) You are entitled to receive a copy of  
13 this public offering statement and all material amendments to this  
14 public offering statement before conveyance of your unit. Under  
15 section 408 of this act, you have the right to cancel your contract  
16 for the purchase of your unit within seven days after first receiving  
17 this public offering statement. If this public offering statement is  
18 first provided to you more than seven days before you sign your  
19 contract for the purchase of your unit, you have no right to cancel  
20 your contract. If this public offering statement is first provided to  
21 you seven days or less before you sign your contract for the purchase  
22 of your unit, you have the right to cancel, before conveyance of the  
23 unit, the executed contract by delivering, no later than the seventh  
24 day after first receiving this public offering statement, a notice of  
25 cancellation pursuant to section (3) of this notice. If this public  
26 offering statement is first provided to you less than seven days  
27 before the closing date for the conveyance of your unit, you may,  
28 before conveyance of your unit to you, extend the closing date to a  
29 date not more than seven days after you first received this public  
30 offering statement, so that you may have seven days to cancel your  
31 contract for the purchase of your unit.

32 (2) You have no right to cancel your contract upon receipt of an  
33 amendment to this public offering statement; however, this does not  
34 eliminate any right to rescind your contract, due to the disclosure  
35 of the information in the amendment, that is otherwise available to  
36 you under generally applicable contract law.

37 (3) If you elect to cancel your contract pursuant to this notice,  
38 you may do so by hand-delivering notice of cancellation, or by  
39 mailing notice of cancellation by prepaid United States mail, to the  
40 seller at the address set forth in this public offering statement or

1 at the address of the seller's registered agent for service of  
2 process. The date of such notice is the date of receipt, if hand-  
3 delivered, or the date of deposit in the United States mail, if  
4 mailed. Cancellation is without penalty, and all payments made to the  
5 seller by you before cancellation must be refunded promptly."

6 (b) "OTHER DOCUMENTS CREATING BINDING LEGAL OBLIGATIONS. This  
7 public offering statement is a summary of some of the significant  
8 aspects of purchasing a unit in this common interest community. The  
9 governing documents and the purchase agreement are complex, contain  
10 other important information, and create binding legal obligations.  
11 You should consider seeking the assistance of legal counsel."

12 (c) "OTHER REPRESENTATIONS. You may not rely on any statement,  
13 promise, model, depiction, or description unless it is (1) contained  
14 in the public offering statement delivered to you or (2) made in  
15 writing signed by the declarant or dealer or the declarant's or  
16 dealer's agent identified in the public offering statement. A  
17 statement of opinion, or a commendation of the real estate, its  
18 quality, or its value, does not create a warranty, and a statement,  
19 promise, model, depiction, or description does not create a warranty  
20 if it discloses that it is only proposed, is not representative, or  
21 is subject to change."

22 (d) "MODEL UNITS. Model units are intended to provide you with a  
23 general idea of what a finished unit might look like. Units being  
24 offered for sale may vary from the model unit in terms of floor plan,  
25 fixtures, finishes, and equipment. You are advised to obtain specific  
26 information about the unit you are considering purchasing."

27 (e) "RESERVE STUDY. The association [does] [does not] have a  
28 current reserve study. Any reserve study should be reviewed  
29 carefully. It may not include all reserve components that will  
30 require major maintenance, repair, or replacement in future years,  
31 and may not include regular contributions to a reserve account for  
32 the cost of such maintenance, repair, or replacement. You may  
33 encounter certain risks, including being required to pay as a special  
34 assessment your share of expenses for the cost of major maintenance,  
35 repair, or replacement of a reserve component, as a result of the  
36 failure to: (1) Have a current reserve study or fully funded  
37 reserves, (2) include a component in a reserve study, or (3) provide  
38 any or sufficient contributions to a reserve account for a  
39 component."

1 (f) "DEPOSITS AND PAYMENTS. Only earnest money and reservation  
2 deposits are required to be placed in an escrow or trust account. Any  
3 other payments you make to the seller of a unit are at risk and may  
4 be lost if the seller defaults."

5 (g) "CONSTRUCTION DEFECT CLAIMS. Chapter 64.50 RCW contains  
6 important requirements you must follow before you may file a lawsuit  
7 for defective construction against the seller or builder of your  
8 home. Forty-five days before you file your lawsuit, you must deliver  
9 to the seller or builder a written notice of any construction  
10 conditions you allege are defective and provide your seller or  
11 builder the opportunity to make an offer to repair or pay for the  
12 defects. You are not obligated to accept any offer made by the  
13 builder or seller. There are strict deadlines and procedures under  
14 state law, and failure to follow them may affect your ability to file  
15 a lawsuit."

16 (h) "ASSOCIATION INSURANCE. The extent to which association  
17 insurance provides coverage for the benefit of unit owners (including  
18 furnishings, fixtures, and equipment in a unit) is determined by the  
19 provisions of the declaration and the association's insurance policy,  
20 which may be modified from time to time. You and your personal  
21 insurance agent should read the declaration and the association's  
22 policy prior to closing to determine what insurance is required of  
23 the association and unit owners, unit owners' rights and duties, what  
24 is and is not covered by the association's policy, and what  
25 additional insurance you should obtain."

26 (i) "QUALIFIED WARRANTY. Your unit [is] [is not] covered by a  
27 qualified warranty under chapter 64.35 RCW. "

28 (3) The public offering statement must include copies of each of  
29 the following documents: The declaration; the survey; the  
30 organizational documents; the rules and regulations, if any; the  
31 current or proposed budget for the association; a dated balance sheet  
32 of the association; any inspection and repair report or reports  
33 prepared in accordance with the requirements of RCW 64.55.090; and  
34 any qualified warranty provided to a purchaser by a declarant  
35 together with a history of claims under the qualified warranty. If  
36 any of these documents are not in final form, the documents must be  
37 marked "draft" and, before closing the sale of a unit, the purchaser  
38 must be given notice of any material changes to the draft documents.

1 (4) A declarant must promptly amend the public offering statement  
2 to reflect any material change in the information required under this  
3 section.

4 NEW SECTION. **Sec. 404.** PUBLIC OFFERING STATEMENT—COMMON  
5 INTEREST COMMUNITIES SUBJECT TO DEVELOPMENT RIGHTS. If the  
6 declaration provides that a common interest community is subject to  
7 any development rights or if the declarant reserves any special  
8 declarant rights, the public offering statement must include, in  
9 addition to the information required under section 403 of this act:

10 (1) A statement of all development rights and special declarant  
11 rights reserved to the declarant, together with the dates or other  
12 circumstances under which such rights must terminate; and

13 (2) A statement describing how the allocated interests of a unit  
14 may be changed by the exercise of any development right.

15 NEW SECTION. **Sec. 405.** PUBLIC OFFERING STATEMENT—COMMON  
16 INTEREST COMMUNITIES CONTAINING CONVERSION BUILDINGS. (1) A public  
17 offering statement for a unit in a conversion building must contain,  
18 in addition to the information required under sections 403, 404, and  
19 412(6)(a) of this act:

20 (a) Either a copy of a report prepared by an independent,  
21 licensed architect or engineer or a statement by the declarant based  
22 on such report that describes, to the extent reasonably  
23 ascertainable, the present condition of all structural components and  
24 mechanical and electrical installations material to the use and  
25 enjoyment of the common interest community;

26 (b) A statement by the declarant or dealer of the expected useful  
27 life of each item reported on in (a) of this subsection or a  
28 statement that no representations are made in that regard;

29 (c) A copy of any inspection and repair report for the conversion  
30 building required under RCW 64.55.090, if applicable;

31 (d) A list of any outstanding notices of uncured violations of  
32 building code or other municipal ordinances and regulations, together  
33 with the estimated cost of curing those violations and a statement  
34 that such list is not a representation that the conversion building  
35 is in compliance with the current building code or other municipal  
36 ordinances and regulations;

1 (e) A statement of the improvements to the conversion building  
2 made or contracted for by the declarant or dealer, or affiliate of  
3 either, offering the unit for sale; and

4 (f) The current deficiency or surplus in reserve funding  
5 expressed on a per unit basis.

6 (2) The obligation to provide the information required in  
7 subsection (1) of this section as to any particular conversion  
8 building ceases on the earlier of (a) the date when all units in the  
9 building have been conveyed to persons other than the declarant or a  
10 dealer, or any affiliate of the declarant or dealer, or (b) the date  
11 set forth in section 402(5) of this act.

12 NEW SECTION. **Sec. 406.** PUBLIC OFFERING STATEMENT—USE OF SINGLE  
13 DISCLOSURE DOCUMENT. If a unit is offered for sale for which the  
14 delivery of a public offering statement or other disclosure document  
15 is required under the laws of any state or the United States, a  
16 single disclosure document conforming to the requirements of sections  
17 403, 404, and 405 of this act and conforming to any other requirement  
18 imposed under such laws may be prepared and delivered in lieu of  
19 providing two or more disclosure documents.

20 NEW SECTION. **Sec. 407.** PUBLIC OFFERING STATEMENT—CONTRACT OF  
21 SALE—RESTRICTION ON INTEREST CONVEYED. In the case of a sale of a  
22 unit in which delivery of a public offering statement is required, a  
23 contract of sale may be executed unless otherwise prohibited by  
24 applicable law, but interest in that unit may not be conveyed until:

25 (1) The declaration and map that create the common interest  
26 community in which that unit is located are recorded pursuant to  
27 sections 201(1) and 210(3) of this act; and

28 (2) In the case of a unit in a building containing that unit or a  
29 building comprising that unit, the unit is substantially completed  
30 and available for occupancy, and all structural components and  
31 mechanical systems of the building containing or comprising that unit  
32 are substantially completed, but a declarant or dealer and a  
33 purchaser may otherwise specifically agree in writing as to the  
34 extent to which the unit will not be substantially completed and  
35 available and to which any structural components and mechanical  
36 systems will not be substantially completed at the time of  
37 conveyance.

1        NEW SECTION.    **Sec. 408.**    PURCHASER'S RIGHT TO CANCEL. (1) The  
2 purchaser may cancel a contract for the purchase of the unit within  
3 seven days after first receiving the public offering statement. If  
4 the public offering statement is first provided to a purchaser more  
5 than seven days before execution of a contract for the purchase of a  
6 unit, the purchaser does not have the right under this section to  
7 cancel the executed contract. If the public offering statement is  
8 first provided to a purchaser seven days or less before the purchaser  
9 signs a contract for the purchase of a unit, the purchaser, before  
10 conveyance of the unit to the purchaser, may cancel the contract by  
11 delivering, no later than the seventh day after first receiving the  
12 public offering statement, a notice of cancellation, delivered  
13 pursuant to subsection (3) of this section. If the public offering  
14 statement is first provided to a purchaser less than seven days  
15 before the closing date for the conveyance of that unit, the  
16 purchaser may, before conveyance of the unit to the purchaser, extend  
17 the closing date to a date not more than seven days after the  
18 purchaser first received the public offering statement.

19        (2) A purchaser does not have the right under this section to  
20 cancel a contract upon receipt of an amendment to a public offering  
21 statement. This subsection must not be construed to eliminate any  
22 right that is otherwise available to the purchaser under generally  
23 applicable contract law to rescind the contract due to the disclosure  
24 of the information in the amendment.

25        (3) If a purchaser elects to cancel a contract under subsection  
26 (1) of this section, the purchaser may do so by hand-delivering  
27 notice of cancellation, or by mailing notice of cancellation by  
28 prepaid United States mail, to the declarant at the address set forth  
29 in the public offering statement or at the address of the declarant's  
30 registered agent for service of process. The date of such notice is  
31 the date of receipt of delivery, if hand-delivered, or the date of  
32 deposit in the United States mail, if mailed. Cancellation is without  
33 penalty, and all payments made to the seller by the purchaser before  
34 cancellation must be refunded promptly. There is no liability for  
35 failure to deliver any amendment unless such failure would have  
36 entitled the purchaser under generally applicable legal principles to  
37 cancel the contract for the purchase of the unit had the undisclosed  
38 information been evident to the purchaser before the closing of the  
39 purchase.

1 (4) The language of the notice required under section 403(2)(a)  
2 of this act must not be construed to modify the rights set forth in  
3 this section.

4 NEW SECTION. **Sec. 409.** RESALES OF UNITS. (1) Except in the case  
5 of a sale when delivery of a public offering statement is required,  
6 or unless exempt under section 401(2) of this act, a unit owner must  
7 furnish to a purchaser before execution of any contract for sale of a  
8 unit, or otherwise before conveyance, a resale certificate, signed by  
9 an officer or authorized agent of the association and based on the  
10 books and records of the association and the actual knowledge of the  
11 person signing the certificate, containing:

12 (a) A statement disclosing any right of first refusal or other  
13 restraint on the free alienability of the unit contained in the  
14 declaration;

15 (b) With respect to the selling unit owner's unit, a statement  
16 setting forth the amount of any assessment currently due, any  
17 delinquent assessments, and a statement of any special assessments  
18 that have been levied and have not been paid even though not yet due;

19 (c) A statement, which must be current to within forty-five days,  
20 of any assessments against any unit in the condominium that are past  
21 due over thirty days;

22 (d) A statement, which must be current to within forty-five days,  
23 of any monetary obligation of the association that is past due over  
24 thirty days;

25 (e) A statement of any other fees payable to the association by  
26 unit owners;

27 (f) A statement of any expenditure or anticipated repair or  
28 replacement cost reasonably anticipated to be in excess of five  
29 percent of the board-approved annual budget of the association,  
30 regardless of whether the unit owners are entitled to approve such  
31 cost;

32 (g) A statement whether the association does or does not have a  
33 reserve study prepared in accordance with sections 330 and 331 of  
34 this act;

35 (h) The annual financial statement of the association, including  
36 the audit report if it has been prepared, for the year immediately  
37 preceding the current year;

38 (i) The most recent balance sheet and revenue and expense  
39 statement, if any, of the association;

1 (j) The current operating budget of the association;

2 (k) A statement of any unsatisfied judgments against the  
3 association and the status of any legal actions in which the  
4 association is a party or a claimant as defined in RCW 64.50.010;

5 (l) A statement describing any insurance coverage carried by the  
6 association and contact information for the association's insurance  
7 broker or agent;

8 (m) A statement as to whether the board has given or received  
9 notice in a record that any existing uses, occupancies, alterations,  
10 or improvements in or to the seller's unit or to the limited common  
11 elements allocated to the unit violate any provision of the governing  
12 documents;

13 (n) A statement of the number of units, if any, still owned by  
14 the declarant, whether the declarant has transferred control of the  
15 association to the unit owners, and the date of such transfer;

16 (o) A statement as to whether the board has received notice in a  
17 record from a governmental agency of any violation of environmental,  
18 health, or building codes with respect to the seller's unit, the  
19 limited common elements allocated to that unit, or any other portion  
20 of the common interest community that has not been cured;

21 (p) A statement of the remaining term of any leasehold estate  
22 affecting the common interest community and the provisions governing  
23 any extension or renewal of the leasehold estate;

24 (q) A statement of any restrictions in the declaration affecting  
25 the amount that may be received by a unit owner upon sale;

26 (r) In a cooperative, an accountant's statement, if any was  
27 prepared, as to the deductibility for federal income tax purposes by  
28 the unit owner of real estate taxes and interest paid by the  
29 association;

30 (s) A statement describing any pending sale or encumbrance of  
31 common elements;

32 (t) A statement disclosing the effect on the unit to be conveyed  
33 of any restrictions on the owner's right to use or occupy the unit or  
34 to lease the unit to another person;

35 (u) A copy of the declaration, the organizational documents, the  
36 rules or regulations of the association, the minutes of board  
37 meetings and association meetings, except for any information exempt  
38 from disclosure under section 320(3) of this act, for the last twelve  
39 months, a summary of the current reserve study for the association,  
40 and any other information reasonably requested by mortgagees of

1 prospective purchasers of units. Information requested generally by  
2 the federal national mortgage association, the federal home loan bank  
3 board, the government national mortgage association, the veterans  
4 administration, or the department of housing and urban development is  
5 deemed reasonable if the information is reasonably available to the  
6 association;

7 (v) A statement whether the units or common elements of the  
8 common interest community are covered by a qualified warranty under  
9 chapter 64.35 RCW and, if so, a history of claims known to the  
10 association as having been made under any such warranty;

11 (w) A description of any age-related occupancy restrictions  
12 affecting the common interest community; and

13 (x) If the association does not have a reserve study that has  
14 been prepared in accordance with sections 330 and 331 of this act or  
15 its governing documents, the following disclosure:

16 "This association does not have a current reserve study. The lack  
17 of a current reserve study poses certain risks to you, the purchaser.  
18 Insufficient reserves may, under some circumstances, require you to  
19 pay on demand as a special assessment your share of common expenses  
20 for the cost of major maintenance, repair, or replacement of a common  
21 element."

22 (2) The association, within ten days after a request by a unit  
23 owner, and subject to the payment of any fees imposed pursuant to  
24 section 302(2)(m) of this act, must furnish a resale certificate  
25 signed by an officer or authorized agent of the association and  
26 containing the information necessary to enable the unit owner to  
27 comply with this section. For the purposes of this chapter, a  
28 reasonable charge for the preparation of a resale certificate may not  
29 exceed two hundred seventy-five dollars. The association may charge a  
30 unit owner a nominal fee not to exceed one hundred dollars for  
31 updating a resale certificate within six months of the unit owner's  
32 request. A unit owner is not liable to the purchaser for any  
33 erroneous information provided by the association and included in the  
34 certificate.

35 (3)(a) A purchaser is not liable for any unpaid assessment or fee  
36 greater than the amount set forth in the certificate prepared by the  
37 association.

38 (b) A unit owner is not liable to a purchaser for the failure or  
39 delay of the association to provide the certificate in a timely  
40 manner, but the purchase contract is voidable by the purchaser until

1 the certificate has been provided and for five days thereafter or  
2 until conveyance, whichever occurs first.

3 NEW SECTION. **Sec. 410.** ESCROW OF DEPOSITS. Any earnest money  
4 deposit, as defined in RCW 64.04.005, or any reservation deposit made  
5 in connection with the right to purchase a unit from a person  
6 required to deliver a public offering statement pursuant to section  
7 402(3) of this act must be placed in escrow and held in this state in  
8 an escrow or trust account designated solely for that purpose by a  
9 licensed title insurance company or agent, a licensed attorney, a  
10 real estate broker or independent bonded escrow company, or an  
11 institution whose accounts are insured by a governmental agency or  
12 instrumentality until: (1) Delivered to the declarant at closing, (2)  
13 delivered to the declarant because of the purchaser's default under a  
14 contract to purchase the unit, (3) refunded to the purchaser, or (4)  
15 delivered to a court in connection with the filing of an interpleader  
16 action.

17 NEW SECTION. **Sec. 411.** RELEASE OF LIENS. (1) In the case of a  
18 sale of a unit when delivery of a public offering statement is  
19 required pursuant to section 402(3) of this act and subject to  
20 subsection (2) of this section, a seller before conveying a unit:

21 (a) Must record or furnish to the purchaser releases of all liens  
22 that encumber:

23 (i) In a condominium, that unit and its common element interest;  
24 and

25 (ii) In a cooperative, plat community, or miscellaneous  
26 community, that unit and any limited common elements assigned to that  
27 unit; or

28 (b) Must provide the purchaser of that unit with title insurance  
29 from a licensed title insurance company against any lien not released  
30 pursuant to (a) of this subsection.

31 (2) Subsection (1) of this section does not apply to liens that  
32 encumber:

33 (a) Real estate that a declarant has the right to withdraw from  
34 the common interest community;

35 (b) In a condominium, the unit and its common element interest  
36 being purchased, but no other unit, if the purchaser expressly agrees  
37 in writing to take subject to or assume such lien;

1 (c) In a cooperative, plat community, or miscellaneous community,  
2 the unit and any limited common element allocated to the unit being  
3 purchased, but no other unit, if the purchaser expressly agrees in  
4 writing to take subject to or assume such lien.

5 (3) Before conveying real property to the association, the  
6 declarant must have that real property released from:

7 (a) All liens the foreclosure of which would deprive unit owners  
8 of any right of access to or easement of support of their units; and

9 (b) All other liens on that real property unless the public  
10 offering statement describes certain real property that may be  
11 conveyed subject to liens in specified amounts.

12 NEW SECTION. **Sec. 412.** CONVERSION BUILDINGS—TENANT RIGHTS.

13 (1)(a) A declarant or dealer who intends to offer units in a  
14 conversion building must give each of the residential tenants and any  
15 residential subtenants in possession of a portion of a conversion  
16 building notice of the conversion and provide those persons with the  
17 public offering statement no later than one hundred twenty days  
18 before the tenants and any subtenants in possession are required to  
19 vacate. The notice must:

20 (i) Set forth generally the rights of residential tenants and  
21 residential subtenants under this section;

22 (ii) Be delivered pursuant to notice requirements set forth in  
23 RCW 59.12.040;

24 (iii) Expressly state whether there is a county or city  
25 relocation assistance program for residential tenants or residential  
26 subtenants of conversion buildings in the jurisdiction in which the  
27 property is located. If the county or city does have a relocation  
28 assistance program, the following must also be included in the  
29 notice:

30 (A) A summary of the terms and conditions under which relocation  
31 assistance is paid; and

32 (B) Contact information for the city or county relocation  
33 assistance program, which must include, at a minimum, a telephone  
34 number of the city or county department that administers the  
35 relocation assistance program for conversion buildings.

36 (b) A residential tenant or residential subtenant may not be  
37 required to vacate upon less than one hundred twenty days' notice,  
38 except by reason of nonpayment of rent, waste, or conduct that  
39 disturbs other residential tenants' or residential subtenants'

1 peaceful enjoyment of the premises, or act of unlawful detainer as  
2 defined in RCW 59.12.030, and the terms of the tenancy may not be  
3 altered during that period except as provided in (c) of this  
4 subsection.

5 (c) At the declarant's option, the declarant may provide all  
6 residential tenants and residential subtenants in a single conversion  
7 building with an option to terminate their lease or rental agreements  
8 without cause or consequence after providing the declarant with  
9 thirty days' notice. In such case, residential tenants and  
10 residential subtenants continue to have access to relocation  
11 assistance under subsection (6)(e)(i) of this section.

12 (d)(i) Nothing in this subsection (1) waives or repeals RCW  
13 59.18.200(2)(b).

14 (ii) Failure to give notice as required under this section is a  
15 defense to an action for possession.

16 (e) The city or county in which the property is located may  
17 require the declarant to forward a copy of the conversion notice  
18 required in this subsection (1) to the appropriately designated  
19 department or agency in the city or county for the purpose of  
20 maintaining a list of common interest communities containing  
21 conversion buildings in the jurisdiction.

22 (2)(a) For sixty days after delivery or mailing of the notice  
23 described in subsection (1) of this section, the person required to  
24 give the notice must offer to convey each unit or proposed unit  
25 occupied for residential use to the residential tenant or residential  
26 subtenant who leases that unit. If a residential tenant or  
27 residential subtenant fails to purchase the unit during that sixty-  
28 day period, the offeror may offer to dispose of an interest in that  
29 unit during the following one hundred eighty days at a price or on  
30 terms more favorable to the offeree than the price or terms offered  
31 to the residential tenant or residential subtenant only if:

32 (i) Such offeror, by written notice mailed to the residential  
33 tenant's or residential subtenant's last known address, offers to  
34 sell an interest in that unit at the more favorable price and terms;  
35 and

36 (ii) Such residential tenant or residential subtenant fails to  
37 accept the offer in writing within ten days following the mailing of  
38 the offer to the tenant or subtenant.

39 (b) This subsection (2) does not apply to any unit in a  
40 conversion building if that unit will be restricted exclusively to

1 nonresidential use or the boundaries of the converted unit do not  
2 substantially conform to the dimensions of the residential unit  
3 before conversion.

4 (3) If a seller, in violation of subsection (2) of this section,  
5 conveys a unit to a purchaser for value who has no actual knowledge  
6 of the violation, the recording of the deed conveying the unit, or,  
7 in a cooperative, the conveyance of the unit, extinguishes any right  
8 a residential tenant or residential subtenant may have under  
9 subsection (2) of this section to purchase that unit, but does not  
10 affect the right of a residential tenant or residential subtenant to  
11 recover damages from the seller for a violation of subsection (2) of  
12 this section.

13 (4) If a notice of conversion specifies a date by which a unit or  
14 proposed unit must be vacated and otherwise complies with this  
15 chapter and chapter 59.18 RCW, the notice also constitutes a notice  
16 to vacate specified under chapter 59.18 RCW.

17 (5) This section does not permit termination of a lease or  
18 sublease by a declarant in violation of its terms.

19 (6) Notwithstanding section 105 of this act, a city or county may  
20 by appropriate ordinance require with respect to any conversion  
21 building within the jurisdiction of the city or county that:

22 (a) In addition to the statement required under section 405(1)(a)  
23 of this act, the public offering statement must contain a copy of a  
24 written inspection report of that building prepared by the  
25 appropriate department of the city or county listing any violations  
26 of the housing code or other governmental regulation that is  
27 applicable regardless of whether the real property is owned as a  
28 common interest community or in some other form of ownership. The  
29 inspection must be made within forty-five days of the declarant's  
30 written request, and the report must be issued within fourteen days  
31 of the inspection being made. The inspection may not be required with  
32 respect to any building for which a final certificate of occupancy  
33 has been issued by the city or county within the preceding twenty-  
34 four months, and any fee imposed for the making of such inspection  
35 may not exceed the fee that would be imposed for the making of such  
36 an inspection for a purpose other than complying with this subsection  
37 (6)(a).

38 (b) Prior to the conveyance of any residential unit within a  
39 conversion building, other than a conveyance to a declarant or  
40 dealer, or affiliate of either:

1 (i) All violations disclosed in the inspection report provided  
2 for in (a) of this subsection, and not otherwise waived by the city  
3 or county, must be repaired; and

4 (ii) A certification must be obtained from the city or county  
5 that such repairs have been made. The certification must be based on  
6 a reinspection to be made within seven days of the declarant's  
7 written request and be issued within seven days of the reinspection  
8 being made;

9 (c) The repairs required to be made under (b) of this subsection  
10 must be warranted by the declarant against defects due to workmanship  
11 or materials for a period of one year following the completion of  
12 such repairs;

13 (d) Prior to the conveyance of any residential unit within a  
14 conversion building, other than a conveyance to a declarant or  
15 dealer, or affiliate of either:

16 (i) The declarant must establish and maintain, during the one-  
17 year warranty period provided under (c) of this subsection, an  
18 account containing a sum equal to ten percent of the actual cost of  
19 making the repairs required under (b) of this subsection;

20 (ii) During the one-year warranty period, the funds in the  
21 account must be used exclusively for paying the actual cost of making  
22 repairs required, or for otherwise satisfying claims made, under such  
23 warranty;

24 (iii) Following the expiration of the one-year warranty period,  
25 any funds remaining in the account must be immediately disbursed to  
26 the declarant; and

27 (iv) The declarant must notify in writing the association and the  
28 city or county as to the location of the account and any  
29 disbursements from the account;

30 (e)(i) A declarant must pay relocation assistance, in an amount  
31 to be determined by the city or county, which may not exceed a sum  
32 equal to three months of the residential tenant's or residential  
33 subtenant's rent at the time the conversion notice required under  
34 subsection (1) of this section is received, to residential tenants or  
35 residential subtenants:

36 (A) Who do not elect to purchase a unit in the common interest  
37 community;

38 (B) Who are in lawful occupancy for residential purposes of a  
39 unit in the conversion building; and

1 (C) Whose annual household income from all sources, on the date  
2 of the notice described in subsection (1) of this section, was less  
3 than an amount equal to eighty percent of:

4 (I) The annual median income for comparably sized households in  
5 the standard metropolitan statistical area, as defined and  
6 established by the United States department of housing and urban  
7 development, in which the conversion building is located; or

8 (II) If the conversion building is not within a standard  
9 metropolitan statistical area, the annual median income for  
10 comparably sized households in the state of Washington, as defined  
11 and determined by said department.

12 The household size of a unit must be based on the number of  
13 persons actually in lawful occupancy of the unit. The residential  
14 tenant or residential subtenant actually in lawful occupancy of the  
15 unit is entitled to the relocation assistance. Relocation assistance  
16 must be paid on or before the date the residential tenant or  
17 residential subtenant vacates and is in addition to any damage  
18 deposit or other compensation or refund to which the residential  
19 tenant or residential subtenant is otherwise entitled. Unpaid rent or  
20 other amounts owed by the residential tenant or residential subtenant  
21 to the landlord may be offset against the relocation assistance.

22 (ii) Elderly residential tenants or residential subtenants and  
23 residential tenants or residential subtenants with special needs who  
24 otherwise meet the requirements of (e)(i)(A) of this subsection must  
25 receive relocation assistance, the greater of:

26 (A) The sum described in (e)(i) of this subsection; or

27 (B) The sum of actual relocation expenses of the residential  
28 tenant or residential subtenant, up to a maximum of one thousand five  
29 hundred dollars in excess of the sum described in (e)(i) of this  
30 subsection, which may include costs associated with the physical  
31 move, first month's rent, and the security deposit for the dwelling  
32 unit to which the residential tenant or residential subtenant is  
33 relocating, rent differentials for up to a six-month period, and any  
34 other reasonable costs or fees associated with the relocation.  
35 Receipts for relocation expenses must be provided to the declarant by  
36 eligible residential tenants or residential subtenants, and  
37 declarants must provide the relocation assistance to residential  
38 tenants or residential subtenants in a timely manner. The city or  
39 county may provide additional guidelines for the relocation  
40 assistance.

1 (iii) For the purposes of this subsection (6)(e):

2 (A) "Elderly" means a person who is at least sixty-five years of  
3 age; and

4 (B) "Special needs" means a chronic mental illness or physical  
5 disability, a developmental disability, or other condition affecting  
6 cognition, disease, chemical dependency, or a medical condition that  
7 is permanent, not reversible or curable, or is long lasting, and  
8 severely limits a person's mental or physical capacity for self-care;

9 (f) Except as authorized under (g) of this subsection, a  
10 declarant and any dealer may not begin any construction, remodeling,  
11 or repairs to any interior portion of an occupied building that is to  
12 become a conversion building during the one hundred twenty-day notice  
13 period provided for in subsection (1) of this section unless all  
14 residential tenants and residential subtenants who have elected not  
15 to purchase a unit in the common interest community and who are in  
16 lawful occupancy in the building have vacated the premises. For the  
17 purposes of this subsection:

18 (i) "Construction, remodeling, or repairs" means the work that is  
19 done for the purpose of establishing or selling units in a conversion  
20 building, and does not mean the work that is done to maintain the  
21 building or lot for the residential use of the existing residential  
22 tenants or residential subtenants; and

23 (ii) "Occupied building" means a stand-alone structure occupied  
24 by residential tenants or residential subtenants and does not include  
25 other stand-alone buildings located on the property or detached  
26 common area facilities; and

27 (g)(i) If a declarant or dealer has offered existing residential  
28 tenants or residential subtenants an option to terminate an existing  
29 lease or rental agreement without cause or consequence as authorized  
30 under subsection (1)(c) of this section, a declarant and any dealer  
31 may begin construction, remodeling, or repairs to interior portions  
32 of an occupied building (A) to repair or remodel vacant units to be  
33 used as model units, if the repair or remodel is limited to one model  
34 for each unit type in the building; (B) to repair or remodel a vacant  
35 unit or common element for use as a sales office; or (C) to do both.

36 (ii) The work performed under this subsection (6)(g) must not  
37 violate the residential tenants' or residential subtenants' rights of  
38 quiet enjoyment during the one hundred twenty-day notice period.

39 (7) Violations of any city or county ordinance adopted as  
40 authorized under subsection (6) of this section gives rise to such

1 remedies, penalties, and causes of action that may be lawfully  
2 imposed by the city or county. Such violations do not invalidate the  
3 creation of the common interest community or the conveyance of any  
4 interest in the common interest community.

5 NEW SECTION. **Sec. 413.** CONVERSION COMMON INTEREST COMMUNITY  
6 PROJECT—REPORT. (1) All cities and counties planning under RCW  
7 36.70A.040, which have inspected any conversion buildings or managed  
8 the payment of relocation assistance within the jurisdiction within  
9 the previous twelve-month period, must report annually to the  
10 department of commerce the following information:

11 (a) The total number of apartment units converted into common  
12 interest community units;

13 (b) The total number of conversion common interest community  
14 projects; and

15 (c) The total number of residential tenants and residential  
16 subtenants who receive relocation assistance.

17 (2) Upon completion of a conversion common interest community  
18 project, a city or county may require the declarant to provide the  
19 information described in subsection (1)(a) and (c) of this section  
20 for the converted common interest community to the appropriately  
21 designated department or agency in the city or county for the purpose  
22 of complying with subsection (1) of this section.

23 NEW SECTION. **Sec. 414.** EXPRESS WARRANTIES OF QUALITY. (1)  
24 Subject to subsections (2) and (3) of this section, express  
25 warranties made by any declarant or dealer to a purchaser of a unit  
26 in a condominium, if relied upon by the purchaser in purchasing the  
27 unit, are created as follows:

28 (a) Any written affirmation of fact or written promise that  
29 relates to the unit, its use, or rights appurtenant to the unit or  
30 its use, improvements to the condominium that would directly benefit  
31 the unit, or the right to use or have the benefit of facilities not  
32 located in the condominium creates an express warranty that the unit  
33 and related rights and uses will not materially deviate from the  
34 affirmation or promise.

35 (b) Any written description of the physical characteristics of  
36 the condominium at the time the purchase agreement is executed,  
37 including plans and specifications of or for improvements, creates an

1 express warranty that the condominium will conform to the written  
2 description in all material respects.

3 (c) Any written description of the quantity or extent of the real  
4 estate comprising the condominium, including plats or surveys,  
5 creates an express warranty that the condominium will conform to the  
6 description, subject to customary tolerances.

7 (d) A written statement that a purchaser may put a unit only to a  
8 specified use is an express warranty that the specified use is  
9 lawful.

10 (2) Subject to subsection (3) of this section, neither formal  
11 words, such as "warranty" or "guarantee," nor a specific intention to  
12 make a warranty are necessary to create an express warranty, but a  
13 statement of opinion or a commendation of the real estate, its  
14 quality, or its value does not create a warranty, and a statement,  
15 promise, model, depiction, or description does not create a warranty  
16 if it discloses that it is only proposed, is not representative, or  
17 is subject to change.

18 (3) A purchaser may not rely on any statement, promise, model,  
19 depiction, or description unless it is contained in the public  
20 offering statement delivered to the purchaser or made in a record  
21 signed by the declarant or dealer, or the declarant's or dealer's  
22 agent identified in the public offering statement.

23 (4) Any conveyance of a unit transfers to the purchaser all  
24 express warranties of quality made by the declarant or dealer.

25 NEW SECTION. **Sec. 415.** IMPLIED WARRANTIES OF QUALITY. (1) A  
26 declarant and any dealer warrants to a purchaser of a condominium  
27 unit that the unit will be in at least as good condition at the  
28 earlier of the time of the conveyance or delivery of possession as it  
29 was at the time of contracting, except for reasonable wear and tear  
30 and damage by casualty or condemnation.

31 (2) A declarant and any dealer impliedly warrants to a purchaser  
32 of a condominium unit that the unit and the common elements in the  
33 condominium are suitable for the ordinary uses of real estate of its  
34 type and that any improvements made or contracted for by such  
35 declarant or dealer will be:

36 (a) Free from defective materials;

37 (b) Constructed in accordance with sound engineering and  
38 construction standards;

39 (c) Constructed in a workmanlike manner; and

1 (d) Constructed in compliance with all laws then applicable to  
2 such improvements.

3 (3) A declarant and any dealer warrants to a purchaser of a  
4 condominium unit that may be used for residential use that an  
5 existing use, continuation of which is contemplated by the parties,  
6 does not violate applicable law at the earlier of the time of  
7 conveyance or delivery of possession.

8 (4) Warranties imposed under this section may be excluded or  
9 modified as specified in section 416 of this act.

10 (5) For purposes of this section, improvements made or contracted  
11 for by an affiliate of a declarant are made or contracted for by the  
12 declarant.

13 (6) Any conveyance of a condominium unit transfers to the  
14 purchaser all of a declarant's or dealer's implied warranties of  
15 quality.

16 (7)(a) In a judicial proceeding for breach of any of the  
17 obligations arising under this section, the plaintiff must show that  
18 the alleged breach has adversely affected or will adversely affect  
19 the performance of that portion of the unit or common elements  
20 alleged to be in breach.

21 (b) As used in this subsection, an adverse effect must be more  
22 than technical and must be significant to a reasonable person. To  
23 establish an adverse effect, the person alleging the breach is not  
24 required to prove that the breach renders the unit or common element  
25 uninhabitable or unfit for its intended purpose.

26 (8) Proof of breach of any obligation arising under this section  
27 is not proof of damages. Damages awarded for a breach of an  
28 obligation arising under this section are the reasonable cost of  
29 repairs. However, if it is established that the cost of such repairs  
30 is clearly disproportionate to the loss in market value caused by the  
31 breach, damages are limited to the loss in market value.

32 NEW SECTION. **Sec. 416.** EXCLUSION OR MODIFICATION OF IMPLIED  
33 WARRANTIES OF QUALITY. (1) Except as limited under subsection (2) of  
34 this section with respect to a purchaser of a condominium unit that  
35 may be used for residential use, implied warranties of quality under  
36 section 415 of this act:

37 (a) May be excluded or modified by written agreement of the  
38 parties; and

1 (b) Are excluded by written expression of disclaimer, such as "as  
2 is," "with all faults," or other language that in common  
3 understanding calls the buyer's attention to the exclusion of  
4 warranties.

5 (2) With respect to a purchaser of a condominium unit that may be  
6 occupied for residential use, a general disclaimer of implied  
7 warranties of quality under section 415 of this act is not effective,  
8 but a declarant and any dealer may disclaim liability in an  
9 instrument signed by the purchaser for one or more specified  
10 conditions, defects, or failures to comply with applicable law, if:

11 (a) The declarant or dealer knows or has reason to believe that  
12 the specific conditions, defects, or failures exist at the time of  
13 disclosure;

14 (b) The instrument specifically describes the conditions,  
15 defects, or failures;

16 (c) The instrument includes a brief statement as to the expected  
17 effect of the conditions, defects, or failures;

18 (d) The instrument is bold faced, capitalized, underlined, or  
19 otherwise set out from surrounding material so as to be conspicuous;  
20 and

21 (e) The instrument is signed by the purchaser.

22 (3) A declarant or dealer may not make an express written  
23 warranty of quality to a purchaser of a condominium unit that limits  
24 the implied warranties of quality made to the purchaser set forth in  
25 section 415 of this act.

26 NEW SECTION. **Sec. 417.** WARRANTIES OF QUALITY—BREACH—ACTIONS  
27 FOR CONSTRUCTION DEFECT CLAIMS. (1) A judicial proceeding for breach  
28 of any obligations arising under section 414, 415, or 416 of this act  
29 must be commenced within four years after the cause of action  
30 accrues. The period for commencing an action for a breach accruing  
31 pursuant to subsection (2)(a) of this section does not expire prior  
32 to one year after termination of the period of declarant control, if  
33 any, under section 304 of this act. Such periods may not be reduced  
34 by either oral or written agreement or through the use of contractual  
35 claims or notice procedures that require the filing or service of any  
36 claim or notice prior to the expiration of the period specified in  
37 this section.

1 (2) Subject to subsection (3) of this section, a cause of action  
2 for breach of warranty of quality, regardless of the purchaser's lack  
3 of knowledge of the breach, accrues:

4 (a) As to a unit, the date the unit was conveyed to the purchaser  
5 to whom the warranty is first made; and

6 (b) As to each common element, at the latest of:

7 (i) The date the common element was completed;

8 (ii) The date the common element was added to the condominium; or

9 (iii) The date the first unit in the condominium was conveyed to  
10 a bona fide purchaser.

11 (3) If a warranty of quality explicitly extends to future  
12 performance or duration of any improvement or component of the  
13 condominium, the cause of action accrues at the time the breach is  
14 discovered or at the end of the period for which the warranty  
15 explicitly extends, whichever is earlier.

16 (4) If a written notice of claim is served under RCW 64.50.020  
17 within the time prescribed for the filing of an action under this  
18 chapter, the statutes of limitation in this chapter and any  
19 applicable statutes of repose for construction-related claims are  
20 tolled until sixty days after the period of time during which the  
21 filing of an action is barred under RCW 64.50.020.

22 NEW SECTION. **Sec. 418.** EFFECT OF VIOLATIONS ON RIGHTS OF ACTION  
23 —ATTORNEYS' FEES. (1) A declarant, association, unit owner, or any  
24 other person subject to this chapter may bring an action to enforce a  
25 right granted or obligation imposed under this chapter or the  
26 governing documents. The court may award reasonable attorneys' fees  
27 and costs.

28 (2) Parties to a dispute arising under this chapter or the  
29 governing documents may agree at any time to resolve the dispute by  
30 any form of binding or nonbinding alternative dispute resolution.

31 NEW SECTION. **Sec. 419.** LABELING OF PROMOTIONAL MATERIAL.  
32 Promotional material may not be displayed or delivered to prospective  
33 purchasers of a condominium unit that describes or portrays an  
34 unbuilt contemplated improvement in the condominium unless the  
35 description or portrayal of the improvement in the promotional  
36 material is conspicuously labeled or identified either as "MUST BE  
37 BUILT" or as "NEED NOT BE BUILT" or words to that effect.



1 (5) On debts owing to the state of Washington for recovery of  
2 medical assistance correctly paid on behalf of an individual  
3 consistent with 42 U.S.C. Sec. 1396p;

4 (6) On debts secured by ((a ~~condominium's or homeowner~~) an  
5 association's lien(~~. In order for an association to be exempt under~~  
6 ~~this provision, the association must have provided a homeowner with~~  
7 ~~notice that nonpayment of the association's assessment may result in~~  
8 ~~foreclosure of the association lien and that the homestead protection~~  
9 ~~under this chapter shall not apply. An association has complied with~~  
10 ~~this notice requirement by mailing the notice, by first-class mail,~~  
11 ~~to the address of the owner's lot or unit. The notice required in~~  
12 ~~this subsection shall be given within thirty days from the date the~~  
13 ~~association learns of a new owner, but in all cases the notice must~~  
14 ~~be given prior to the initiation of a foreclosure. The phrase "learns~~  
15 ~~of a new owner" in this subsection means actual knowledge of the~~  
16 ~~identity of a homeowner acquiring title after June 9, 1988, and does~~  
17 ~~not require that an association affirmatively ascertain the identity~~  
18 ~~of a homeowner. Failure to give the notice specified in this~~  
19 ~~subsection affects an association's lien only for debts accrued up to~~  
20 ~~the time an association complies with the notice provisions under~~  
21 ~~this subsection)); or~~

22 (7) On debts owed for taxes collected under chapters 82.08,  
23 82.12, and 82.14 RCW but not remitted to the department of revenue.

24 NEW SECTION. Sec. 502. A new section is added to chapter 59.18  
25 RCW to read as follows:

26 This chapter does not apply to any proprietary lease as defined  
27 in section 102 of this act:

28 (1) Created after the effective date of this section;

29 (2) Created before the effective date of this section, except  
30 those that have elected out of applicability of chapter 64.--- RCW  
31 (the new chapter created in section 506 of this act) pursuant to  
32 section 117 of this act; and

33 (3) That have amended their governing documents to provide that  
34 chapter 64.--- RCW (the new chapter created in section 506 of this  
35 act) will apply to the common interest community pursuant to section  
36 120 of this act.

37 NEW SECTION. Sec. 503. A new section is added to chapter 64.32  
38 RCW to read as follows:

1 This chapter does not apply to common interest communities as  
2 defined in section 102 of this act:

3 (1) Created after the effective date of this section;

4 (2) Created before the effective date of this section, except  
5 those that have elected out of applicability of chapter 64.--- RCW  
6 (the new chapter created in section 506 of this act) pursuant to  
7 section 117 of this act; and

8 (3) That have amended their governing documents to provide that  
9 chapter 64.--- RCW (the new chapter created in section 506 of this  
10 act) will apply to the common interest community pursuant to section  
11 120 of this act.

12 NEW SECTION. **Sec. 504.** A new section is added to chapter 64.34  
13 RCW to read as follows:

14 This chapter does not apply to common interest communities as  
15 defined in section 102 of this act:

16 (1) Created after the effective date of this section;

17 (2) Created before the effective date of this section, except  
18 those that have elected out of applicability of chapter 64.--- RCW  
19 (the new chapter created in section 506 of this act) pursuant to  
20 section 117 of this act; and

21 (3) That have amended their governing documents to provide that  
22 chapter 64.--- RCW (the new chapter created in section 506 of this  
23 act) will apply to the common interest community pursuant to section  
24 120 of this act.

25 NEW SECTION. **Sec. 505.** A new section is added to chapter 64.38  
26 RCW to read as follows:

27 This chapter does not apply to common interest communities as  
28 defined in section 102 of this act:

29 (1) Created after the effective date of this section;

30 (2) Created before the effective date of this section, except  
31 those that have elected out of applicability of chapter 64.--- RCW  
32 (the new chapter created in section 506 of this act) pursuant to  
33 section 117 of this act; and

34 (3) That have amended their governing documents to provide that  
35 chapter 64.--- RCW (the new chapter created in section 506 of this  
36 act) will apply to the common interest community pursuant to section  
37 120 of this act.

1        NEW SECTION.    **Sec. 506.**    Sections 101 through 420 of this act  
2    constitute a new chapter in Title 64 RCW.

3        NEW SECTION.    **Sec. 507.**    This act takes effect July 1, 2018.

--- END ---